

The Anarchist Library  
Anti-Copyright



# The Libertarian Critique

The state, its legitimacy, and democracy proper

Torvald Sudmann Therkildsen

Torvald Sudmann Therkildsen  
The Libertarian Critique  
The state, its legitimacy, and democracy proper  
21.05.2021

[theanarchistlibrary.org](http://theanarchistlibrary.org)

21.05.2021

just as concerned, if not more, with the security and wellbeing of citizens as most statist are. It just so happens that they perceive the liberation of the individual to be the highest virtue, and therefore they just so happen to be in constant conflict with all hierarchical structure that claims exclusive rights on their behalf. It should also be stated that although I wished to avoid comparative analysis of the various libertarian strains of thought in this essay, I do acknowledge the need for such discussions and arguments for the various ideas to prosper. I just find that such arguments are better suited for other texts, not one such as this that seeks to establish the general principles of libertarian metaphysics.

However, I do, as any other individual, have my own convictions and beliefs, that greatly shape my philosophy and how I perceive the road forward for the libertarian movement. A suggestion I have that I personally believe to be of utmost benefit to the libertarian philosophy, is that education and enlightenment of as many people as possible. Education and academic training are some of the primary drivers for creating a more liberated society. Increased compliance with a regime follows from enhanced participation by the public, particularly in situations where network governance is utilized as a means to create binding resolutions for its members and relevant actors. Due to the multi-level governance structure of most states, there are multiple points during the decision making and agenda setting process that citizens could potentially participate, like through referendums but also through promotion of a proper democratic culture. By educating and training individuals in various skills that would empower them, the balance of power between the state and citizens will shift, and hopefully lead to situations where democracy proper can develop, and libertarian freedom can have a chance to prosper.

including the relevant actors, such as empowering or informing citizens. Thus, the focus for libertarians, in my own opinion, should be on how to increase inclusion of citizens in the agenda setting and decisions making process; consent, in particular, is viewed as an extension of democracy and therefore as an extension of the democratic legitimacy of a political system.

*Following the arguments put forth in this essay, the coalesced libertarian critique of the state is that democracy is not possible within the borders of the state's monopoly on enforcement, simply because citizens are not empowered enough to grant consent to the governing bodies of the state for them to enforce their rules and laws.* As such, democracy proper is not possible in a current society. Democracy, as discussed earlier, is understood, and reformulated to serve the purpose of a wide variety of governing systems, but none of them are fully achieving a system of democracy proper. *Democracy proper is here then understood to be a democratic system where free individuals have universal right of participation in the agenda setting and policy development of a specific geographical location.* The geographical constraint is necessary to ensure that democratic decision-making only concerns those that are directly affected by them, and that its practical plausible for people to participate in the various forums, meetings, assemblies, and extra-parliamentary procedures that might take form in such a system.

## 11. The road forward.

I do not claim for a second that I know which form of praxis is best suited to realize the libertarian agenda, nor do I pretend to know what an actual libertarian society might look like. Many might be confused by the usage of libertarianism in the same sentences as governance and government, but this is largely due to, I fear, a public misconception of what libertarianism is and what it strives to achieve. Most libertarians are

# Contents

Preface . . . . .	5
1. <b>Introduction</b> . . . . .	5
2. <b>Some essential definitions and clarifications</b>	8
3. <b>What is political legitimacy? The two conflicting theoretical strains</b> . . . . .	10
3.1. <b>The Institutionalists</b> . . . . .	11
3.2. <b>The Regulators</b> . . . . .	13
4. <b>A possible synthesis: the theory of perceived legitimacy</b> . . . . .	15
5. <b>Theory of Perceived Legitimacy &amp; insights for the libertarian</b> . . . . .	17
6. <b>Political activity per the state</b> . . . . .	19
7. <b>Political activity proper</b> . . . . .	21
8. <b>Democracy versus democracy proper</b> . . . . .	23
9. <b>Statehood democracy</b> . . . . .	24
10. <b>Democracy proper</b> . . . . .	26
10.1. <b>Citizen empowerment and the libertarian citizen</b> . . . . .	26
10.2 <b>Citizen empowerment</b> . . . . .	28
10.3. <b>Consent and democracy proper</b> . . . . .	29
11. <b>The road forward.</b> . . . .	30

ment is of key importance to determining the quality of a democratic system's institutional design, and the degree to which citizens are adequately emancipated. Since most libertarians are unable to create new formal avenues for participation within the rigid judiciary of the state, like the creation of direct democratic processes or reshape the institutional balance of power between the state and its citizen, libertarians are inclined to empower citizens in an alternative manner. Remember, almost all acts are political, even if the current regime tries to stigmatize them if they're perceived to be threatening. It is not for me to say what is the ideal praxis for libertarians to achieve long term success, although I can have my own reservations towards certain means to achieve certain ends. The important point is that a libertarian views citizen empowerment as the primary means to achieve a fully free society.

### **10.3. Consent and democracy proper**

The notion of legitimacy discussed in this essay has a basis in the conceptualization as legitimacy being conferred by citizens and / or eligible voters granting consent to representatives to govern them, which is a bottom-up approach with an emphasis on citizens, and not a top-down view that positions the state's institutions as the most important actors. I also assume consent only to be possible if the person is adequately informed on the choice they're making. An approach that focus on the conditions of a libertarian governance body must start by recognizing that most libertarians are unable to implement democratic reform directly and have to rely on their own projects in order to stimulate political engagement. In short, citizens are unable to actively create the change they wish to see due to the rigidity of the state's judicial and enforcement monopoly. Furthermore, citizen consent does not have to be granted exclusively through referendums and elections but could also be secured by reaching consensus through a deliberative process

have the right to directly influence the of enforcement of policies that affect themselves. As such, the libertarian citizen is not bound by laws or judicial monopoly, but rather by the voluntary agreements and contracts they establish between themselves and other liberated individuals in a geographical location. An important similarity between the nation state's citizen and the libertarian citizen is the notion, although not always practiced by the nation state, that the laws decided by people in one geographical location aren't legitimate for another governing body with monopoly of enforcement in another geographical location.

## 10.2 Citizen empowerment

For a libertarian citizenship to be realized, one needs to arrive at a point where a governance body, or rather a libertarian government of sorts, have managed to ensure a level of citizen empowerment that prevents the monopoly of violence, judicial exclusion, economic autocracy and centralized power that identifies the vast majority of states. In order to avoid abstract notions of empowerment, the definition utilized in this thesis is borrowed from David Levi-Faur and Frans van Waarden's book *Democratic Empowerment in the EU*, which surprisingly enough serves as an excellent basis for libertarian praxis and policy development. Citizen empowerment is here understood as a subdivision of democratic empowerment, a concept that covers the political participation, democratic development and citizenship. In particular, citizen empowerment refers to *any act that seeks to provide new opportunities of citizen participation in a policy-making procedure*. This definition is practical, because it acknowledges that not just legally sanctioned acts can be helpful for increasing the amount of citizen participation in the long term. As such, democratic empowerment is measured by the degree of expansion of citizen rights to participate in a policy making process. For a libertarian, empower-

## Preface

The purpose of this essay is to clearly define the nature of political activity, so that one can understand it in a broader and more inclusive manner, while including those activities rooted in statehood, but also those that position themselves outside the state-centric approach of the conventional discourse. I wish to illustrate that the legitimacy of the nation state and similar centralized societies predicate their rule on consistent legitimation and trust procurement from their governed subjects, and that by rediscovering the nature of democracy and politics as something not exclusive to the party system and representatives, one can challenge the fundamental issue of the nation state with increased validity. This essay is therefore an olive branch extended to a plethora of political ideologies and branches of criticism leveled against the nation state and statehood, be it to libertarians, black liberationist, anti-colonialists, feminists, anarchist, socialists, egoists, anarchist-capitalists, and objectivists. Although many of these ideologies have significant disagreements, this essay aims at coalescing the major criticism raised against a discourse that views sanctioning and participation in the judicially protected status quo as the only legitimate form of political engagement.

## 1. Introduction

A common misconception in the general discourse surrounding politics and the nature of political activity is the presumption that political activity is fundamentally rooted in the historical nation state. Instead of opening discourse to alternative forms of political engagement, the discourse and its participants reproduce the continuous misunderstanding that liberty, freedom, and democracy can only exist within the confines of a party-driven or state-centric political organ.

The discourse is controlled by most of the nation states most influential actors, or rather, those that hold the power to influence discourse. These participants include the media, politicians in elected offices, or those with significant capital and economic control. The discourse systematically, either consciously or through tradition, disenfranchises alternative forms of governance. They do so by position alternative political practices that take place outside the preestablished nation states judicial framework as immoral, against the commonly accepted practices that strengthens the nation states institutional legitimacy.

Through the continuous reproduction of a discourse in which the nature of politics and political activity is confined to a specific form of governance, those with significant power within such as system can effectively shape the meaning and definitions of certain concepts so that they serve the current systems institutional integrity. Examples of this would be to define political activity as, for instance, exclusively linked to party-politics, meaning that other forms of political activity that favors independent candidates might be described as “less” political than those that favors the party and the larger collectivist approach to representative politics. Going further, since most nation states operate on a basis of representative politics, usually through direct votes in more-or-less free elections, one can similarly contrast the representative systems as “more” political or “more” democratic than alternative forms of governance. Usually, they’re contrasted with totalitarian or authoritarian regimes, but they can also effectively discredit direct democracies or forms of governance that puts an emphasis on grass-root activity, mutual aid, neighborhood activism, autonomism, or other forms of radical federalism.

The consequence of this disenfranchisement of alternative forms of governance that aren’t predicated or based within the ramifications of the state is the stagnation of political and societal evolution. By consistently discrediting or excluding

realm of political citizenship beyond the borders of the judicial frames, as per the aforementioned critique of state’s restrictions of political plurality. Judicial, as well as economic, violent, non-formal and informal settings by a civil society pertain as much to the actual individual citizen as do specific legal rights. Firstly, one should define the concept of a citizen within libertarian thought. Citizenship as understood in the nation state has developed and changed vastly over the years and remains an ambiguous and even contentious abstraction of member states’ definition of citizenship. Therefore, this essay bases its theoretical framework on one type of citizenship: *the libertarian citizenship*.

Regulators and institutionalists would argue that citizenship are the included values and norms, as well as legal and political annotations of judicial citizenship of already existing national variation. Although ambiguous for many, such as refugees and stateless individuals, the official definition stems from the recognition of the nation state as its own legal entity in relation to a geographical area. The judicial system established a legal relation between the state, representatives, and citizens, clearly defining the rights, duties and responsibilities of each. Seeing as this essay is primarily concerned with the relationship between citizens and the state, specific national citizenship, subject to the contextual limits and criteria of the respective nation states will not be discussed or explored. In contrast, the libertarian conception of the citizen is that every human is, inherently, only temporarily restricted by laws and judicial barriers, and that the final, and only real moral standard for determining what constitutes political activity or not, is the liberated and voluntary engagement between free individuals. As such, to a libertarian, a citizen is anyone who happens to live in a certain place and wish to participate in the governance of the community and themselves. This understanding of citizenship is rooted in the libertarian notion that people have the right to decide their own life and should

## 10. Democracy proper

As this essay's end draws near, it's fruitful to summarize the previous discussion and what insight we've discovered. Firstly, I have illustrated that nation states, states and centralized governments can, through their control of judiciaries, exclusive rights to enforce laws and monopolize violence, can effectively bar certain acts and forms of behavior from being classified as political, thus denying a broad specter of activity from being considered political at all. Secondly, I presented the theory of perceived legitimacy, which states that a government only needs to be perceived as legitimate by its subjects to sustain its operation. This perception of legitimacy means that a government, state, or nation state can continue to practice its subjugation and control over a populace, regardless of whether the regime can be defined as properly democratically legitimate. This theory helps to explain the wide variety of governments need to procure trust in their rule from their subjects, how autocratic governments as well as representative ones can secure stability over a longer period, and why political and societal progress is hampered by the need for stability for the ruling regimes. This brings us to the third and final point of the essay, namely, to coalesce the libertarian thought into *a precise libertarian critique*.

### 10.1. Citizen empowerment and the libertarian citizen

Regardless of what strain of libertarianism one adheres to, there is one common trend that runs through them all, and that can be used to criticize all state's attempts at procuring legitimacy from its citizens. Libertarian proponents argue that the only means of increasing the legitimacy of a system of governance is increased deliberation and citizen empowerment. Citizenship empowerment will be defined here by extending the

forms of governance that aren't necessarily hierarchical or rooted in nation statehood, one can ensure the stability of the existing regime, whilst at the same time contrasting those other forms of governance as disruptive, naïve, or infeasible. As such, those with power in a nation state has a practical, albeit dubious, moral reasoning for their desire to reject all forms of governance that restrict, reduce, or reinvents the relationship between politics and individuals, the state and the people, and democracy as it is presented to us and democracy proper. In our pursuit of a full understanding of what politics is, or rather, what politics could be, we must first start by redefining, or rather, rediscover what democracy is, and how political legitimacy is produced and secured by the current regimes of the world. Only then can we fully comprehend the fundamental flaws and valid criticism raised against nation states and other centralized societies and ensure validity for those criticism that prefers alternative forms of governance based on the free and unrestricted acts of liberated individuals.

The purpose of this essay is to clearly define the nature of political activity, so that one can understand it in a broader and more inclusive manner, while including those activities rooted in statehood, but also those that positions themselves outside the state-centric approach of the conventional discourse. I wish to illustrate that the legitimacy of the nation state and similar centralized societies predicate their rule on consistent legitimation and trust procurement from their governed subjects, and that by rediscovering the nature of democracy and politics as something not exclusive to the party system and representatives, one can challenge the fundamental issue of the nation state with increased validity. This essay is therefore an olive branch extended to a plethora of political ideologies and branches of criticism leveled against the nation state and statehood, be it to libertarians, black liberationist, anti-colonialists, feminists, anarchist, socialists, egoists, anarcho-capitalists, and objectivists. Although many of these ideologies have signifi-

cant disagreements, this essay aims at coalescing the major criticism raised against a discourse that views sanctioning and participation in the judicially protected status quo as the only legitimate form of political engagement.

## 2. Some essential definitions and clarifications

I do not pretend to have the literary nor philosophical skill to summarize the fundamental issues of political philosophy in such a short essay. However, what I hope and believe possible to achieve is to formalize the nature of political activity, so that those critical to nation states, states, and centralized government can better formulate their criticism, and maybe, if willing, convince those in favor of such forms of government to critically reevaluate their own convictions. Before we dwell into my argument, it is necessary and fruitful to establish some definitions, so to both steel myself from the valid criticism that's certain to arise, and to establish conceptual borders, so that the discussion does not derail entirely.

Firstly, there's a need to crystalize the purpose of this essay. I wish to illustrate that nation states, states and centralized governments can, through their control of judiciaries, exclusive rights to enforce laws and monopolize violence, can effectively bar certain acts and forms of behavior from being classified as political, thus denying a broad specter of activity from being considered political at all. This is a significant problem, as I will detail below, and one that's inherently connected to the state's need to procure trust from their subjects.

Secondly, I wish to present the theory of perceived legitimacy, which states that a government only needs to be perceived as legitimate by its subjects to sustain its operation. This perception of legitimacy means that a government, state, or nation state can continue to practice its subjugation and control

current Communist regime in the Democratic People's Republic of China claim to be fully democratic, by their standards. Here, the ambiguous and metaphysical will of the people, like in the most liberated Western democracy Switzerland, is the steering force behind the policy development of these nations. The key difference, of course, is the degree to which people themselves can vote directly on policy proposals, and the degree to which regulators make the decision for them, on their behalf. For the Swiss federal system, the people are, to a much greater degree than almost any other modern industrial nation, allow citizens to express the will of the people directly in referendums, whereas in the Chinese's case the commissars, regulators and technocrats acts from a perspective where they're able to better understand the will of the people than if the Chinese people were given the right to vote freely on policies.

Thirdly, active participation by citizens in the judicially established framework of statehood democracy is understood to be purest form of legitimacy procurement for the state. This is true for any state: following the laws and participating in the clearly established institutional procedures is an expression of recognition for the power and authority that backs them up. For instance, by voting in an election, the state can claim that you've signed a social contract that allows you to accept the outcome of the election, thus surrendering yourself to the enforcement monopoly of the state and its representatives. Participation in a system as an expression of that systems legitimacy is true in both authoritarian and non-authoritarian regimes. Even in a hypothetical libertarian society would participation in governmental practice be seen as expression of an individual's consent to be governed, and that they perceive the system to be somewhat legitimate. However, there's a key element not yet discussed in this essay, which is the central value for all libertarians, and the final point to be addressed.



My job as a political philosopher is to identify the nature of our various political systems, and to present comprehensive, understandable explanations for the metaphysics of politics.

The libertarian is not so much concerned with the current regime, as with that a future regime should aim to be. Rather, the libertarian idea of political activity is predicated on what values should drive political activity, and how governance should be facilitated. This is, in of itself, an apolitical statement, because it still does not say what form these actions should take. However, the greater metaphysics of libertarian political thought that stretches above all forms of libertarianism, will be presented here.

## 9. Statehood democracy

Taking the insights provided earlier in this essay, we can clearly see that there are as many different interpretations of what democracy means as there are different forms of states. Both the institutionalists and the regulators have different opinions of what democracy is and ought to be, but there are some major overlapping agreements that makes it possible for us to identify how democracy is understood and promoted in most states.

Firstly, all states agree that democracy is determined and legally framed by the judicial monopoly of the state. Democracy outside of the state's legally established borders will be discredited, or at worse persecuted actively, by the state if it is perceived to threaten the functioning and perceived legitimacy of the centralized government.

Secondly, democracy is understood, broad and large, to be some form of governance that takes the preferences of its citizens as the steering force behind policy development. Regardless of how democracy is practiced, this is the argument that even the most dictatorial of regimes favor. For example, the

over a populace, regardless of whether the regime can be defined as properly democratically legitimate. This theory helps to explain the wide variety of governments, how autocratic governments as well as representative ones can secure stability over a longer period, and why political and societal progress is hampered by the need for stability for the ruling regimes.

Thirdly, I hope to coalesce a wide variety of libertarian thought in an almost apolitical analysis of the nature of states and democracy proper. Currently, substantial time is devoted by libertarians to argue and challenge the ideas of other libertarians. I do not think these sorts of discussion are particularly helpful for the development of libertarianism as a political philosophy, nor does it help the promote critical analysis of statehood in the public at large. By reducing the criticism of statehood to its bare minimum, to its essential core, the broad selection of libertarian thoughts can be united, and its argument can be extended in a proper, apolitical manner to interested others that might be inclined to consider libertarian thought, so long as it refrains from ideological rigidity.

For the purpose of this essay, I will use the term state, nation state, statehood, centralized government and current regime to refer to the wider notion of state that libertarian thought perceives as a challenge to the total liberation of the individual and humanity. Although imprecise and broadly generalizing, referring to these concepts interchangeably keeps the focus on the broader libertarian critique, without dwelling into the specific issues related to specific ideological varieties of libertarianism. As such, state is defined in this essay *as the ruling body that has sole judicial right to enforce laws and violence in a specific geographical area.*

Politics is defined here as the set of acts and systems developed by people to achieve a notion of how one ought to live together, or rather, *the total complex of relations between people living in society.* The primary concern of politics is to understand *how these complex relations between people leads to gover-*

nance, meaning the act or process of governing or overseeing the control and direction of something, such as a country or an organization. Apolitical means, in this case, are those *things which have no significant affiliation to a specific form of politics that aims to achieve governance*. When I then suggest that this essay is almost apolitical, it is because the critical analysis of the state's legitimacy and what political activity it does not suggest which form of politics is preferred as an alternative, nor what type of ideological conviction is best suited for the further development of society. Rather, this essay is both apolitical and political, depending on how one wishes to apply these thoughts.

Finally, libertarian is defined as an *person who upholds the principles of individual liberty especially of thought and action*, an advocate of the doctrine of free will. Libertarianism is apolitical in the same sense as mentioned before. Being a libertarian does not directly determine a specific form of political action and ideology, but rather says something about what values are of importance to the person, and what issues motivate that person's actions. Whether you identify as an objectivist, egoist, anarchist or communalist, you are inclined to value ideas and concepts such as liberation, democracy, freedom of choice, individualism, and most importantly, an avid skepticism of statehood and centralized governments.

### **3. What is political legitimacy? The two conflicting theoretical strains**

Currently, there are two broad schools of thought in the field of political philosophy and political science that deal with the concept of legitimacy. In short, the two theories try to identify the measurements one should use when criticizing a state or governing body, and how one should evaluate its legitimacy. In broad strokes, the first theory states that the

## **8. Democracy versus democracy proper**

Finally, we arrive at the conclusion of what democracy proper can be understood to mean from the libertarian perspective. While trying to remain as apolitical as possible in this critique, and simply present the natural flow of the libertarian critique without presenting a definitive solution to many of the issues facing contemporary states, there's a need for me to underline a few concrete thoughts, so to prevent confusion among readers. Firstly, although I, the author, identify as a libertarian, I'm not fond of ideological boxes, nor of pretending that every single aspect of every single political ideology that I don't personally subscribe to is without merit. It would be an outrageous lie to suggest that everything about modern society is evil, and that everything perpetrated and done in the name of the state has been a morally defunct action conducted by devils and monsters. Certainly, I would not pretend to be so ignorant as to suggest such a thing. Life is, undoubtably, improving for the vast majority of humans in a plethora of ways, and most of these changes have come about due to the workings of modern states. Some of these areas of improvement, I would even argue, should be considered apolitical, because they are goods almost every comprehensible political ideology would celebrate. We live longer. More of us are educated. Child mortality is sinking. More people have access to clean drinking water. More people have access to the internet, literacy is improving, and there's a steady decrease in open war among nations. These are benefits that are apolitical, however, the means as to how one achieved these ends are, of course, as political as could be. I just wish to stress that the following contrast of democracy and democracy proper is a libertarian argument, not a specific policy proposal for how we should aim to secure all these benefits without the state. I don't think any serious libertarian, nor human, polymath or otherwise, could claim to know the answer to.

also political, because it is either a form of surrendering to the superstructures of one's existence, or an active ignorance that one prefers to the active choice of engaging with the superstructures to try to change them for the better. Those that surrender might do so for very good reasons, reasons that are quite understandable. Life is brutal, short, confusing, and unforgiving for most humans, and will continue to be so for the rest of the foreseeable future. The load on one's shoulders can be unbearable, and it is therefore somewhat rational for people to prefer to avoid engagement with the world around them. However, let us not pretend that this is not also a political choice. It is the same as not voting in an election. It is an active choice to be unactive and passive. By surrendering to the superstructures upheld and supported by the state, a person risks legitimizes the state with their passivity.

*For libertarians, political activity proper is almost the totality of one's actions in a society.* This, therefore, include the realm of economics and the realm of violence. By choosing to invest money or conducting trade in manners not always sanctioned by the state, one can actively make political choice whilst participating in markets. Examples of this can be supporting businesses the state refuses to acknowledge, such as serving blacks in white only restaurants in Apartheid South Africa. Or, using violence as a political tool, such as resisting arrest, challenging the state's monopoly of violence, or using violence to secure the destruction of illegitimate invasions or illegitimate regimes. The US revolution against the British Empire is often heralded as an example of democratic integrity and bravery but was undeniably an example of political violence against a state that no longer successfully procured legitimacy from its subjects. Almost everything is political because politics is the art of how we strive to live together.

current standard by which one measures a state or centralized government's legitimacy is traditional liberal democracies in the first world. These forms of institutions are again measured against some ideals of how such a liberal democracy ought to look like, be it the traditional Lockean federalism or the contemporary European welfare states. Regardless of what form of liberal democracy is viewed as the model state, the field of political science and philosophy use the liberal, representative, parliamentary democratic state as the benchmark for which all other forms of government is measured against. The second theoretical strain states that there are certain affairs or decision-making processes that functions best without democratic input, and that criticizing them for being undemocratic is inherently nonsensical, since these processes were never intended and should never be under the control of democratic participation. The two theories put a different emphasis on whether a liberal democracy is necessary or even desirable for governance but agree on two core issues: the superiority of the state's right of enforcement and the exclusion of citizens from a significant amount of legislative decision-making.

### **3.1. The Institutionalists**

The first strand of legitimacy theory is prone to view the liberal democracy as the primary model for all forms of government. One could call supporter of this strain the Institutionalists. If a state experience problem of any sort, the institutionalists first question usually becomes: can this decreasing consensus be attributed to poor institutional design? Certain decisions in the development of a hypothetical state can create widespread concern for the creation of a possible democratic deficits, and the institutionalists believes the problem to be best solved by creating better institutions to prevent a declining legitimacy for the governing bodies. The institutionalists raise

five main concerns for the current development of statehoods, which can often be attributed throughout history. Firstly, the continued integration of national and international institutions will lead mightier nation states and organizations to wield far greater executive power than the nation state. A contemporary example is the The Court of Justice of the EU. The Court has in the last decades developed legal principles and case laws that influence social, political, and civil rights, to such a degree that it has determined the course of European integration more than democratic decisions made by the citizens of the member states. Institutionalists would argue that this is a problem that should be solved by strengthening the power of nation states' institutions. Secondly, institutionalists believe that if the balance of power between larger states and smaller states' parliaments is too great, one should strengthen the power of elected officials in the smaller states. For instance, one of the measures of the EU to deal effectively with the Euro-crisis was to undermine the national autonomy of member state parliaments with weaker economies. This imbalance favors the European Parliament, effectively causing an imbalance between member states and the EU in terms of democratic control. And even though the European Parliament has increased its powers, the agenda-setting ability of the European Commissions stands paramount without directly elected officials. This means that national parliaments are weaker, and that the European Parliament is too weak to justify this imbalance. Thirdly, institutionalists puts and emphasis on national policies, and argue that citizens have shown a preference for national political issues in favor of wider, global concerns. Fourthly, institutionalists believe that nation state's institutions were originally designed to serve as representatives bodies focusing on issue related to democratic input from citizens, and believe that the best course of action is to strengthen the current representative bodies rather than seeking to devalue its powers. Fifthly, the issues voted on in most nation states' representative bod-

party wins that actively seeks to reduce your access to citizenship rights, the supporters of the state and its legitimacy would simply ask why you didn't vote for a better party that would not have implanted the policies that are now persecuting you. The same goes for most other acts that the state determines to be legitimate forms of political behavior.

## 7. Political activity proper

However, as mentioned earlier, this is a very narrow definition of political activity, and one that does not account for a libertarian, or apolitical perspective. As defined earlier in this text, what a libertarian refers to as political is the totality of the complex interactions between humans and people in a society. As such, very few acts can be said to be fully apolitical, as most behavior is so fiercely regulated, taxed, controlled, recorded, made to data and statistics, commercialized, and swallowed by the state's reach. Take for instance the active choice of not buying a product A if you believe its producer to represent certain values that you disagree with, and instead opt for product B, which you perceive this product to be associated with values or choices that are more important to you. This choice is wholly political, because it is a statement about the kind of world and kind of values a person believes to be of the utmost importance to them, and as such they choose to steer their behavior and influence away from those adverse values, they perceive to be perpetrated by the producer of product A. The simple choice of choosing to buy product B instead of product A has suddenly turned into a political choice.

Some would probably argue here that there are exceptions, such as the unconscious decision to buy cheaper products due to personal income. However, not making a choice is not apolitical, but rather a choice to avoid engaging with larger structures for whatever reason that individual have. This choice is

litical acts, and which acts aren't. Naturally, these frames vary depending on one whom one might talk to, or in which context they're debated, as we shall see later. When we contrast the public discourse supported by the state, with an alternative discourse favored by other, alternative forms of governance that questions this restrictive understanding of what politics is and ought to be, we find that the state has an active interest in restricting politics to those acts that support the functioning and continued legitimacy procurement of the state. The state has an incentive to define these borders as clearly as possible, as it makes the process of determining and identifying behavior that falls outside these perimeters as disruptive and problematic. The reason such behavior might be disruptive, and problematic is mainly due to the form such alternative forms of activity take. Some of them can be clearly identified and argued to be illegitimate and non-political if they take the form of acts defined as judicially illegal. If the acts are illegal by the state's definition of what legality is, the state can legitimize its desire to prevent and stop such behavior by merit of its own judicial system. Since the judicial system is the only allowed standard for measuring the validity of behavior, the state can effectively secure a monopoly on the right to define what constitutes as political behavior or not. Political behavior is, according to the state, only those acts that engage with, participates in, or secures the ongoing existence of the state. This, in turn, ensures that acts defined as legitimate by the state continuous to legitimize the state, since the alternative is to contradict the entirety of a state's judicial system.

Continued participation in the state's preestablished institutions, and behavior within the framework supporting these institutions, are used to procure legitimacy for the state from the public. The reason for this is that the active engagement with a system, as opposed to active rebellion and revolution against it, is taken as proof of that system's legitimacy by those that favor it. For instance, if you don't vote in an election, and a new

ies and the preferences of its citizens are rarely in sync, leading to the preferences of citizens rarely being translated into actual policies. The institutionalists argues that this is another indication of the lacking empowerment of the nation states political parties, and that more power to the elected representatives would increase the synchronization between the citizens and the elected officials. This theoretical strain favors policy reform proposals that encourage representative democracy, deliberation, liberalism and neo-liberalism, supranational organizations such as the EU, and reform of the state's institutions and criticism of erosion of representative's institutional power. Essentially, this theoretical strain defines the legitimacy of its institutions as granted by representative democratic participation in elections with more or less universal suffrage. Claims to ethical authority must include some levels of citizen engagement throughout democratic procedures if said authority is to be perceived as legitimate. As such, democratic legitimacy is granted to the state through the promise of selecting one's rulers through elections, and a promise that these rulers will work to strengthen their institutions and political power to synchronize their voting behavior better with those of its electorate. However, some argue in favor of another perspective that rejects the need for democratic legitimacy entirely.

### **3.2. The Regulators**

The other main strain of political thought is associated with the, arguably, more adverse examples of centralization and statehood. As opposed to the first strain, that offers at least some form of participation and transparency in the political decision-making process, the second strain rejects the need for democratic input in order for the state to function properly. For simplicity's sake, we will call the supporters of this strain the regulators. Regulators argue that the democratic theory criticism predicates itself on a misunderstanding of the

regulatory function and purpose of certain political bodies. These scholars argue that the state should not be measured against the standards we apply to liberal national democracies, as their ideal state is not a democratically diverse polity at all. Rather, the regulators argue that the state is meant to be technocratic in design to serve the function of a transnational political body primarily concerned with the improvement and integration of markets, planning, and political stability, and should therefore not be thought of as a system requiring democratic input to be legitimate, but as a system conducting regulatory actions in areas not concerned with democratic legitimacy. For instance, regulators argue that European integration and globalization had decreased the problem-solving capacity of the process' traditional actors. But instead of criticizing the non-democratic feature of the process, new actors, and institutions such as the European Commission and European Court of Justice are commended for their ability to create consensus in the EU on transnational issues and break deadlocks in the integration process. The argument can just as easily be extended to autocratic, dictatorial, or more totalitarian regimes. A body focusing on primarily technocratic issues, such as one-party states or highly centralized governments, requires a technocratic design structure to function properly. These regulatory states generate legitimacy simply by existing, precisely because its functions require primarily nondemocratic inputs. The regulatory state's features are like those of a liberal democracy; however, the areas where it has the most influence and developed its most efficient instruments of governance are non-majoritarian by default, such as social and economic regulation.

The regulators are in no way rejecting the discourse entirely and do acknowledge that there is a perception of a democratic deficit within such states, and that this sentiment has been around for a while. However, rather than agreeing that there are institutional flaws, this perspective shifts the focus from

## 6. Political activity per the state

Now that we've established that any state is dependent on procuring a perception of legitimacy from its public, we can turn to one of the other central focuses of this essay: how a state determines what is political to procure legitimacy from its subjects. The tendency in modern discourse about politics is to restrict the understanding of what politics are and their borders to engagement and participation within the clearly defined and judicially sanctioned borders of a state's apparatus. This can be anything from voting in an election to peacefully protesting decisions made by the elected representatives. Rarely, but not fully excluded, does it also include the direct voting of the populace in referendums, or the recalling of elected officials due to massive public uproar. For the most part, the everyday acts deemed to be political are left primarily to either those who have signed up as a member of a political party, a legally recognized NGO or similar organization with an explicit policy focus, or those conversations and debates that discuss the aforementioned things. These conversations can be about policy, the behavior of an elected politician, the opinions one might have about a certain political party or political group, and the opinions one might have about others' conversations about similar things. In short, what is political, per the established norms of the state and its conventional public discourse, *are those acts that are judicially sanctioned and tolerated by the state*. Note that none of the examples I've given have included two of the most political contentious issues in history: economics, and violence. And there are good reasons for it.

Defining the frames of what is deemed political or not is important for all ideologies and philosophies that deal with the ethics of social behavior. If we can clearly separate certain acts and certain behaviors from the political sphere, we can better define those acts and behaviors are sanctioned as legitimate po-

sight, is that if one individual does not perceive the state to be legitimate, the very foundation of the state's existence can be called, rightly so, into question. Since the state is dependent on perceived legitimacy to exist, there must be a certain amount of legitimacy required for it to survive, and a certain amount of perceived illegitimacy by the public that is needed for a collapse to take place. For every individual that perceives the legitimacy of the state to be questionable, there is an increased risk for the state's collapse.

However, the current state of political philosophy and political science is plagued by significant shortcomings. Legitimacy research has failed to counter the normative issues and the difficulties associated with operationalization of legitimacy as an empirical unit. There are two major shortcomings in the current attempts to *empirically measure legitimacy*: the first is the limitation of research by focusing exclusively on a specific form of legitimacy in a specific context, such as the legitimacy of liberal, Western democratic polities with a Rule of Law. The second shortcoming is that other studies only measure regime support as opposed to the actual legitimacy of the regime, equating two concepts that aren't the same. Furthermore, one also needs to understand how legitimacy can be influenced in developing policy proposals to improve upon it.

None of these problems are necessary to dwell on for the time being, at least for the remainder of this essay. This essay seeks to coalesce the central critique libertarians raise against the state, not offer specific policy solutions nor claim the superiority of one form of alternative to another. However, they are important issues that should be addressed going forward and must be so if we are to further develop the field of political philosophy and science for the future.

being concerned with institutional criticism to the issues of convergence, congruence, and *defining legitimacy as faith in authority*. The problem is not that the regulatory state is inherently illegitimate because its institutional design fails to live up to the standards set by traditional democratic nations; the issues facing the regulatory state is a lack of legitimacy resulting from poor representation and education of its citizens on what the regulatory state is and what it is supposed to do. A contemporary example of the lacking comprehension of the EU's governance regime amongst ordinary citizens can be found in the United Kingdom. The day after the UK voted in the Brexit-referendum, the number one thing searched for on Google was "what is the EU?". Regulators argue that if citizens are not able to understand the benefits and their own rights in a system, they will be inclined to be distrustful of said system's development which might manifest a preference for other alternatives.

#### **4. A possible synthesis: the theory of perceived legitimacy**

Now we have summarized the two main strains of how legitimacy is understood in the field of politics. On the one hand, we have a definition of legitimacy as voter participation in elections of representatives. On the other, we have faith in authority and the technocratic skill of regulators. But what seems to be the central issue at hand here? For the libertarian, one can identify the core of the discourse to be that state's, regardless of form or function, need to procure legitimacy in one form or another to maintain their rule and secure the continued existence of their regime. The synthesis of these two theoretical strains reveals that there seems to be a steadily prevailing consensus that the state is suffering from, first and foremost, *a perceived legitimacy deficit*. This conclusion is drawn from the preceding explanation of the two theoretical strains, where one observes

that there is, regardless of reason, a disconnect between the citizens of the state and those that govern.

I coin this as *the theory of perceived legitimacy*, by which it is meant that *a polity succeeds in justifying its power structures as long as they are perceived to be legitimate*, regardless of whether or not they are truthful towards their citizens or whether or not the polity's institutional structure can be deemed *ethical*; *as long as a polity is perceived to be legitimate, actors in the polity will act accordingly regardless of whether or not the polity is legitimate*. By identifying the overarching problem in the theoretical framework of most non-libertarian political trends, identified as a problem of perceived legitimacy, this essay can draw upon literature from both theories, and may therefore be applied as a convergence to the two, without excluding either contribution from either theory.

Following the review of literature concerned with how one should best operationalize legitimacy as a combination of the two theoretical strains, I think its best to *empirically conceptualize and measure perceived legitimacy as trust*. Trust differs from support for political activities, as trust reflects more so endorsement of a system and that the actions and balances of power within said system are proportional and ethically defensible. One can trust a system without supporting the specific political decisions and policies. If one trusts a system, one consents to that system even when its output conflict with one's own wishes and desires. For instance, would one trusting a parliamentary democracy be less willing to act against it when a political majority promotes an ideology than one support is in power, because one trust that they will be held accountable by the checks and balances within the polity. Trust is therefore thought to lead to stability, support, and willingness to follow rules. Legitimacy is measured by means of public trust in the nation state's governance and understood as the best practical representation of the perception citizens has on how the state procures trust through institutional claims to legitimacy. Pub-

lic trust can be measured in polls, surveys and interviews about the degree to which the legitimacy procurement of the polity is successful or not.

## 5. Theory of Perceived Legitimacy & insights for the libertarian

For the libertarian critique, this conclusion offers the following insight. Firstly, all libertarians agree that the central core issue is that the state requires perceived legitimacy to function. This means that most actions perpetrated by the state and its adherents either consciously or subconsciously seeks to procure perceived legitimacy from its subjects. As such, one can equate the state's action to procure perceived legitimacy with that of a business seeking profit above anything else. The implications of this are plenty. A state's actions can therefore be highly immoral, corrupt, deceitful, and unfaithful to the preferences of its subjects, if it secures a high enough perceived legitimacy from its subjects to prevent the state's collapse. Like a theoretical situation where a business' only concern is to maximize profit, a state can be inclined to do everything within its power to procure a perceived legitimacy from its public. Secondly, the libertarian perspective is that the state does not have any legitimacy by default. The state, because of its dependence on perceived legitimacy to exists, is a temporal, fragile and at best stagnated body that prolongs its collapse for as long as possible. The state seeks legitimacy to sustain its existence, meaning that a state that is perceived to be illegitimate in the eyes of its populace will have to, either willfully or by force, forfeit its exclusive right to enforce rules and laws. By virtue of being a temporary social construct, the state can therefore neither make universal claims to a territory, to the right of monopolizing violence, to judicial supremacy, nor to the superiority of its moral standards. The third, and most radical libertarian in-