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THE NATURE OF THE STATE

Political power is, of course, always coercive power backed by the state's machinery for enforcing its laws. But in a constitutional regime political power is also power of equal citizens as a collective body: it is regularly imposed on citizens as individuals, some of whom may not accept the reasons widely believed to justify the general structure of political authority (the constitution); or when they do accept that structure, they may not regard as well grounded many of the laws enacted by the legislature to which they are subject.

John Rawls, 2001¹

Introduction

The nature of the state is a topic which divides criminologists. There are those who see it as a neutral instrument which upholds civic order or which supports citizens through a system of benefits and support and there are those who see the state as either having interests of its own or advancing the interests of a specific class of persons, in whose interests it governs. The idea of justice as fairness rests upon the idea that the state is a neutral entity and it is fair to say that the liberal tradition within Criminology has tended either to neglect the state or to rely, wholesale, upon liberal political theorists, such as John Rawls and his conception of 'social cooperation among equals for mutual advantage'.² The Marxist and Feminist traditions within Criminology have a far richer body of writing about the state and more generally about state control and social regulation. This chapter will set out the main ideas used in contemporary Criminology, either explicitly or implicitly, concerning the nature of the state.

The State

The state is, arguably, the most contested term in political theory and it may refer to a great many different things, such as a philosophical or ideological category, an institution, a territorial power or a functional organising principle. It is a topic covered extensively in the writings of political philosophers since classical times,

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and certainly Plato, Aquinas, Machiavelli, Hobbes, Locke and Marx are only a few of the writers who have tackled the subject of the state. In Criminology different traditions have grown up which attribute varying attributes and motivations to the state. In order to make progress, let us outline four basic and interrelated features of a state. First, the state must have a working political organisational structure. In other words, it must have a set of institutions which allow it to operate, such as the courts, a civil service and a police force. Secondly, for a state to be a working entity it has to persist in time and space, i.e. it must control a set territory and survive changes in its basic organisation, as would be the case if an election altered the government. Thirdly, it must be able to support a single political form of public order and therefore it must have agency. It must be sovereign and be able to claim a monopoly of political authority, law-making and power, and it must be autonomous. Fourthly, but closely linked to the idea of the state as a single political form of public order, it must have the allegiance of its members (citizens, subjects), who are subject to its laws and who have an obligation to obey it. The political theorist John Charvet has noted that: 'For Locke, as well as for Hobbes and Rousseau, entry into political society from the state of nature is possible only if individuals surrender their natural right of private judgement to the public judgement of the community or its agent.'³

The two most important features for criminologists are the first and third features. The first feature, that the state is a particular form of political organisation, is the dominant notion at work in contemporary Criminology. It is the view of Karl Marx, who wrote in *The German Ideology*, that: 'Through the emancipation of private property from the community, the State has become a separate entity, beside and outside civil society; but it is nothing more than the form of organisation which the bourgeois necessarily adopts both for internal and external purposes, for mutual guarantee of their property and interests.'⁴ In contemporary legal theory, Joseph Raz has also argued that the state is a form of political organisation, but he has usefully delineated the state from law and government: 'The state ... is the political organisation of a society, its government, the agent through which it acts, and the law, the vehicle through which much of its power is exercised.'⁵ Raz has further argued that: 'A state is the political organisation of a society, it is a subsystem of a more comprehensive social system.'⁶ This position echoes John Rawls' idea, expressed in *Political Liberalism*, that: 'a society's main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next'.⁷ It should be noted here that the political and social basis of the state are not very clearly delineated.⁸

The third feature, that the state is a political form of public order with a monopoly of political authority, law-making and power, was underscored by Thomas Hobbes and John Locke, who defined the state as that form of political power which has the sole right to make laws and to punish those who fail to follow them, and it has obvious connections to the study of crime. Hobbes, in the *Leviathan*, wrote: 'I Authorise and give up my Right of Government myselfe, to this Man, or his Assembly of men, on this condition, that thou give up thy Right

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to him, and Authority all his Actions in like manner.⁹ Hobbes saw the state as being that thing which preserves men from the state of nature. Hobbes' conception is set out in the *Leviathan*, where he writes: 'The state of nature is simply the condition of men without a sovereign power to compel order. Just as we may never have a perfect vacuum, perhaps we can never have a situation where there are no vestiges of the restraints that sovereignty provides, but inasmuch as sovereignty is absent, to that extent men will begin to exhibit behaviour typical of the state of nature.'¹⁰ In Hobbes, we get the idea that it is not natural for men and women to subordinate themselves for the greater good. Rather, we are presented with a view that social community, and freedom from the state of nature, can only be established through the exercise of political power. Our human society is the outcome of agreements and conventions that men and women make themselves.¹¹ John Locke, following Hobbes, saw the state as that political institution which maintains order. Locke details his notion of the main function of a state in his description of the Law of Nature: 'For the Law of Nature would, as other Laws that concern men in this world, be in vain, if there were no body that in the state of nature, had a power to execute the Law and thereby preserve the innocent and restrain offenders.'¹² In this passage we note both his understanding that all law requires enforcement and concern for deterrence in punishment.¹³ In contemporary liberal political theory, both Charvet and Raz follow the tradition of understanding the state as that thing that maintains law and order and thereby allows persons to live their lives unhindered by the dangers inherent in a state of nature; indeed, it is the standard view.¹⁴ It is important to note that in liberal theory the state is the outcome of a voluntary agreement made by individuals who realise that only a social contract will save them from the dangers of the state of nature. The liberal state is always a protective neutral entity which represents all the people fairly for the common good of all. This conception of a *neutral* state that safeguards its citizens equally from the state of nature is what Marxism and Feminism takes issue with.

Marxism and the State

The classic statement within Marxist Criminology on the state, as that thing which frames laws which uphold sectional class interests, was given us by Bill Chambliss when he wrote: '... without doubt the single most important force behind criminal law creation is doubtless the economic interest and political power of those social classes which either (1) own or control the resources of the society, or (2) occupy positions of authority in state bureaucracies'.¹⁵ Marx himself gave two different accounts of the state. The account Marx gives in his Introduction to *Critique of Hegel's Philosophy of Right* is an unfinished work and is a critique of Hegel, rather than a systematic view of his own thinking. The first view Marx outlined for himself was given in the 1848 *The Communist Manifesto*, where he wrote: '...executive of the modern State is but a committee for managing

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the affairs of the whole bourgeoisie'.¹⁶ In *The Communist Manifesto*, the state simply coordinates the interests of dominant class. We are presented with a straightforward binary opposition between the bourgeoisie and the proletariat. However, Marx also advanced a second view, notably in two other works, the *Class Struggles in France*, written in 1850, and *The Eighteenth Brumaire of Louis Bonaparte*, written in 1852. In these works, he outlines a plurality of classes and details how the state is far more than just a simple coordinator of the interests of the dominant class. Marx also argued, in this second view, that the state itself has some autonomy. This second view of the state has become the dominant view in contemporary Marxist scholarship and Carnoy has written that: 'The State is not regarded simply as an instrument of the ruling class. ... Who rules the State is an important issue, but few, if any, current writers claim that the ruling class controls the State directly.'¹⁷ However, we must not lose sight of the fact that Marx did not furnish a systematic theory of the state and his ideas are often inconsistent or not fully formed, though this is in part due to the fact that he was far more concerned with Political Economy, rather than Political Theory.¹⁸ Marx also tends to underplay the ability of individuals to either act or calculate independently of their economic situation. Because Marx failed to provide a thoroughgoing or clear conception of the state, his followers have had to interpret his writings and this has spawned a variety of latter-day Marxist theories.¹⁹ Nevertheless, the Marxist state is always essentially economic in its character. As Pashukanis said of legal forms, they 'form a united whole with the material relations of which they are the expression'.²⁰ This position is found in Marx's *Preface to a Critique of Political Economy*:

My investigations led to the result that legal relations as well as forms of state are to be grasped neither from themselves nor from the so-called general development of the human mind, but rather have their roots in the material conditions of life. ... The sum total of these relations of production constitutes the economic structures of society, the real foundation, on which rises a legal and political superstructure. ... The mode of production of material life conditions the social, political and intellectual life process in general. It is not the consciousness of men that determines their being, but on the contrary, their social being determines their consciousness.²¹

Among contemporary Marxist criminologists Dario Melossi has, perhaps, done most to uncover the original intention of Marx's writing on the state and punishment, though Marx's writings resist a *definitive* definition.²² Nonetheless, it is possible to argue that there are two main schools within Marxist writing on law, punishment and the state. On the one hand, Melossi and Rusche and Kirchheimer, who stress the first view given in *The Communist Manifesto* and play up the economic elements in Marx's analysis and the role of state coordination.²³ On the other hand, Hall, Hay, Ignatieff and Sumner, who tend to favour the second view given in *The Eighteenth Brumaire of Louis Bonaparte* and understand the state as having a deal of autonomy.²⁴ Hall, Hay, Ignatieff and Sumner all stress the importance of ideology and broader issues of legitimacy. Hay, for example, reasoned that the criminal justice system in eighteenth-century England was essentially

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ideological in nature, rather than straightforwardly judicial. The proliferation of offences for which people could be executed was, he argued, part of an elaborate system of execution and mercy. The deeper point Hay makes is that state punishment was secondary to its ideological function, which was the preservation of the property rights of a tiny minority of the population. State punishment was actually more concerned with ensuring a compliant citizenry than giving criminals their deserved sentences. Hay wrote: 'Loyalties do not grow simply in complex societies – they are twisted, invoked and often consciously created.'²⁵

Gramsci

Of all Marxist theorists, Antonio Gramsci has arguably had the greatest influence upon Criminology, notably through the work of Stuart Hall and Colin Sumner. Gramsci, above all else, wanted to stress human subjectivity in his writing. Gramsci rejected the economic determinism of *The Communist Manifesto* and the *Preface to a Critique of Political Economy* in favour of a type of Marxist theorising which gave primacy to the autonomy of the state and which had an enlarged role for ideology in ordering civil society. Prior to Gramsci, Marxists had, typically, followed Marx' and Engel's *German Ideology* in arguing that the capitalist class were, in the same instance, the dominant intellectual class.²⁶ Gramsci's novelty was to give a much greater weight to the centrality of the ideological superstructures and the autonomy of the state than had Marx, and he advanced a case for the role of consent in running civil society, rather than the brute force of the state. Gramsci maintained that human consciousness is independent and that political life can be separated from the economic base, in which case the masses can be co-opted into the capitalist project through ideological means. He argued that hegemony subtly dominates the culture and thinking of ordinary people and that this is how a capitalist state maintains itself. The hegemony of the capitalist state can maintain dominance without the use of force by moulding the ideas and values of ordinary people, undermining class conflict and providing a backdrop of mutual agreement on those issues which are allowed to be tackled by political action, as happens, Gramsci argues, in capitalist democratic systems.²⁷

Gramsci assigned an important role to intellectuals. He understood that no organisation could work properly without intellectuals and no class-based politics could be successful without intellectuals. He therefore stressed the coherence of the intellectuals and the people in developing progressive politics.²⁸ He saw intellectuals as having an educative function in combating the ideas generated by capitalist hegemonic power, though how the intellectuals obtain the capacity to think outside capitalist hegemony, and to what extent, remains a mystery.

Gramsci's theory of the state is one which is linked to notions of class but his originality is in seeing the superstructure itself rooted in class relations. For Gramsci, therefore, legal and political systems are always 'rooted in class struggle', as Carnoy notes.²⁹ Gramsci differs from Marx in noting that the state has only a

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limited engagement with the executive, law and police because he does not see the state as functioning through class rule in the same way that Marx had. Gramsci argued: 'the state is conceived as a continuous process of formation and superseding of unstable equilibria ... between interests of the fundamental group and those of subordinate groups – equilibria in which the interests of the dominant group prevail, but only up to a certain point'.³⁰ Colin Sumner echoes this reasoning when he writes:

The criminal justice system is one of the regulatory institutions of modern society charged with the tasks of pacifying, rephrasing, defining, defusing and treating the products of social tension. ... But ruling groups' ideological perception of what is peace, safety, health and order dominate the public articulation of legal and moral censures, and the specification of target populations for those censures. In return, subordinate forces continually contest consciously, or threaten unconsciously, the validity, purpose and morality of hegemonic censures. Such dominance and contestation are vital features of the normal legal procedure and practical pattern of criminal justice systems.³¹

Gramsci saw the state as a 'complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules'.³² This thinking is indebted to Hegel's *The Philosophy of Right*, which saw civil society as the outcome of complex corporatist relationship between groups, such as trades unions. In Hegel, it is civil society which gives rise to the state.³³ Gramsci, like Hegel, tends to identify the state with civil society. Moreover, Gramsci's view that the state is not made up of physical institutions but rather of a dominant set of ideas is also first found in Hegel.³⁴

The main elements of Gramsci's analysis of the state are: (1) that the state is not simply a repressive mechanism to do down the working class; (2) that class domination is a very subtle affair; (3) that the state is receptive to ideas and arguments; (4) that Marx had not addressed seriously enough the possibility that the state could be taken by intellectual means rather than by violent revolution; and (5) that control of the state was part of the proletariat's own hegemonic aspiration and it could be advanced through intellectual struggle.³⁵ However, the attention paid to ideology by Marxist, of the Gramscian-type, has been harshly criticised. The conservative political theorist Michael Oakshott puts the case well when he writes:

...the larger enterprise of exploring the possibility of demonstrative political discourse based upon an 'ideology' composed of categorically informative propositions about human beings and the course of events. It is interesting in itself: but for us its main interest is that the obstructions which frustrated it are, in principle, obstructions which must frustrate every undertaking of this sort. Explanatory 'laws' of social change cannot generate political deliberation capable of reaching 'correct' political decisions, or political discourse capable of proving decisions to be 'correct' or 'incorrect'. The disappointment of the hope of achieving demonstrative political deliberation with the aid of an 'ideology' composed of explanatory 'laws' of social change or development is one of the great traumatic experiences of the early twentieth century.³⁶

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Althusser and Poulantzas: Structuralism

Structuralism, which is situated within Marxism, runs counter to the work of Gramsci. It stresses the underlying economic structures rather than the agency of individual subjects. Louis Althusser and Nicos Poulantzas are the leading proponents of this approach. They focus upon Marx's *Capital* and emphasise the historico-economic structures which frame the world of ideas, as opposed to the role of human subjectivity. Althusser's rejection of Gramsci is made clear in his most famous work, *For Marx*. Althusser argues: '...ideology is an objective social reality; the ideological struggle is an organic part of class struggle. On the other hand, I criticized the theoretical effects of ideology, which are always a threat or a hindrance to scientific knowledge.'³⁷ He stresses that the knowledge individuals have is merely 'material activities inserted into material practices governed by material rituals which are themselves defined by the material ideological apparatus from which derive the ideas of the subject'.³⁸ Later in *For Marx*, he stresses, in a famous passage, that our knowledge of ideology is only a partial knowledge about 'the conditions of its necessity'.³⁹ In other words, that we understand the state best in terms of the base economic structures that Marx had written about in *Capital*.

Nicos Poulantzas dealt with the question of the state head on two books, *Political Power and Social Class* and *State, Power and Socialism*. In *Political Power and Social Class* (1973) he argues for the *relative* autonomy of the state (though, as Milton Fisk has argued: 'This restriction undercuts autonomy and leaves us with an economic reduction ... the state's activity in organising the dominant class for political power is only made to seem autonomous by considering it in isolation from the rigid claim that the state, at least in the last instance, must reproduce the economy.'⁴⁰ Poulantzas argued that capitalism shifts the struggle from the economic concerns to the political domain. This, he argues, is part of a process of undermining class struggle through the individuation of persons and 'to mask and obscure class relations (the capitalist State never presents itself as a class State) but also plays an active part in the division and isolation of the popular masses'.⁴¹ Poulantzas has a similar view of the role of law as individualising issues and supporting the reproduction of the capitalist economic system.⁴² The capitalist state, through politics and the law, is actively preventing the emergence of class consciousness. In *State Power and Socialism* he maintains that '[t]he State apparatuses organise and unify the dominant power bloc by permanently disorganising – dividing the dominated classes'.⁴³

Problems with Marxism

The problem of Marxism is well illustrated by considering the work of Gramsci, Althusser and Poulantzas. There is no agreed position within Marxism. The problems raised in the original Marx have led to a number of theoretical and practical issues, such as the extent to which the economy dictates the form of the state, the

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role and extent of ideology and the role of law. Marxism is withering as a potent political force and it is now a marginal force in contemporary Criminology. It is not incidental to note that the heyday of Marxist Criminology was in the 1960, 1970s and 1980s. Yet the Marxist intuitions that the economy, to a greater or lesser extent, dictates the form of the state, that the state seeks to maintain itself and that the state is self-interested all seem plausible ideas. However, the notion that the state organises, or manages, moral panic through its treatment of crime in order to deflect attention away from the central issue of capitalist social and economic relations, and simultaneously thereby increases the power of the state over the citizen, seems increasingly unconvincing as an explanation of how the state works. Yet this is exactly what *Policing the Crisis* (a Gramsci-inspired text) argued when it conceived the treatment of mugging in the London of the 1970s as largely reducible to the state re-legitimizing itself through a concentration upon mugging:

... a governing class which can assure the people that a political demonstration will end in a mob riot against life and property has a good deal going for it – including popular support for ‘tough measures’. Hence the ‘criminalisation’ of political and economic conflicts is a central aspect of the exercise of social control.⁴⁴

Building upon this analysis, Sumner has stated that: ‘The definition of deviance and the organisation of crime control are fundamentally and profoundly, political questions. Deviance, criminality and policing, in the times and societies we know, have never escaped their basic ideological role in the everyday, practical politics of domination by one class, gender and race over others.’⁴⁵ Such an analysis seems at best, partial, at worst reductive. Indeed, McLaughlin has suggested that the set of issues that *Policing the Crisis* dealt with were themselves linked to a unique set of socio-political and politico-historical circumstances, rather than being proof of any Gramscian conception of the state and its activities.⁴⁶

The issues thrown up by the concept of collective class politics and the uses and abuses of ideology seem insurmountable. Since Marx died there has been little agreement, among Marxists, as to what the corollary of his writings was. Moreover, in practice, the Marxist state has usually proven despotic, as Leszek Kolakowski, the eminent scholar of Marxism, has argued:

On the assumption that violence is the midwife of progress, one should naturally expect that the ultimate liberation of humanity would consist in the coercive reduction of individuals to inert tools of the State, thereby robbing them of their personality, and their status as active subjects. This is what in fact all the regimes that base their legitimacy on Marxist ideology try to do; they are incapable in principle, not as a result of temporary deficiencies, of accepting the idea of human rights, for human rights would indeed demolish their very foundation.⁴⁷

Feminism

In many ways Feminism might be said to share some features in common with Marxism: (1) an understanding that the world is made up of relations of

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domination and subjugation; (2) that the state is skewed in favour of particular interests; (3) that it is a basic function of the law that it is used to both confuse and oppress those who threaten its legitimacy and dominant economic mode of production; and (4) that it is a position characterised by internal divisions. By and large, feminist criminologists have neglected the state and concentrated upon more sociological types of issue, such as the development of feminist research methodology, victimisation, and developments in social policy. The state is often implied as the thing that ultimately legitimates relations of patriarchy, through law and the preservation of gendered social practices. Feminism has increasingly stressed the particularities of women's lives. Some feminists have taken over Marxist terminology wholesale (e.g. hegemony, ideology and the mode of production). However, other feminists, such as MacKinnon, reject the old Marxist terminology and argue that it needs to be replaced with a new terminology which better reflects the nature of patriarchy.⁴⁸ Dobash and Dobash have similarly argued that 'it is impossible to use the law and legal apparatus to confront patriarchal domination and oppression when the language and procedures of these social processes and institutions are saturated with patriarchal beliefs and structures'.⁴⁹

In liberal political theory, feminists have addressed the state, notably the work of Thomas Hobbes. They have critiqued the social contract theory he outlined in *Leviathan*.⁵⁰ Coole and Pateman are typical of feminists who have criticised the Hobbesian social contract treatment and its conception of the state.⁵¹ Hobbes had argued that men and women leave the state of nature and contract to live under a sovereign for their own protection and to secure their freedom. Hobbes had argued for the formal equality of men and women and in the text of *Leviathan* there seems to be sexual equality. However, Hobbes also reasoned that there were families in the state of nature where patriarchy exists and Coole has shown how, when considering patriarchal family structures, his 'formal account is at odds with unexpurgated ideological and historical assumptions'.⁵²

If we look at *Leviathan*, we get what is technically called a concept of *negative freedom*, i.e. a view of liberty that, in Hobbes' words, consists of 'an absence of external impediments'.⁵³ However, the feminist political theorist Anne Phillips has made the following point: 'If freedom were simply a matter of non-interference, we might have to say that a slave left alone by a lazy master enjoyed full liberty; or that a wife cherished by her accommodating husband was as free as a bird, even when the laws of her society denied her any independent status. ... Servitude is servitude even when the master is accommodating. The only free people are those who govern themselves.'⁵⁴ Phillips' point is that the liberal ideas of freedom and equality do not respect women in practice.

The theorist who has done most to develop this is Carole Pateman, who is regularly cited by criminologists.⁵⁵ Pateman's most important works are *The Sexual Contract* (1988) and the essay 'God Hath Ordained to Man a Helper: Hobbes, Patriarchy and Conjugal Rights' (1991), which both detail the liberal social contract model, but concentrates upon Hobbes. She is taken with the issue of why women, who are equal in the state of nature according to Hobbes, consent to subordination in civil society. She argues that once the social contract is in place

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the sovereign enforces all contracts, including the marriage contract. She argues that the marriage contract is the basis of women's subordination.⁵⁶ In other words, once the social contract is in place, men come to control women and their sexuality, through the marriage contract and this is what undermines women's freedom. This is done through the concept of the 'property of the person', which posits that we own both our abilities and our freedom and that because of this we can give them up. Indeed, it is what Hobbes argues we do when leaving the state of nature and making the social contract. Richardson argues that Hobbes' concept of the 'property of the person', when understood in relation to marriage, is a mechanism for women to exchange their freedom for subordination in such a way as to emphasise consent.⁵⁷ The marriage contract facilitates subordination through contract and though historical change has altered the pattern of sexual contract, it nonetheless has established modes of thought that persist, notably the subordinate role of women. Indeed, Pateman has criticised Rawlsian political methodology for never even considering the issue of how women come to occupy a subordinate position society.⁵⁸ Pateman is important because her analysis does not assume the nature or position of women in society. Moreover, she asks important questions about how women became established in a subordinate role in society.

Therefore, although feminist criminologists have tended to undertake research unrelated to issues of the state, the work of feminist theorists, such as Coole and Pateman, nonetheless supports their work. Smith and Natalier have stated:

How does the law and criminal justice system reflect patriarchal realities? In other words, how do they work to exclude and regulate women? How are they informed by underlying masculine assumptions and prejudices about women? Central to this agenda are themes relating to the regulation of sexuality and the idea of the 'social contract' is really a patriarchal social contract. Such analyses might look at either sexist legal statutes or specific contexts. Rape provides a good example of this. Feminist research on rape demonstrates the patriarchal nature of legal and popular definitions of rape and the ways that these impact upon criminal justice process, such as judicial reasoning or police discretion.⁵⁹

Main Summary Points

- The basic four features of the state are: (1) the state must have a working political organisational structure with functioning courts, a civil service and a police force; (2) to be a working entity the state must have control over territory and be strong enough to survive; (3) the state must be sovereign and be able to claim a monopoly of political authority, law-making and power, and it must be autonomous; and (4) the state must command the allegiance of its members (citizens, subjects), who are subject to its laws and who have an obligation to obey it.

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- In liberal theory the state is the outcome of a voluntary agreement made by individuals who realise that only a social contract will save them from the dangers of the state of nature. The liberal state is always a protective neutral entity which represents all the people fairly for the common good of all. This conception of a neutral state that safeguards its citizens equally from the state of nature is what Marxism and Feminism takes issue with.
- The Marxist state is always essentially economic in its character.
- The Marxist theorist Antonio Gramsci argued that hegemony of the capitalist state maintains dominance over the people without the use of force by moulding the ideas and values of ordinary people and that this undermines class conflict and provides a backdrop of mutual agreement on those issues which are allowed to be tackled by political action, such as the way society is organised.
- Feminists have argued that the state is often implied as the thing that ultimately legitimates relations of patriarchy, through law and the preservation of gendered social practices.

Questions

1. How are feminist writers developing the idea of the state?
2. What features would a Marxist theory of the state have?
3. Is the state essential to the preservation of our personal freedom and safety?

Suggested Further Reading

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4. Marx, K. (1978) 'The German Ideology', in R. Tucker (ed.), *The Marx–Engels Reader*, New York: W.W. Norton. p. 187.
5. Raz, J. (1986) *The Morality of Freedom*, Oxford: Clarendon Press. p. 70.
6. Raz, J. (1979) *The Authority of Law*, Oxford: Clarendon Press. p. 100.

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7. Rawls, J. (1993) *Political Liberalism*, New York: Columbia University Press. p. 11. See also Rawls, *Theory of Justice*. pp. 7–9.
8. Copp, D. (1995) *Morality, Normativity and Society*, New York: Oxford University Press. Chapter 7.
9. Hobbes, T. (1991) *Leviathan*, ed. Richard Tuck, Cambridge: Cambridge University Press. p. 141.
10. Ibid. p. 42.
11. Ibid. pp. 86–87.
12. Locke, J. (1988) *Two Treatises of Government*, ed. Peter Laslett, Cambridge: Cambridge University Press. s. 7, p. 271.
13. See also: 'Each Transgression may be punished to that degree, and with so much Severity as will suffice to make it an ill bargain to the Offender, give him cause to repent, and terrifie others from doing the like.' Locke, *Two Treatises of Government*. p. 275.
14. Charvet, *The Idea of an Ethical Community*. pp. 153–179; Raz, *The Morality of Freedom*. pp. 70–105.
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17. Carnoy, M. (1984) *The State and Political Theory*, Princeton, NJ: Princeton University Press. p. 250.
18. Carver, T. (1982) *Marx's Social Theory*, Oxford: Oxford University Press. p. 20. See also Reiner, R. (2002) 'Classical Social Theory and Law', in J. Penner, D. Schiff and R. Nobles (eds), *Jurisprudence*, London: Butterworth. Reiner denies economic ascendancy and attributes a more balanced position to Marx.
19. See Cohen, G. A. (1988) *History, Labour and Freedom*, Oxford: Oxford University Press.
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