Authority, Philosophical Anarchism, and Legitimacy

Jeremy D. Farris

University College

Thesis submitted in partial fulfilment of the requirements for the degree of D.Phil. in Politics in the Department of Politics and International Relations at the University of Oxford

Michaelmas 2009

Word count: 99,313

Authority, Philosophical Anarchism, and Legitimacy

Jeremy D. Farris
University College

Thesis submitted in partial fulfilment of the requirements for the degree of D.Phil. in Politics in the Department of Politics and International Relations at the University of Oxford

Michaelmas 2009

Abstract

One way to prompt people to act is to claim that one's commands impose duties upon some persons to act and subsequently to command those persons. This is the approach of practical authority. The claim of practical authority is ingredient to a predominant conception of the state. This thesis argues that the state's claim to practical authority is both unjustified and morally wrong; it defends philosophical anarchism. The philosophical anarchist argument advanced here begins with a defence of a presumption against practical authority. It then argues that no argument for the practical authority of the state overcomes that presumption. Thus the state's claim to practical authority is unjustified.

The philosophical anarchist's position suggests that we rethink both the normative claim ingredient to the concept of the state and the relationship between states and persons. This thesis suggests that states claim legitimacy – that is, states claim that the potentially coercive legal directives that they enact are all-things-considered morally permissible. The thesis outlines the ideal of legitimacy in political philosophy, an ideal distinct from authority.

An analysis of legitimacy requires an analysis of coercion. The thesis develops a specific account of the *pro tanto* wrongfulness of coercion that locates the wrongfulness of coercion not with the badness of the outcomes that the coercee faces but rather with the beliefs and intentions of the coercer. Two upshots emerge from that account. The first is that legal directives are not necessarily coercive. The second is that the conditions which render coercion *pro tanto* wrongful also render the state's claim to practical authority wrongful. However, whereas coercion is justifiable by an appeal to reasons that defeat its *pro tanto* wrongfulness, the philosophical anarchist shows that the state's claim to practical authority is not so justifiable. Therefore, the state's claim to practical authority is decisively wrongful.

DEDICATION

Jon J. Johnston (1928-2008) and G.A. Cohen (1941-2009)

Two Teachers, Friends of the Forms

It made one think of the prisons of the spirit men create for themselves
and for others – so overpowering,
so much a part of the way things appear to have to be
and then abruptly, with a little shift,
so insubstantial.

— V.S. Naipaul, *A Turn in the South*

Table of Contents

Abstract iii

Dedication v

Epigraph vii

Table of Contents ix

Acknowledgements xi

Preface 1

Chapter 1. A Conceptual Analysis of Authority 11
1.1. The Minimal Definition and Preliminary Remarks 11
1.2. The Reasons of Authority 14
1.3. The Wronging Criterion 30
1.4. The Strength of Authority's Reasons 43

Chapter 2: The Right to Rule and the State's Self-Image 55
2.1. Introduction 55
2.2. Rights and the Right to Rule 58
2.3. Alternative Presentations of the Right to Rule and Its Correlate Duties 71
2.4. Hobbes on Personation, Authority, and States 78
2.5. The State's Self-Image 106

Chapter 3: Philosophical Anarchism 111
3.1. Introduction 111
3.2. Philosophical Anarchism 113
3.3. The Significance of Presumptions 120
3.4. The Presumption Against Authority 133
3.5. A Unified Philosophical Anarchism 159

Chapter 4: Three Objections to Philosophical Anarchism 167
4.1. Defending the Presumption 167
4.2. Against the Folk 169
4.3. Against the Domains and Limits Objection 189
4.4. Against the Overreaching Objection 198

Chapter 5: An Authority Worth Achieving 225
5.1. Introduction 225
5.2. The A Posteriori Conclusion 228
5.3. Epistemic Authority and Legal Directives 251
5.4. Beyond Authority 263

Chapter 6: Legitimacy 267
6.1. The Concept of Legitimacy 267
6.2. From Justice to Legitimacy 269
6.3. The Site of Legitimacy 290
6.4. The Scope of Legitimacy 301
6.5. Why We Care (About Coercion) 312

Conclusion 339

Bibliography 345

Acknowledgments

After defending his D.Phil. thesis, a friend and fellow traveller in Oxford political theory told me that the acknowledgements are the happiest pages that one writes. 'You just get to thank people. What could feel better?' For me the happiness is not unalloyed. In the past year the two men who made the greatest contributions to my philosophical education passed away. This thesis, which is not equal to the depth and clarity of their thought, is nevertheless dedicated to their memory.

I have Jon Johnston to thank first. Jon was tenured to teach philosophy at a time when publications were not emphasized at a place where philosophy is not either. A small coterie of dedicated students assembled around him. For years, on Friday nights in the upper rooms of small restaurants around Atlanta, Georgia, we would present our papers on various Platonic dialogues, Aristotle, Kierkegaard, Dewey, Feyerabend, Popper, Rorty, Berlin, Gellner, and on and on. Looking back, I can see that Jon was attempting to replicate a tutorial system on the periphery of an institution whose commitment to efficiency undermines the idea. The results glow in my memory; the contest of ideas will never be more exciting. Having done his postgraduate work at the University of London in the early fifties, Jon encouraged me to consider a British postgraduate education. His support and confidence in my application for the Rhodes Scholarship was unwavering. Jon was a door-opener, a teacher, a mentor, and a close friend. He was a great man.

Upon arriving at an institution, a common view to take is that during one's time there one will grow and change, but the institution will remain stable and fixed. This view is especially tempting at an institution as established as the University of Oxford;

however, the view is misleading. In my years at Oxford, I have been most impressed by the depth and precision of Jerry Cohen's thought. When he passed, Oxford as I know it diminished. Jerry raised the standard for what we should count as successful work in political philosophy. In the seminars which he conducted in the basement of All Souls College, he taught by instruction and by example how to approach that standard. Jerry would simply refer to it as the truth. Jon and Jerry never read the work that follows. I thank them for an influence that is indirect, pervasive and global in my life – an influence which will outlast this thesis by years.

Now I would like to thank those persons and institutions that helped me to craft this thesis. First, I thank my supervisor, Marc Stears. Marc is a political theorist *par excellance*. He is at home both in the history and analysis of ideas. I hope that my work to a minor extent reflects Marc's dexterous grasp and wide reach in political theory. I also thank Marc for the institutional support he has facilitated through University College.

Equal thanks go to William Edmundson. From the very beginning of my doctoral work, Bill has helped to shape my interest in various problems in moral and legal philosophy. He has also reviewed and sharpened my responses toward them. In the academic year 2007-2008 when Oxford was not in term, I held a temporary research position at the Georgia State University Department of Philosophy. Bill and George Rainboldt made this possible. Also, during my time at Georgia State, I benefited greatly from Bill's seminars in philosophy and jurisprudence in the School of Law.

My great and heartfelt appreciation goes to Sabeel Rahman, a close friend from the moment of our first conversation walking down the steps of the U.S. Supreme

Court, who took time out of his gruelling first semester of Harvard Law to thoroughly read and comment on my manuscript. It is a commonplace that graduate students learn as much from their cohort as from their professors. I always benefit from conversations with Gabriel Wollner and Hugh Lazenby – companions through Oxford's M.Phil. degree – and Matt Brown, who recently took his Ph.D. in philosophy from UCSD and has embarked upon a professional philosophical career at UT-Dallas. I warmly thank each of them.

At Oxford, I would also like to thank John Gardner and Tony Honoré who gave me the opportunity to present some of my work on Hobbes and philosophical anarchism in their seminar 'Law and the State' in All Souls, Michaelmas Term, 2009. Thanks also go to Adam Swift and the Graduate Political Theory Workshop in the Department of Politics where I presented some thoughts on realism and legitimacy in Michaelmas Term, 2009.

In May of 2008 I presented a response to David Estlund's work on democratic authority at the Sorbonne. Our subsequent interchange at Café Les Patios outside the Sorbonne provoked a few early thoughts on the relationship between epistemic and practical authority. I thank Professor Estlund for that discussion and Nicholas Condom for originally facilitating it.

In the academic year 2008-2009 I took a temporary but full-time teaching position in the School of Public Policy at the Georgia Institute of Technology. I thank Diana Hicks and Bryan Norton for that wonderful and trying opportunity. The School of Public Policy houses the philosophers at Georgia Tech, and I was able to present my work to a very helpful audience, which included Bryan, Michael Hoffmann, Hans Klein, and Nancy Nercessian. During my time at Georgia Tech, I also had several

stimulating conversations with Eddie Keene about Hobbes, Locke, and natural law. Eddie has also since made his way back to Oxford and our conversations continue. I would also like to thank the students of PST 4803, 'The Philosophy of Anarchy,' a few of whom left the class bemused, if not committed, philosophical anarchists.

Also in the spring semester of 2009, I had the unique opportunity to teach a class on contemporary theories of justice at Morehouse College. I thank Gregg Hall and Preston King for that opportunity. I especially thank Preston for several conversations about my work, political philosophy, and life more broadly at his most-preferred and symbolic *Paschal's*.

I presented an early version of the broadest arguments of the thesis in a paper playfully entitled 'How to be a Good Anarchist' at the 2008 Harvard Department of Government Graduate Political Theory Conference. I thank Michael Rosen and the graduate students of the government department for some helpful exchanges. Eric Beerbohm followed the conference with some especially helpful commentary.

I would also like to thank a few other professional philosophers for their limited, but insightful engagement. Dan McDermott reviewed some of my early arguments on legitimacy. I thank Andrea Sangiovanni for one especially useful conversation about Rawls on legitimacy. I thank A.J. Julius for sharing his unpublished and very brilliant work. I also thank an old (but not as old as I had imagined!) fellow anarchist, Robert Paul Wolff, of whose late engagement I am warmly appreciative.

When in Oxford, Rhodes House has been my anchor. I would like to thank Sir Colin Lucas and, more recently, Don Markwell for stewarding Rhodes House during my time there. I would also like to thank Bob Wyllie, Colin Page, John Gee, and Sheila Partridge for taking such good care of me over these past four years.

To be sure, I thank my parents Don Farris and Katie Farris for their categorical and loving care and my brother, Jason Farris, who is a fixed-star and who supported this project in several ways.

Ultimately, however, it is my spouse, Lisa, who brought about a sea change in her life to accompany me to Oxford. Most of all, I admire and thank her.

Preface

There are many ways of getting people to do things.[1] One way is to claim that one's commands impose duties upon some persons to act and subsequently to command them. Another way is to propose to sanction them if they fail to commit certain actions. Yet another way is to signal reasons, which exist independently of the signal, for those persons to act. These three ways – namely, practical authority, coercion, and epistemic authority – are predominantly how the state gets people to do things.

This thesis argues that the first way the state attempts to get people to do things is indefensible. It is not only unjustifiable but also wrongful for the state to get people to act by claiming practical authority over them. For the vast majority of cases, state commands do not create duties for persons to act. This is the conclusion of philosophical anarchism. The lion's share of this thesis defends the argument towards that conclusion.

This conclusion may surprise many. It is common both to speak of 'legitimate authority' and to define the state by reference to the claim to possess practical authority over persons. Our understanding of the state is in part defined by the normative claims that are attributed to it. Philosophical anarchism prompts us to reconsider the normative claims that are ingredient to our concept of the state. It also provides the impetus to rethink the concept of legitimacy in political philosophy. This thesis suggests that legitimacy does not concern practical authority; rather, it concerns

[1] The phrase is colloquial, but it is becoming interestingly academic. See Ripstein (2004), p. 32 and Julius (2009).

the second and third ways the state directs the actions of others – namely, coercion and the signalling of reasons.

A defensible philosophical anarchist argument suggests that the main relationship between the state and persons is not one of practical authority. Instead, the relationship between states and persons revolves around two types of action that the state performs: coercion and the signalling of reasons. Philosophical anarchism breaks apart and brushes aside the distraction of states' claims to practical authority and allows us to focus on those state-person relationships that are normatively significant. Thus in addition to a defence of philosophical anarchism, this thesis offers some arguments concerning other ways that states prompt the action of persons. I consider how states may signal reasons and argue that even though the claims of states to practical authority are indefensible, states may nevertheless aspire to epistemic authority. Epistemic authority is a species of authority importantly distinct from practical authority. The thesis also offers some arguments regarding the wrongfulness of coercion and the capacity of states to coerce persons. It argues that the wrongfulness of coercion is located with the beliefs and intentions of the coercer and thus that state action is not necessarily coercive.

The moral evaluation of some of the ways that states may direct the actions of persons – with the predominant focus on authority and coercion – is the terrain of this thesis. My hope is that the political and legal philosophers who come across my arguments therein have passed through this area before and recognize the landscape. However, for those who have not, I should identify some landmarks and pitfalls.

First, a pitfall: This thesis does not defend anarchism; it defends philosophical anarchism. Anarchists oppose existing states. They believe that existing states are

either involuntary or coercive, or that they solidify unjust distributions of benefits and burdens and therefore should be resisted. Philosophical anarchists, by contrast, oppose the state's claim to possess practical authority. They believe that no existing state has practical authority over those whom it claims to have practical authority. The philosophical anarchist claim about state authority is much more *limited* than the anarchist claim that states should be decisively resisted. Indeed, the only defensible anarchist position is a philosophical thesis about the state's claim to practical authority. Philosophical anarchism targets a particular problem with one way that states may attempt to get people to do things – namely, by claiming practical authority and commanding. Thus philosophical anarchism can be identified neither with the view that all state actions are illegitimate nor with the view that persons would be better absent states. Rather, the philosophical anarchist makes a limited claim about the relation between the commands of states and the duties of persons: the state's single act of commanding does not create duties of obedience on the part of those persons subject to the command.

Legal philosophers will recognize philosophical anarchism as one position in the debate over 'the duty to obey the law.' In that debate, the first move of the philosophical anarchist is to precise the concept of 'law' as a state command and the action 'to obey' as the act of performing the commanded action for the sufficient reason that the action is commanded. The second move is then to argue that whereas a duty to perform the action commanded *may* exist, the specific duty to perform the action *because* it is commanded does not. Below, I will consider those two steps in detail, but now note that the question to which the philosophical anarchist responds is one of moral philosophy and not of political psychology. His question concerns the

relation between state commands and obligations to obey, not the relation between state commands and the fact of compliance. This thesis is a philosophical investigation into the existence of certain moral obligations and the permissibility of certain actions that the state may take in order to direct the action of others. Although answers to those investigations may be informed by facts that may be revealed by the pursuit of political science or psychology, they do not primarily depend upon them. There is a domain of human enquiry in which moral questions are irreducibly primary, and the main arguments of this thesis are located therein.

Although I mention the 'duty to obey' debate in legal philosophy, arguments about practical authority and the attribution of practical authority to states range over other areas of practical philosophy that might self-identify as moral philosophy or political philosophy. No argument is an island. Rather, my argument is a stream that winds through various debates and subdisciplines of practical philosophy: the nature and normativity of reasons, the nature of authority, the justifiability of the state's claim to authority, the wrongfulness of coercion, the legitimacy of state action, and the distinction between the ideals of legitimacy and justice. A good inter-subdisciplinary argument picks up its current and does not stagnate as it winds its way through various debates. I hope that my argument achieves that standard. Also, every stream flows into a larger body, and one should know where one is headed. The watersmeet for the argument of this thesis is the larger body of political philosophy, as opposed to other subdisciplines such as moral or legal philosophy. Philosophical anarchism allows us to reconsider the relationship between states and persons. Because philosophical anarchism casts doubt on the state's claim of practical

authority, it enables us to focus our attention on the evaluation of other actions the state may take to direct the actions of persons.

Not only does philosophical anarchism allow us to rethink the relationship between states and persons, it also prompts us to rethink the concept of the state. This thesis embarks from a particular conception of the state to which the claim to possess practical authority is ingredient. That condition is, in part, how Thomas Hobbes understood the state. Hobbes's theory of the state and its authority is the *locus classicus* of the position that the philosophical anarchist rejects. Thus Hobbes will be a recurrent interlocutor. He will be the advocate of the conceptions of state and state authority that he developed and the philosophical anarchist rejects. Of course, there are dangers in engaging in conversation with the mighty dead. Although our context, idiom, and conceptual lexicon are informed by theirs, the two are not identical. Aware of this, I have sought to inform the present conversation with the best contemporary scholarship on Hobbes. Even though we are separated from Hobbes's work by three and a half centuries, I nevertheless contend that Hobbes's conception of the state and state authority is the predominant conception that we have inherited. The use of the first person plural is always contentious; however, the claim that Hobbes's conceptions of the state and the species of authority attributed to the state are or, at the least, are very akin to our own is defensible by a survey of what contemporary political and legal philosophers imply when they write about state authority and the obligation to obey the law. If the vast majority of analytic legal and political philosophers who write about state and state authority embarked from conceptions that were radically different from Hobbes's, then we would notice.

Given that the questions of where we are and how we got here are distinct, we might prescind from the question of why these Hobbesian conceptions are our inheritance. However, it is worthwhile to reflect on the genealogical question.[2] Our conceptual lexicon exists as it does because the concepts therein were posited to solve a set of normative problems that were encountered in the past and continue to trouble. Concepts are passed down like technologies, and, like technologies, they are jettisoned when the problems they engender render their further use unjustifiable. Perhaps Hobbes's conceptions of state and state authority resonate because we recognize the force of similar normative problems about stability and assurance in a world characterized by self-interest and diffidence, problems which Hobbes's conceptions were crafted to address. However – and this is a major claim of the thesis – the Hobbesian conceptual solutions of state and state authority bring their own normative problems in tow. Those problems issue partly from Hobbes's ascription of personhood to the state and partly from the inability of arguments for state authority to overcome a central presumption that the philosophical anarchist highlights. For the philosophical anarchist these are fatal flaws that force us to rethink our concepts of the state, state authority and legitimacy, and the relationship between states and persons. I argue that the normative claim ingredient to a defensible concept of state (defensible, that is, in light of philosophical anarchism) is a claim not about authority, but about legitimacy. Legitimacy is a complex normative concept which the last

[2] Such reflections can go very deep. Political philosophers (like anyone else) work with a conceptual lexicon that, to a great extent, they have inherited. The relation between the history of political theory and contemporary political theory is inordinately complex. For one now classic approach (one 'school' of thought) to that relation, see Skinner (2002). For an antidote to that approach plus a broader overview of approaches to the relation between political philosophy and the history of political philosophy see Philp (2008).

arguments in the thesis attempt to disaggregate; however, at bottom, a concern with legitimacy is a response to the wrongfulness of coercion. States are what they are, in part, because they claim that their execution of directives which might be coercive is legitimate.

The thesis unfolds as follows. The first five chapters are devoted to an analysis of authority, the attribution of authority to the state, and the argument towards the philosophical anarchist conclusion. To my knowledge, no proponent or opponent of philosophical anarchism has presented a complete and correct argument for that conclusion. The argument for philosophical anarchism that I will defend is this:

(1) *The Authority of the State*: For two agents, A (the state) and B, A has authority over B if and only if A's act of commanding 'Let B Φ' creates a *pro tanto* obligation for B to Φ, such that if B didn't Φ, B would wrong A. [premise]

(2) *The Presumption Against Authority*: Absent a decisive reason to believe otherwise, for two rational agents, A and B, A does not have practical authority over B. [premise]

(3) *The A Posteriori Conclusion*: No condition satisfies both the *justification* and the *fulfillment* criteria. Hence, no condition generates the general duty to obey the law. [premise]

.:

(4) *The Central Claim*: The state's act of commanding 'Let B Φ' never, in and of itself, creates an obligation for any person to Φ. [(1),(2),(3)]

(5) *The Anarchist Denial*: The state does not have practical authority over those whom it claims to have practical authority. [(1),(4)]

The first five chapters are organized around the three premises in this argument. The first two chapters are devoted to premise (1), *The Authority of the State*. Chapter 1 – which is not a traditional introductory chapter – offers a conceptual analysis of practical authority. Practical authority is a relation between the commands of one person and the reasons for action of another. In Chapter 1, I sharpen that relation. Chapter 2 turns directly to the state's authority. The state's authority is often couched as the right to rule. Chapter 2 provides an analysis of the right to rule and demonstrates that such a right is consistent with the analysis of authority developed in Chapter 1. In Chapter 2, I also consider why the claim to practical authority is integral to a dominant conception of the state. With this end in mind, I discuss the impact of Hobbes's interlocked theories of authority, state, and personhood.

Chapters 3 and 4 are devoted to premise (2), *The Presumption Against Authority*. Chapter 3 explains why the philosophical anarchist argument must be the one given above and not other arguments that are sometimes advanced or implied to establish the position. Although Chapter 3 introduces both *The Presumption Against Authority* and *The A Posteriori Conclusion*, it is mainly concerned to motivate and provide support for the former premise. *The Presumption Against Authority* captures the notion that first generation philosophical anarchists such as William Godwin and Robert Paul Wolff had in mind in their advocacy for philosophical anarchism.[3] Chapter 4, in turn, defends the presumption from various objections that issue from recent literature on practical authority. Chapter 5 is devoted, in part, to a defence of

[3] Godwin (1971 [1798]); Philp (2007); Wolff (1970)

premise (3), *The A Posteriori Conclusion*. That defence revisits some moves in the 'duty to obey the law' debate made prominent by avowed second generation philosophical anarchists such as John Simmons.[4] However, Chapter 5 also advances two novel arguments against Joseph Raz's service conception of authority.[5] If the three premises above are sound, then the philosophical anarchist conclusion follows: states do not have practical authority over those whom they claim practical authority.

Philosophical anarchism makes waves. If the philosophical anarchist conclusion holds, then we should reconsider the species of authority to which states may aspire. The latter half of Chapter 5 suggests that the state may achieve epistemic authority. In that chapter I draft a view of legal directives consistent with that aim. Also, if philosophical anarchism is true, then by its light we must review both the concept of legitimacy and the normative claims ingredient to the concept of the state. Chapter 6 and the Conclusion are devoted to that end. Chapter 6 considers what is within the remit of legitimacy and attempts to disaggregate that complex concept. I propose that the ideal of legitimacy is distinct from the ideals of both authority and justice. To be concerned with legitimacy is to be concerned with the justifiability of directives that are likely coercive. That is, when political philosophers focus on legitimacy, they organize their enquiry around what is, at bottom, *political*. This concern with coercion prompts the question of why we care about its justification in the first instance. What about coercive acts makes them *pro tanto* wrongful? That is, why does coercion necessarily demand a justification? For the most part, contemporary political philosophy has been on the wrong track in its approach to this

[4] Simmons (1979); Simmons (2001)

[5] Raz (1985); Raz (1986); Raz (1994); Raz (2006)

question. In the last sections of Chapter 6, I present an argument that I hope clarifies the wrongfulness of coercion. Then, in broad outline, I offer the conditions that would render coercion legitimate.

The Conclusion unites the conclusions of the thesis. The conditions that make coercion *pro tanto* wrongful are also true of practical authority. The attempt to get people to do things by claiming practical authority is wrongful in the same way that coercion is wrongful. However, coercion can be justified. Philosophical anarchism informs us that for the vast majority of persons the state's claim to practical authority is unjustified. Hence, the state's claim to possess practical authority is not only indefensible; it is also wrong. This is the first conclusion. The second conclusion is that once the claim to practical authority has been dispelled, we should view the normative claim integral to the concept of the state as a claim about legitimacy, which is an ideal apart from authority. The legitimacy claim ingredient to the concept of the state is that its legal directives are all-things-considered permissible, even if and when they are coercive. It is my hope that the two main conclusions of the thesis, elucidated in the Conclusion, make a modest contribution to the evolving debates about what the state is and the relationship between states and persons.

Chapter 1 – A Conceptual Analysis of Authority

§ 1.1. The Minimal Definition and Preliminary Remarks

1.1.1. Authority is commonly understood to be a relation between the commands of one agent and the reasons for action of another. We may initially define authority as follows:

(1) For two agents, A and B, A has authority over B if and only if A's command 'Let B Φ' creates a reason for B to Φ.

Call this the *minimal* definition of practical authority.[1] It is a point of departure for an analysis of authority. The minimal definition of authority is broadly shared both by philosophical anarchists, who deny that the state (or more strongly, any agent) has authority, as well as by defenders of authority, who argue that certain agents, perhaps including the state, have authority in certain circumstances. That there is a shared description of authority among its detractors and defenders makes disputes about authority both tractable and interesting.

Yet the minimal definition is incomplete. It does not distinguish authority as distinct from relations of force or bargaining power. It does not contain an understanding of what a command is, nor does it specify what kind of a reason A's command provides for B. Neither does it specify how strong of a reason A's

[1] Lucas (1966), p. 16. The *minimal* definition is also where Joseph Raz begins his analysis. See Raz (1979a), p. 11-12.

command is for B nor how the reason for B relates to the content of the commanded action, Φ. Finally, the minimal definition does not provide any indication of how to understand authority as the right to rule. These are, at the least, necessary requirements of a conceptual analysis of authority.

This chapter responds to those requirements. It provides a conceptual analysis of authority that goes well beyond the minimal definition. The conception of authority I present takes the notions of command and reason as primitive. Those ideas are the building blocks of an understanding of the concept of authority, which is first and foremost a relation between the commands of one agent and the reasons of another. The analysis presented here develops a specific understanding of that relationship.

This chapter is an attempt at conceptual analysis. It attempts to clarify one predominant conception of authority. In pursuit of that goal, I do not intend to describe the social or psychological relationship between any two persons with proper names. It is not my purpose to describe a psychological theory that would explain why some people at some particular times and under some particular circumstances do the bidding of others. The experimental psychological research conducted in the line of Stanley Milgram or the Stanford Prison Experiment is therefore not the interest of this chapter.[2] Here, I am not interested in the relationship between a command and the *fact* of compliance. Rather, I am interested in the relationship between a command and the morally and rationally justified grounds for action. My interest is one of moral and political philosophy. What is the moral relationship that holds

[2] For introductions to such research see Milgram (1974) and Zimbardo (2007).

between persons if one of them were actually an authority over another?[3] In short, what is the proper understanding of authority as a moral concept? This chapter attempts to respond to that question. A correct answer reflects what we mean when we proclaim that some agents such as the state, or parents, or even God have authority over some persons.

The thesis I will develop is that authority identifies the command of one agent with a specific moral obligation on the part of a person to obey the command, such that if the latter did not obey, she would wrong the former. This, I believe, is what is normally meant, or at least entailed, by the identification with authority as the right (of some person or group) to rule (over another person or group). This conception of authority is perhaps the conception that we normally attribute to authority figures such as parents and God. It is also the conception of authority that is commonly attributed to the state. Chapter 2 is devoted to the latter claim. However, lest we rush ahead, the goal of the present chapter is only to render perspicuous a predominant conception of authority before we attempt to attribute it to particular agents. The present chapter is devoted to the claim that authority – or, to be more precise, what is called *practical authority* – is fundamentally a specific relation that connects a command of an agent with a moral obligation to obey the agent who issued the command.

---

[3] I use the subjunctive ('were') so as to not prejudge the issue that there are actually, or could be, persons with authority over others. My conceptual analysis is not meant to prejudge the further question of whether or not this conceptual relationship actually or possibly holds between two or more actual agents. The fact that authority might not perfectly apply as a description of any relationship between two agents need not alter or preclude our understanding of what the concept is. Philosophical anarchists of all stripes are not precluded, by virtue of their anarchism, from understanding what practical authority *is*.

The chapter unfolds as follows: To clarify arguments for or against authority requires a more thoroughgoing conceptual analysis than the minimal definition provides. A conceptual analysis of authority requires an understanding of the kinds of reasons that authority generates. To understand authority is to know exactly what kind of reason A's command 'Let B Φ' is for B to Φ. In Section 2, I review a set of distinctions among kinds of reasons, attempt to clarify the notion of a command, and stipulate how the concept of authority portrays a command as a certain kind of moral reason. The reasons of authority have particular aspects such as content-independence and intentionality. Section 3 continues the analysis of the reasons of authority. It illuminates one essential aspect of the reasons of practical authority – namely, what I call the *wronging criterion*. Section 4 then presents a view of the strength of authority's reasons.

§ 1.2. The Reasons of Authority

1.2.1. The idea of a reason is basic to practical philosophy. It is a consideration that counts in favour of an action. That definition is primitive. As T.M. Scanlon notes, 'Any attempt to explain what it is to be a reason for something seems to me to lead back to the same idea: a consideration that counts in favour of it.'[4] All reasons have this essential feature, but there are many reasons. There are reasons to hold beliefs, to adopt intentions to act, to fulfill those intentions, and to adopt attitudes such as hope or despair. 'Counting in favour of' is a relation; *X* counts in favour of *Y*. Reasons are

[4] Scanlon (1998), pp. 17

kinds of relations between facts and persons or, more precisely, between facts and the actions that issue from persons.[5]

A significant part of that relation is the presence of a fact. It is not up to us to decide what reasons there are. Reasons seem to be somehow 'outside' of us. We judge whether there are reasons to hold certain beliefs, intentions, or attitudes, but we cannot make it the case that reasons are present or absent with respect to our beliefs, intentions, or attitudes. In this sense, reasons are facts whose existence is not dependent upon our beliefs about what reasons there are.[6] Such judgments about whether or not we have certain reasons may be true or false. This claim does not entail major metaphysical commitments. A correct judgment that there is a reason to act does not imply some metaphysical realm of reasons that anchors the truth of that judgment by correspondence. Rather, reasons may issue from non-mysterious standards of correctness in evaluation. For example, that we can hold true and false beliefs about arithmetic does not commit us to some Platonic conception of numbers. In practical reason, as in arithmetic, there are standards of reasoning that constrain and give support to the truth or falsity of judgments.[7]

Reasons have normative force. Reasons are facts *plus*. They are facts that *count in favour of* certain actions. Reasons are factual considerations that compel us, however sharply or softly, to *do* certain things: to hold or discard beliefs, to have intentions or motivations, to form or dispel attitudes. We do not need to act on a

---

[5] Raz (1975), p. 19

[6] For a convincing account of that claim, see Gardner and Macklem (2002), pp. 442-447.

[7] Scanlon (1998), p. 63

motivation in order for there to be a reason for action. That would be to reverse the relation between reasons and motivation. If there is a reason and if it happens that we recognize it, then there is a consideration that ought to motivate us, however softly, to act in some way. To be sure, the consideration might not motivate us to carry out the action. But what is central is that the consideration counts in favour of the action. That makes it a reason.[8]

It is convenient to group reasons for action under the inclusive umbrella of 'practical reasons.' We have practical reasons that are instrumental reasons – that is, considerations that count in favour of acting in ways that advance our more ultimate goals. We also have practical reasons to promote the goals themselves. For instance, we have reasons to promote states of affairs that we value, such as states of greater beauty or scientific achievement. In addition, there are practical reasons to act in ways that are valuable, but perhaps which do not promote better states of affairs – for example, a reason to keep a promise, the keeping of which would have no, or even worse, wider consequences.

To interrogate authority requires that we introduce a further class of reasons within the umbrella of practical reasons, namely moral reasons. These are considerations that guide our treatment of one another. They are reasons of right and wrong. We offer moral reasons to explain the duties we have to other persons: to treat some, such as our children, with a certain partiality, or to treat others, such as our grandparents, with a certain deference, or to aid some who are in need, or to relieve the pain of the hurt, or to refrain from treating all in certain, morally condemnable ways. We have strong reasons not to harm, coerce or deceive others; we owe others

[8] Larmore (2008), p. 11

this restraint. We also have strong reasons to relieve the pain and misery of others; we owe others that attention. Following Scanlon, we might say that this set of reasons informs 'what we owe to each other.' Moral reasons are reasons that explain why we owe certain actions or things to other persons. When we speak of right and wrong, of obligations that we owe to each other and legitimately expect from one another, we are speaking of moral reasons.[9]

There is a further division of reasons that aids in clarifying the reasons of authority. There is a distinction, current in contemporary moral philosophy, between agent-neutral and agent-relative reasons.[10] An agent-neutral reason is a reason to act that is not pinned to a particular agent's point of view or place in the world; it is a reason for anyone. Consider the reasons to promote the health and well-being of others, or to minimize the pain of others. These are not reasons that apply to only some persons with definite descriptions. If they are reasons, then they are reasons for each of us. To follow Thomas Nagel, agent-neutral reasons are reasons 'that apply to oneself because they apply to everyone.'[11] Agent-relative reasons, by contrast, are reasons for only some persons. Agent-relative reasons are not necessarily relative to one person alone, but they are relative. They are not reasons for every person. For example, if three students make a pact to advance 'the cause,' then each of them has reason to advance 'the cause' if the others do. To be sure, other persons not party to the pact may also have reasons to advance 'the cause', but they will not have the pact-

[9] Some might object that morality connotes a much richer set of reasons. Here, I follow Scanlon in employing the 'narrower domain of morality having to do with duties to other people.' Scanlon, (1998), p. 6

[10] Parfit (1984), p. 143

[11] Nagel (1986), p. 199

relative reason shared by the three partisans. Derek Parfit puts it most clearly: 'When I call some reason agent-relative, I am not claiming that this reason cannot be a reason for other agents. All that I am claiming is that it may not be.'[12] It is normal to think that we have agent-relative reasons to act in certain ways as an upshot of the relationships we have with a set of other persons, a set which obviously does not include everyone. This is a point attributable to W.D. Ross in his reaction to utilitarianism.[13]

1.2.2. What kind of reasons does authority provide? Recalling the minimal definition, what kind of reason for B to Φ is A's command 'Let B Φ'? To begin, some might hold that authority provides epistemic reasons. They would contend that 'Let B Φ' is a reason for B to hold some belief about Φ-ing, namely, that Φ would be a good thing to do or achieve. In that case, A's authority over B amounts to A's capacity to provide B with epistemic reasons to hold beliefs about some set of Φ-ings. A would be an epistemic authority for B:

---

[12] Parfit (1984), p. 143

[13] Ross writes, 'Moore's 'ideal utilitarianism' says, in effect, that the only morally significant relationship in which my neighbors stand to me is that of being possible beneficiaries by my action. But they may also stand to me in the relation of promisee to promiser, of creditor to debtor, of wife to husband, of child to parent, of friend to friend, of fellow countryman to fellow countryman, and the like; and each of these relations is the foundation of a *prima facie* duty, which is more or less incumbent on me according to the circumstances of the case.' Ross (1930), p. 19

(2) For two agents, A and B, A is an *epistemic authority* for B if and only if, as a result of A's directives, B has a reason to believe either that there is a reason to Φ or, more strongly, a decisive reason to Φ.[14]

This conception of epistemic authority does not seem consistent with how practical authority's reasons are normally issued or received. Reflect on what is normally meant when it is said that A has authority over B. When A commands, 'Let B Φ,' is his intention to provide B with justificatory grounds to endorse the belief that Φ-ing is worthwhile? Does B believe that this is A's intention when A issues the command? Does B believe that A intends that B receive the command as a counsel to his epistemic beliefs? A moment's reflection on the concept of authority as it is and has been used 'now and around here' suggests not. The epistemic thesis conflates advice and commands. Thomas Hobbes, a defender of authority *par excellence*, emphasizes this distinction between counsel and command. Hobbes's rich account reflects the essential elements of the predominant conception of authority. I quote his definitions from *De Cive* at length.

> They who less seriously consider the force of words, do sometimes confound law with counsel…WE must fetch the distinction between counsel and law, from the difference between counsel and command. Now COUNSEL is a precept, in which the reason of my obeying it is taken from the thing itself which is advised; but COMMAND is a precept, in which the cause of my

[14] This formulation of epistemic authority loosely follows the one presented by Heidi Hurd. See Hurd (1999), p. 64.

> obedience depends on the will of the commander. For it is not properly said, thus I will and thus I command, except the will stand for a reason. Now when obedience is yielded to the laws, not for thing itself, but by a reason of the adviser's will, the law is not a counsel, but a command, and is defined thus: LAW is the command of that person (whether man or court) whose precept contains in it the reason of obedience: as the precepts of God in regard of man, of magistrates in respect of their subjects, and universally of all the powerful in respect of them who cannot resist, may be termed their laws.[15]

If A's utterance 'Let B Φ' were a piece of advice or counsel, then A would intend that this utterance should be taken as a guide to the reasons that B has to Φ. If A is an epistemic authority, then B takes A's directive as a signal that there are independent reasons to Φ. However, as Hobbes notices, the illocutions of authority are not given as advice; they are intended as commands. A's command 'Let B Φ' does not refer to reasons that B otherwise has to believe that he should Φ. Rather, it *is itself* a reason that B should Φ. If A is an authority over B, then A's command 'Let B Φ' is itself a reason for B to Φ. B ought to Φ because A said so.

Hobbes's clarity on the distinction between advice and command suggests a further clarification on the difference between 'being an authority' and 'having authority.' We use the term 'authority' to refer to both conceptions; however, these represent two species of authority with significant differences. A might be an authority – that is, she might be very well qualified to speak on some topic – and B might take her pronouncements as reasons for the belief that there are reasons for

[15] Hobbes (1978a [1642]), pp. 271-272. See also Hobbes (1991 [1651]), ch., xxv.

action. B might even substitute her pronouncements on certain topics for his own judgment. But the former sense of being an authority is not what is in dispute when, say, the authority of the state is in dispute. 'Being an authority' is akin to epistemic authority or expertise – that is, having a tendency to make correct judgments within a certain domain of enquiry. We look to epistemic authorities to signal what reasons there are that merit consideration when making decisions. 'Having authority' is a different and perhaps more straightforward concept. It connotes that the commands of some agent are themselves reasons to act in a specific way, namely, to obey the command. Practical authority, as distinct from epistemic authority, is meant to *create* reasons to act. The directives of practical authority do not only refer to reasons we otherwise already have. Practical authority is *reason-creating*. More specifically, practical authority elevates 'because A said so' as a reason to act.

Epistemic authority is important for legal and political theory, and we will return to it in Chapter 5. However, it is not the conception of authority that is commonly attributed to the state. The conception of practical authority plays that role. As we will see in Chapter 2, the attribution of practical authority to the state is made explicitly by Hobbes and implicitly in the contemporary 'the duty to obey the law' debate. As I will suggest in Chapter 5, epistemic authority may be successfully attributed to states; however, that claim does not rouse the philosophical anarchist. She is motivated to reject the claim that practical authority may be successfully attributed to states. As such, it is an analysis of practical authority to which we will devote our energies.

1.2.3. The notion of a command is central to practical authority. To understand its centrality, consider the following features of practical authority. Authority's reasons are *agent-relative*, *agent-relational*, *intended* and, most importantly, *content-independent*. First, authority's reasons are *agent-relative*. The commands of an authority are not commands for everyone, but only for some agents that are 'under' that authority. Not every agent is necessarily subject to the same reasons of authority because each agent may be subject to different authorities. The most obvious examples are parental authority or the belief that citizens are under the authority of the specific state that endows their citizenship. The concept of jurisdiction, complementary to that of authority, shows that for at least some authorities (perhaps most authorities) their reasons are agent-relative, that is, relative to those agents within their jurisdiction.

Authority is not necessarily institutional. It is not necessary that the concept of authority be exemplified only in institutional contexts, such as in states or in courts. Rather, authority is a type of normative relation between two agents or groups of agents. Authority denotes a specific relationship between two or more agents; it is *agent-relational*. It is a normative relation that describes the fact of one agent's commanding as creating an obligation for some other agent to obey the command.

Hobbes' emphasis on 'the will of the commander' raises another important feature of practical authority. The reasons of authority are *intended*. In order to be a practical authority, one must intend that her act of commanding – or, as Hobbes says, her 'will' – creates obligations for others to obey. A command is an illocutionary act. It is a type of action, namely a speech-act. The medium through which the action is executed happens to be words and not bodies. A command is understood to be an

action. As such, it is something to which we may ascribe an intention as necessary to its performance.[16]

To see this point, focus on some examples. To see that intention matters to practical authority, consider the *Inadvertently Elected Great Leader*: a mob elects an innocent bystander and takes his utterances as obligation-creating commands for their group (unbeknownst to him). We would not think that this case exemplifies the concept of authority. The necessary but absent condition is a kind of intentional relation between the bystander and the mob. For authorities, intent matters. However, intent is not all that matters, and it is certainly not sufficient to establish authority. Consider the deranged man who proclaims himself *King of the World*. He may very well believe as much, and therefore intend that his commands be regarded as if he were, but clearly the purity of his intentions are not sufficient to show his authority over us.

Intent matters for authority. Authorities intend that their commands stand as reasons for their purported subjects. But as reasons to do what? Namely, to obey. An authority intends that her commands are themselves reasons for another to obey.

Obedience is a moral concept that requires an analysis in its own right because, as Donald Regan has indicated, there are two distinct meanings of obedience: the loose, commonplace sense of obedience and a stricter, 'philosopher's' sense of obedience.[17] Suppose A commands B to Φ. In the commonplace sense B obeys A's commands as long as B complies with the requirements stipulated by A's command, *viz*. B does Φ. B may comply with the requirements of A's command for any number

[16] This point is also made by Marmor (1995).

[17] Regan (1990)

of reasons (perhaps B intended to Φ before A ever mentioned it or perhaps B can do nothing but Φ), and in the commonplace sense of the term, by doing Φ, B would be obeying A. The strict or 'philosopher's' sense differs. In the strict sense, B obeys A only if B Φs for the singular reason that A commands it.

Which sense of obedience is entailed when a practical authority commands? That is, in what sense does the subject obey if she recognizes another as a practical authority? If we are to maintain consistency with the Hobbesian distinctions between command and counsel, practical and epistemic authority, then practical authority intends obedience in the *strict sense*.[18] Moreover, for the authority relation to hold, the purported subject to the authority must obey in the strict sense as well, that is, she must obey for the singular reason that the authority has commanded. Let us examine the perspective of both parties to the authority relation.

First, consider the intentions of a practical authority. Practical authorities intend that their acts of commanding stand as reasons for some persons to obey in the strict sense. The reasons provided by epistemic authorities do not share these features. The reason an expert advises other agents to believe certain propositions or to act in certain ways is not because the expert told to them to believe or to act. Rather, the reason is something that an expert can reference as a justificatory ground for the belief, which is independent of the illocutionary act of advice-giving. For example, when a climate scientist tells a population to curb its CO_2 emissions, and a member of the population asks 'Why?' the expert may not respond with 'Because I said so' and expect that to be a valid reason (as a practical authority might). Rather, the expert

[18] Throughout this thesis, I will refer to 'obedience in the strict sense' or 'strict obedience' as a term of art to refer to this idea.

will refer to the justificatory background of climate science and the expected consequences of further CO_2 emission. The expert does not intend that his 'saying so' is a valid reason for others to cut emissions; rather, he intends that the facts provided by climate science, of which he is very knowledgeable, can stand as reasons for why persons should curb their carbon emissions. In short, his dictates are not independent of their content, nor does he intend that they are. His utterance 'we should cut emissions' depends on the content of that utterance and his expert knowledge of that content. Hence, he is not an example of the species of authority with which we are concerned – that is, practical authority, which purports to create reasons to obey by the very act of commanding.

Additionally, for the authority relation to hold, the subjects to authority must also obey in the strict sense. If B believes that A has authority over her, then she believes that A's command 'Let B Φ' is itself a reason for B to Φ. If B merely complied with A's directives, and nothing more about the reason for that compliance was clear, then we would be unable to ascertain whether A stands as an epistemic or practical authority. Consider the above case with the climate scientist. The climate scientist might tell us to curb our personal emissions, and we might well comply with him (perhaps we were already aware of global warming, or perhaps we were getting rid of our car anyway); however, our compliance – or, obedience in the vernacular sense – would not stand as a condition for the practical authority of the climate scientist. To be a practical authority, his directives must provoke a specific type of action, namely, obedience in the strict sense. If he is a practical authority, then 'because he says so' stands as a sufficient reason for us to curb emissions.

1.2.4. The intentions of those who are party to authority relations reveal a further essential feature of the concept of authority. If one or more agents, A, is a practical authority, then A's commands themselves stand as sufficient reasons for another, B, to act. The command of an authority does not refer to further reasons for B to act; rather, the command itself is the reason for B to act. To be even more precise we may say that it is the *fact* of A's commanding B to act which is the reason for B to act.

Act how? B's action could be myriad – 'appropriate the van,' 'pay taxes,' 'believe p'; however, if B's action responds to A's command as a practical reason, then no matter what B's specific action is, we may say that B obeys in the strict sense. If A is an authority over B, then the fact that A has 'said so' itself stands as a reason for B to obey, which is to say, it stands as a reason for B to commit any number of further action-types.[19]

Philosophers normally call this feature of authority *content-independence*.[20] Authority is a relation between the commands of A and the reasons for action of B. Content-independence is meant to highlight that the *fact* that A has commanded stands as a reason for B to Φ. It is a reason regardless of what other reasons, independent of the illocutionary act of the command, B might have to Φ and regardless of what Φ is, subject to certain range conditions.

---

[19] As Raz notes, 'The reason is the apparently 'extraneous' fact that someone in authority has said so, and within certain limits his saying so would be a reason for any number of actions.' Raz (1986), p. 35. See also, Green (1988), pp. 36-42.

[20] The idea is traceable to Hobbes, but the term was coined by H.L.A. Hart. For a discussion of Hart's conception of content-independence and the commands of authority, see, Hart (1982), p. 254. For further developments on the idea, see also Raz (1986), p. 35 -37; Green (1988), pp. 36-42; Marmor (1995), pp. 342-349.

The notion of content-independence embarks from Hobbes's understanding of the conception of a command. When Hobbes draws the distinction between command and counsel in Chapter 25 of *Leviathan* (and also in Chapter 14 of *De Cive*), he gives a description of content-independent reasons:

> Command is where a man saith 'Doe this or Doe not this, without expecting other reason that the Will of him that sayes it.' By contrast, 'Counsel is where a man saith Doe, or Doe not this, and deduceth his reasons from the benefit that arriveth by it to him to whom he saith it.[21]

Hobbes intends that the command, which springs from the will of the commander, is itself a reason for some subject to do the commanded act. The command does not point out or refer to reasons the subject has to act so as to promote his well-being. For Hobbes, this is precisely what distinguishes command from counsel. The reason a subject has for acting does not concern the features of the particular action which is commanded. Rather, the only concern is the fact that one has been commanded. The illocutionary act of the command is the reason for the subject to commit some further act, and this reason is independent of the content of the command. The reason is *content-independent*. To elaborate on this Hobbesian kernel: When considering the relation of practical authority – a relation between A's commands and B's reasons for action – it is B's reason for action that is 'content-independent.' B only has the 'extraneous' fact that A has commanded as the reason, and B's reason to Φ does not necessarily depend on the content of some valuable features of Φ-ing.

[21] Hobbes (1991 [1651]), ch., xxv

This notion of content-independence is perplexing. It is not obvious how content-independent reasons are possible. That is, there is a question of how a content-independent reason is a reason at all. To see the puzzle, consider the commonplace notion of *content-dependent* reason. A content-dependent reason to Φ is a reason that is grounded on some valuable quality of Φ-ing. For example, Φ-ing might satisfy a preference, promote a better state of affairs, or discharge a duty. Content-dependent reasons to Φ purport to be considerations that count in favour of Φ-ing given some valuable feature of the action. For example, it is a content-dependent reason to take out the rubbish because the rubbish smells and it would be a better state of affairs absent the stench.[22]

Against the background of content-dependent reasons, what might we say to clarify the notion of content-independent reasons? Presumably they are not content-dependent reasons to Φ – they don't purport to 'point out' any valuable features of Φ-ing – but they are reasons to Φ nevertheless. That is puzzling. To say that some reason, *R*, does not 'point out' any valuable features of Φ-ing seems tantamount to saying that *R* is not a reason to Φ at all. In order for content-independent reasons to

[22] Raz also speaks of content-dependent reasons. For Raz, a dependent reason is a reason, *R*, that an epistemic authority offers to an advisee that is meant to reflect the balance of reasons, applicable to the advisee, on which *R* depends. For Raz, a dependent reason means to reflect the balance of reasons and hopefully illustrate which reason in that field is decisive for action. See Raz (1986), p. 41. My notion of a content-dependent reason is more basic. All of what Raz calls 'first-order' reasons are content-dependent reasons, including whichever reason is decisive. All first-order reasons are reasons to perform some action because of some valuable features of that action. See also Raz (1979) and Shapiro (2002).

be credible, we must account for how they are reasons to Φ that do not refer to any valuable qualities of Φ-ing.[23]

Two ideas contribute to such an account. We may also read 'content-independence' as a description of the action that A commands B to do. We may regard B's commanded action as 'to obey' in the strict sense – that is, to follow the specific directives of A's command simply because it is A's command and without (a not unlimited) regard to what those directives are. In the exercise of an authority relationship, when A commands B to Φ, what A is commanding first and foremost is that B obeys. How B performs the action of obedience will vary with the 'content' of the command; however, that performance is of derivative importance. The action that A implicitly commands B to enact is obedience in the strict sense. That action is, in a sense, 'content-independent.' It does not depend on the specific 'content' of the action-type that would satisfy obedience.

Consider another way to account for content-independence. If the reason B has to Φ is content-independent, then B's reason cannot be a consideration about the valuable aspects of Φ-ing that purport to count in favour of Φ-ing. Instead, B's reason might be the *will* of the person, A, who commands B to Φ.[24] Content-independence might just refer to the notion that someone's (and not just any someone, but rather someone who stands in a relevant relationship) expressed wish that another Φ counts

---

[23] I thank William Edmundson for introducing me to this puzzle.

[24] Andrei Marmor is keen to point out that it is persons that possess practical authority. Marmor's paper, 'Authorities and Persons,' is, in part, a discussion of the relation between the thesis that practical authority is located with persons and that practical authority produces reasons that are content-independent. This suggests what we have made explicit: practical authority is a relation between reasons for action and something that only persons could possess – namely, a will. See Marmor (1995).

as a reason for them to Φ. I think this is more what is traditionally meant by the term.[25] Content-independence is just the idea that some illocutionary actions are also facts that count in favour of acting, irrespective of what other considerations might also count in favour of acting. In short, some illocutionary actions are also reasons. Practical authority is, in part, the thesis that commands themselves are reasons.[26]

To summarize the story thus far: Authority is a relation between some persons or groups of persons, A and B, where A's command of the type 'Let B Φ' itself stands as a reason for B to obey in the strict sense, and therefore, to Φ. B's reason to Φ does not depend on the content of any consideration other than the fact that A has commanded. Nor does it depend on the specific action-type, the specific Φ, in question (subject to certain range conditions). The story thus far, however, does not exhaust the concept of practical authority.

§ 1.3. The Wronging Criterion

1.3.1. The other central feature of practical authority is what I will call *the wronging criterion*. This feature is just as central to the notion of practical authority as that of content-independence. It also divides practical authority from epistemic authority.

[25] For recent work on the nature of content-independent reasons see Markwick (2000) and Markwick (2003).

[26] Other types of illocutionary actions can also be reasons. For instance, content-independence is a feature of promises. If B promises A to do whatever A wants to do on A's birthday, then when A says 'Let's Φ,' B has a reason to Φ, whatever Φ may be (subject to range conditions). B has a reason to Φ, whatever Φ may be, because of her promise in conjunction with A's utterance 'Let's Φ.' A's utterance is the content-independent reason, and it is such because of B's promise.

The distinction between advice and authoritative commands is not only revealed in the intentions of both the givers of and subjects to commands and advice, but also in the different reactions to noncompliance.[27] Consider the divergent reactions to noncompliance with respect to the advice of experts and the commands of authorities. Noncompliance with the commands of authorities is normally met with grounds for censure or sanction. Such grounds for sanction do not necessarily exist in the case of noncompliance with the advice of experts. Just because a person does not follow the advice of some expert, it does not necessarily follow that the person has therefore done something *wrong*.[28] Practical authority seems different. When some person, B, does not comply with the commands of some other person or group of persons who has authority over B, the concept of authority seems to suggest that B's noncompliance is wrong. Practical authority is not only reason-creating; it also is obligation-creating. If A has authority over B, then A's command 'Let B Φ' creates an obligation for B to Φ, such that if B did not Φ he would be doing something wrong.[29]

---

[27] Here I follow Green (1988), p. 26, although I will attempt to pursue further the differing reactions to non-compliance.

[28] Whether they have done something irrational depends, in part, on the reliability of the expert.

[29] Two comments about the term 'obligation': First, I understand an obligation as a *pro tanto* moral requirement. Second, in using 'obligation' here, I do not mean to contrast it with 'duty.' My use of these terms does not indicate a hard distinction. Some, adhering to a distinction, understand that obligations emerge only through some voluntary undertaking or through some particular social relationship mediated by something like fair play. Following John Rawls, they might call 'obligations' those moral reasons that emerge from considerations of fair play created by legal systems, whereas 'duties' signifies moral reasons that are in some way independent of a legal system. Cf. Rawls (1971), pp. 333-349. Again, I will not follow that

The notion that authority is obligation-creating separates the concept from brute force. Suppose a group of persons who traded in brute force, for example, the mafia, were to announce 'Let B Φ.' This would create a reason for B to Φ, perhaps even a very strong, prudential reason for B to Φ (a special regard for his own knee-caps, say). Yet it is not normally thought that the mafia has authority such that B has some kind of obligation to Φ just because the mafia commands it. Reason-creation is not enough. In order for a person or group of persons to have authority over others, their commands must also create moral reasons – *i.e.,* obligations – on the part of others to obey. Many would hold that what the state has with respect to its subjects, or what parents have with respect to their children, or what God has with respect to his creation is exactly what the mafia lacks – namely, authority, the ability to create obligations to obey by fiat. If A has authority over B and A commands B to Φ, then if B disobeys and does not Φ, then B's action is more than likely imprudent. It is also wrong.

Consider the nature of that wrong. In order to get traction in this line of enquiry, we should consider the ways in which actions are wrong. What do we mean when we utter statements of the form, 'B did wrong in doing Φ'? Moral philosophy provides manifold suggestions as to how actions are characterized as wrong. The classic contrast is, of course, between consequentialism and deontology as (overly) broad camps. Consequentialists view the goodness and badness of states of affairs as the primary moral factor and consider an action wrong when it brings about an outcome or state of affairs that is worse. Deontologists, by contrast, hold that an

---

distinction. Obligations and duties are both terms that we use to signify something they share about which I am concerned – namely, reasons that register as moral.

action can be wrong irrespective of the goodness or badness of the state of affairs it effects. Goodness is not the only significant (or even the most significant) normative factor.[30] A more concrete standard deontological view is that an action is wrong if it infringes or violates some constraint (or a right of some person) even if that action promotes some (very) better outcome or state of affairs. It is well beyond my purpose to discuss these views in any great detail or to assess their correctness; however, I will employ them to canvass at least two ways of thinking about wrongness that will be relevant to untangle how B's disobedience could be wrong.

Suppose that both consequentialism and deontology highlight some significant normative factor. That is, suppose a thesis of *pluralism*. Both positions point out kinds of reasons that register in moral deliberation.[31] Suppose also that there can be genuine conflicts between the rights, constraints, and agent-centered restrictions espoused by deontologists and the promotion of good (or the avoidance of very bad) states of affairs. Again, we are supposing both moral registers to be significant.[32] Now, an action can be wrong when it does not reflect what we have the weightiest reason to do, whether that reason is broadly consequential or deontological in content. In that case, the action is wrong *all things considered*. This is what we might mean in the statement, 'B did wrong in doing Φ.' Of course, this statement could convey something less strong: that B did wrong in some *pro tanto* way, even if what he did is

[30] This broad distinction draws on Kagan (1998), p. 73.

[31] Cf. Kagan (1998), p. 80-81; Nagel (1979), pp. 128-141.

[32] Adding plausibility to this assumption, F.M. Kamm writes, 'the concept of a right need not imply that when respecting the right conflicts with producing more good, respecting the right will always take precedence over the good (either at the act or rule level). Rights need not be absolute but rather may have thresholds beyond which calculation of goods and evils is reintroduced.' Kamm (2002), p. 489

not wrong all things considered.[33] Perhaps, in securing some very good state of affairs or preventing some very bad state of affairs, B had to infringe on a right of some person. In cases like this, it might be true that B's action was not wrong all things considered, yet it was wrong *in one way* because it involved a violation of some nonabsolute constraint in the deontological register. Taking on board this less strong interpretation of 'B did wrong in doing Φ' suggests a way to speak in less severe terms about an action's being wrong. An action is *pro tanto* wrong if there is a *reason to regret* it, *i.e.*, that there is at least one moral register (of a plurality) that provides a reason to regret the action. Moreover, if there is a consideration that disfavours an action such that it is *pro tanto* wrong, then for the action to be justified, all things considered, it must be supported by a weightier reason.[34]

1.3.2. There is another specific way in which an action is wrong. Consider the wrong present in the statement, 'B wronged A by doing Φ.' In this case, there is a fact about A that provides B with a reason to perform or to refrain from performing certain actions. Since the work of Wesley Newcomb Hohfeld, it is normal to speak of cases

[33] Shelly Kagan provides an exemplary description of *pro tanto* reasons: 'A pro tanto reason is one that always has force, but this force can be countered, and overridden, in various ways; a given act can be supported by a pro tanto reason even though that act is not morally required [all things considered].' Kagan (1989), p. 49. Also, I discuss the status of *pro tanto* reasons in Section 5.

[34] Gardner and Macklem echo these points about *pro tanto* wrongness and the sense in which they call for further justification. 'There can be actions that are wrong although justified and that create a special pressure for justification precisely because they are wrong. They are things which, all things considered, it was right for one to do and yet in doing them one did something wrong.' Gardner and Macklem (2002), p. 467

like this in terms of rights and correlative duties.[35] In this case, we may think that the relevant fact about A, which B apprehends, is that A holds certain rights *towards* (or against) B, which correlate with a set of duties that B has towards A. F. M. Kamm, following J.J. Thompson and Hohfeld, points out that rights generate *directed duties* that are owed specifically to the rights-bearer.[36] Not all duties are moral reasons which are directed to someone. For example, I might have a consequentialist reason to relieve suffering, but that reason does not ground a duty that I owe to a specific sufferer somewhere because he has a right pointed, as it were, towards me.

There is something special about directed duties: they generate a special class of moral judgments. When we fail to discharge a directed duty, we not only do something wrong, but we also wrong some person. Michael Thompson holds that there is a special set of deontological judgments with respect to directed duties. He calls judgments about directed duties 'properly bipolar' or 'dikaiological,' as opposed to 'merely monadic' judgments.[37] Properly bipolar judgments of the form 'B wronged A by doing Φ' are a subset of the merely monadic moral judgments of the form 'B did wrong in doing Φ.' The latter set encompasses a more extensive range of

---

[35] Hohfeld (1923)

[36] Responding to Raz's 'interest theory of rights,' Kamm remarks, '[I]f I have a duty to help you by praying for your recovery, you might still not have a right that I related to God in this particular way. Indeed, we may agree that I *have a duty* to save someone from drowning and this is merely because it would be greatly in her interest to be saved. But to say she has a right to be saved says more than this: it implies that I have a *duty to her* (as subject). In the absence of a correlative right, the person who drowns loses out because I did not do my duty, but she has no more (or less) ground for complaint against my failure to respond that anyone else has…. When Raz (and also Feinberg) claim that a right is more than a correlative duty, neither, unlike Hohfeld and Thomson, has in mind a *directed duty*, one owed to someone.' Kamm (2002), pp. 483-484

[37] Thompson (2004)

wrongs than the wrongs we do when we wrong persons. After all, not all wrong actions are actions that are wrong because they wrong persons. Again, a consequentialist view would hold an action to be wrong because it brings about a worse state of affairs, which might not have any reference to persons at all. Consider, for example, the wrongfulness of exercising by taking a chainsaw to very old oak tree, given that a world absent that oak is worse. Moreover, some actions may be deemed wrong on deontological grounds even if those actions do not wrong persons. Thompson gives the example that if you are making an intrusive enquiry, and I tell you a lie in response, then it does not seem that I wrong you, although the lie would be, nevertheless, wrong.[38]

Pulling these observations together, we can call attention to two relevant statements of some action's being wrong: 'B did wrong in doing Φ' and 'B wronged A in doing Φ.' In the former statement, B's action is wrong because it is regrettable on some moral register, be it more specifically consequential or deontological. Moreover, B's action could be wrong because it is wrong *all things considered*. In that case, B has a decisive reason to avoid some action. The latter statement, however, presents a much more precise, 'properly bipolar' notion of wrongdoing. Here, B's action is wrong specifically because it fails to discharge a directed duty toward A. There is something about A that calls out for special apprehension, which B's action neglects. In the latter statement, B's wrong is specifically directed – he wronged A. In the former statement, B's wrong could be because he directly wronged some person, but this is not necessary. Given that not all wrongs are wrongs directed

[38] *Cf. Ibid*., pp. 339-340. I thank Eric Beerbohm for discussion on this point.

against some person, 'properly bipolar' judgments of wrong are only a subset of judgments about wrong action.

1.3.3. Let's return to authority, focusing on the wrongness of noncompliance with authority. Suppose that A has authority over B, A commands B to Φ, and B disobeys by not Φ-ing. What then might we say about the wrongness of B's action? We might be tempted to say this: When A commands B to Φ, B's noncompliance is wrong because Φ is what B has a moral reason (on some register, either consequential or deontological) to do. In that case, B's failure to Φ is wrong because it is regrettable. Or perhaps B's action (or forbearance) is wrong because Φ is what B had a decisive moral reason to do. In that case, B's failure to Φ is wrong, because B had a decisive reason to Φ and he did not. In that case, B's action was wrong all things considered.

Consider some examples. Suppose the state commands you to evacuate your family from an oncoming hurricane or to pay a certain percentage of your income as tax. In either case, you might have a moral reason, perhaps even an all-things-considered reason, to do the action that the state commands. You might have an all-things-considered reason, such as a special obligation to your family to protect their greatest interests and evacuate. You might also have a decisive reason of justice or fairness to redistribute a certain percentage of your income to others. In either case, when you do not comply with the state's commands, you act against what you have a moral reason, perhaps even a decisive moral reason, to do. You act wrongly, if not all things considered, then at least regrettably. Note that in these examples, however, the wrongness is independent of the directives of authority. If there were no authority that issued directives, then the failure to commit those actions would still be wrong.

Its wrongfulness is independent of the directives of authority. Hence, noncompliance can be wrong *independent of command*.

What does this view of the wrongness of noncompliance – that is, wrong independent of command – entail for the directives of authority? If B's noncompliance is wrong because it contravenes what B has most reason to do anyway, then A's directive 'Let B Φ' *could* be taken as a signal to B that he has most reason to Φ (or, at least, that it would be regrettable if he did not Φ). However, this interpretation of A's directives violates the content-independence requirement of the reasons of practical authority. This interpretation of the wrongness of noncompliance with authority suggests that the reason-giving force of A's directives depends on some epistemic relationship between A and the content of those directives, namely, that A believes that Φ is what B has a moral reason or even a decisive reason to do. *That* reason is independent of the illocutionary act of the directive. On this view, the directives of authority are signals, given by A to B, of what B has (most) reason to do. B's reason to comply ultimately depends on the content of the directive, namely, that it is what he has most reason to do.

This view of the wrongness of noncompliance collapses the distinction between command and counsel, which is referred to by Hobbes. Moreover, it conflates epistemic authority with practical authority.[39] Epistemic authority points to reasons

[39] Stephen Darwall accuses Raz's account of authority of both collapsing the distinction between command and counsel and conflating epistemic and practical authority. He writes, 'In my view, failure to observe this distinction [between command and counsel] infects Joseph Raz's account of authority in Raz 1986.' Also, 'Raz argues that the species of authority with which we are concerned, for example, political authority can be grounded in epistemic authority.' Darwall (2006), pp. 13n25; 15n29

that persons otherwise have to act in certain ways; this is the function of advice or counsel. Practical authority, by contrast, creates obligations to act in certain ways. Practical authority elevates the content-independent 'because A said so' into a reason that would obligate someone under A's authority to obey. This is another way of putting the by now familiar Hobbesian point: If A is a practical authority over B, the illocutionary act of the command, 'Let B Φ,' *is* the reason that counts in favour of B's Φ-ing. Here we analysts of authority face a dilemma. If we accept the above view of the wrongness of noncompliance – that is, noncompliance is wrong independent of the illocutionary act of authority's command – then we must reject any firm distinction between command and counsel and between epistemic and practical authority. However, if we accept those distinctions because we accept the content-independence requirement – that is, we accept that a practical authority's illocutionary act of a command *is* a reason to enact the content of the command – then we must articulate another view of the wrongness of noncompliance.

Given that the reasons of practical authority are content-independent, we should look to another view of the wrongness of noncompliance. Such a view is anchored by an evaluation of directed duties or 'properly bipolar' judgments of an action's being

---

Against Darwall, I do not believe that Raz holds the view of the wrongness of noncompliance that I first detailed (i.e., that noncompliance is wrong independent of the illocutionary act of the authority). Raz holds what he calls the 'pre-emptive thesis' that the commands of authority do not necessarily signal what persons have most reason to do; rather, they substitute in as reasons proper and pre-empt other reasons. Moreover, Raz holds that authority's reasons are binding, even when the commands of authority are inconsistent with what the commanded has most reason to do prior to the illocutionary act. Thus, Raz does not make a full conflation between counsel and command (*pace* Darwall), nor does he commit to the above view of the wrongness of noncompliance with authority. *Cf.* Raz (1986), pp. 57-62.

right or wrong. If the illocutionary act of the command creates the obligation to obey, then content-independence requires what I call the *wronging criterion.*

> *The Wronging Criterion:* if A has authority over B, when A commands 'Let B Φ' and B disobeys and does not-Φ, then B's action wrongs A.

Content-independence means that, for those subject to practical authority, the illocutionary act that is the authority's command *is* the reason for some person to act in the commanded way. The illocutionary act of the command does not necessarily by itself refer to any fact about B's set of reasons (*i.e.*, what B has independent reason to do and what would be regrettable if B acted in such-and-such ways). Hence, if B's noncompliance of A's command is *necessarily* wrong (either *pro tanto* or decisively), then it is wrong because B has a directed duty toward A to obey, for no other reason than because A commanded. If A is an authority over B, then the illocutionary act of the command is not only a reason for B to obey and to act in the commanded way; moreover, it is a reason that registers as moral – that is, it obligates B to A. It therefore seems that obligations of obedience to authority are a subset of what Scanlon calls the 'narrower domain of morality having to do with duties owed to other people,' or more briefly, the domain of 'what we owe to each other.' If A has authority over B, then B owes something to A, namely, his strict obedience to Φ when A commands 'Let B Φ.'[40]

[40] Several philosophers agree with what I have called the wronging criterion. Thomas Christiano agrees that duties of obedience are owed to the authority. He states, 'The idea of legitimate authority as a right to rule to which citizens owe obedience gives

Consider some common examples of authority that motivate inclusion of the wronging criterion in its analysis. It is plausible to assume that many persons of faith hold that God's authority includes the wronging criterion. 'Because God said so' is the reason to comply with God's commands, whatever they may be, and a failure to comply with God's commands is to wrong or to sin against God. Recall David's lament in Psalm 51: 'Against thee, thee only, have I sinned.'

Parental authority is another common example of an authority relation. If a mother commands her child, 'Don't eat that candy!' and if the child eats the candy anyway, then there are at least two reasons why the mother would be upset and would be motivated to reprimand the child. The first reason is that the child has just ingested some high-fructose (glucose-fructose) corn syrup, which being only modestly nutritional underpromotes the health of the child. Surely this reason does not explain the bulk of the mother's ire and reprimand, however. The other, stronger explanation for her distress is simply because the child disobeyed. The child did not give her what she thought she is owed, namely, its obedience. Its disobedience wronged her. Some are prone to believe that mothers have authority over their children. It is commonplace to believe that children have a duty to obey their parents, not because

---

each citizen a moral duty to obey, *which it owes to the authority* [my italics].' See Christiano (2008), p. 242. See also Buchanan (2004), p. 237.

David Copp, however, fails to see that the requirements of content-independence and the wronging criterion are linked with respect to the practical authority of the state. He 'propose[s] that a legitimate state would have the power to put its residents under a *pro tanto* duty to do *something simply by enacting a law*' [my italics]. Hence, he sees its reasons are content-independent. However, Copp argues that such a legitimate state does not have the moral claim-right to be obeyed. Copp believes subjects do not have duties, which they owe *to the state*, to obey. He cannot consistently endorse both beliefs. If he wants the authoritative directives of the state to be content-independent, then he must recognize that a directed duty to obey is necessary to endow such directives with any normative force. See Copp (1999), especially p. 20.

Mummy and Daddy necessarily 'know best' (that is, they are epistemic authorities with respect to the child), but because they are the parents and they 'say so' (that is, they are practical authorities with respect to the child). A failure on the part of children to discharge their duties of compliance seems for many to be a failure to deliver what is owed to the parents as authorities.

The wronging criterion, like content-independence, serves to delineate practical authority from epistemic authority. Consider again the climate scientist who is an epistemic authority. We believe he has a tendency to be correct about the domain of climate change and its implications. In the case of the climate scientist who tells a population to curb its CO_2 emissions, we may believe that it would be right or good to curb carbon emissions, but it would bizarre to believe that if we didn't we would therefore be wronging him, the climate scientist. To be sure, experts may be offended when their advice is disregarded, but they are not wronged. In *De Cive*, Hobbes makes a similar point. 'To follow what is prescribed by law, is duty; what by counsel, is free-will…the right of the counsellor is made void by the will of him to whom he give counsel; the right of the lawgiver is not abrogated at the pleasure of him who hath the law imposed.'[41]

Our analysis of authority has moved well beyond the *minimal* definition of authority. We might summarize the above conceptual analysis of practical authority in another attempt at a definition.

[41] Hobbes (1978a [1642]), p. 272

(3) For two agents, A and B, A has authority over B if and only if A's act of commanding 'Let B Φ' creates an obligation for B to Φ, such that if B did not Φ, B would wrong A.

Call this the *robust formula* of authority. It signals that authority is obligation-creating. It incorporates content-independence and the wronging criterion, which are the most salient features of the reasons generated by practical authority as distinct from epistemic authority. It also includes as the notions of agent-relativity, intention, and agent-relation. It is a definition that serves to distinguish command from counsel and to delineate cases of practical authority from cases of epistemic authority. Those who seek to defend an instance of practical authority – such as the authority of the state over persons – seek to demonstrate that the relation specified by the robust formula obtains.

§ 1.4. The Strength of Authority's Reasons

1.4.1. I have considered some specific aspects of the duties that authority's commands create; however, an analysis of authority is incomplete absent an account of the weightiness of those duties in moral deliberation. Just how strong are the reasons supplied by authority meant to be? In order to address that question, consider the following typology of reasons: *prima facie* reasons, *pro tanto* reasons, and *all-things-considered* reasons.

W.D. Ross introduced '*prima facie*' as a description of a kind of reason, and although there is controversy over what he meant,[42] I interpret a *prima facie* reason as a reason to believe there are (other) reasons to commit certain actions. A reason to Φ is distinct from a reason to believe that there is a reason to Φ; *prima facie* reasons are reasons of the latter type. They are reasons for belief. Thus, a *prima facie reason* is an epistemic reason, not a moral or obligation-creating reason. It is a consideration that counts in favour of endorsing some proposition, 'consideration *C* is normally a decisive reason to Φ in this situation.' In that respect, a *prima facie* reason is like advice, a rule of thumb, or a tendency.

Prima facie reasons do not support the justification of actions. A *prima facie* reason cannot *justify* an action; however, a *prima facie* reason can *excuse* an action. (Our actions are excused by reference to reasons to believe that there are reasons to act in a certain way, when, in fact, there are not reasons to act in that certain way.) Thus, *prima facie* reasons neither contribute to a conflict of reasons in justification nor do they leave a trace on the moral landscape.[43] When we disregard a *prima facie* reason, it is not the case that our action (or lack thereof) is regrettable in any sense. *Prima facie* reasons are like rules of thumb that yield completely to better evidence.

---

[42] Ross (1930), p. 19. I believe that Ross's use of the term '*prima facie*' covers at least two meanings in *The Right and the Good*. The first meaning is what I will refer to as '*prima facie*' and the second meaning is what I will refer to as '*pro tanto*.' Both of those meanings are in Ross's text. This distinction has been clear to others who have employed the term '*prima facie*' to refer to the idea contemporarily indicated by the use of the term '*pro tanto*,' *e.g.*, Rawls in *A Theory of Justice*. Searle, in his paper on Ross (see fn39), holds that there is another, a third meaning of '*prima facie*' in Ross's work; however, as I do not find that category particularly helpful, I will not mention it. Searle (1978)

[43] Searle (1978)

Furthermore, they cannot be operative in cases of akrasia – that is, we cannot intentionally not do what we have a decisive reason to do and explain that intention by reference to a *prima facie* reason.[44]

Pro tanto reasons, by contrast, are actual reasons to Φ in a given situation. They purport to justify actions. A *pro tanto* reason to Φ stipulates that a situation would be better in at least one way if an agent were to Φ. *Pro tanto* reasons come into conflict as they compete for our motivation, and they do not disappear as reasons when they are overridden or neglected. Following Susan Hurley, '*Pro tanto* reasons are manifestations of the conflicting values that may continue to exert their discrete influences over us even when we have arrived at all-things-considered judgments; they're not like pieces of evidence or rules of thumb about what ought to be done, all things considered, that yield automatically to better evidence.'[45] Even if we do not commit an action, Φ, which is supported by a *pro tanto* reason, *R*, it remains the case that *R* is a reason to Φ – that is, Φ still has some value that we acknowledge. There was one way in which the world would have been better had we chosen to Φ. Depending on the context, *pro tanto* reasons may be defeasible, but even then they do not disappear.

Pro tanto reasons do not exist only in the moral register. For instance, I have a good *pro tanto* reason to do my shopping on Saturday morning as opposed to midday; *ceteris paribus*, it is more convenient. However, when *pro tanto* reasons register as moral they can be either deontic or consequentialist in content. As I said above in (1.3.1), what is salient is that their underpromotion is a cause for regret. *Pro tanto*

[44] Hurley (1989), pp. 125-135

[45] Hurley (1989), p. 137

reasons ought to register the phenomenology of regret or loss at their underpromotion. Consider conflicting reasons for action, such as justice and kindness. They are not like rules of thumb that disappear once we learn more about the choice situation or once we have acted. Suppose a conflict that ultimately requires justice. We nevertheless have a reason to regret that we were not kind when we acted justly. The *pro tanto* force of kindness has not disappeared.[46] We might think that *pro tanto* reasons are marked by their residue, even when overridden.

An *all-things-considered* or *decisive* reason is the strongest of our conflicting *pro tanto* reasons for action in a given situation. We may think of a moral choice situation as a field of *pro tanto* reasons, and the task of the deliberator is to determine which *pro tanto* reason is decisive – that is, which reason supports which action to commit, all things considered.[47] All-things-considered reasons are decisive in a choice situation. Given a particular situation and through the exercise of our judgment, the all-things-considered reason emerges as the most weighty and most pressing reason for action. It is both a sufficient and undefeated reason to commit the action of which it counts in favour. In non-akratic cases, it prevails as what should motivate the person for whom it is a reason, provided, of course, that this person is aware of her reasons.

---

[46] The example is Hurley's, (1989), pp. 133-134, but Kagan makes the same point. See Kagan (1989), p. 49.

[47] This is how Hurley understands the relation of *pro tanto* and all things considered reasons. She says, 'The question of precisely how various pro tanto reasons for action determine what ought to be done, all things considered, is the question that deliberators try to answer…. what ought to be done, all things considered, is some function of the pro tanto reasons that apply to the alternatives in question.' Hurley (1989), p. 138

With this schema in place, we may ask how strong are the reasons that practical authority is meant to provide? What type of reason does authority provide? Not a *prima facie* reason, it seems. In that case, the pronouncements of authority would be akin to advice. Advice is given with the intention that it be taken into consideration, as we take rules of thumb into consideration. However, if the advisee chooses to act contrary to the advice, he does not thereby wrong the adviser, denying him something that is duly owed. The advice disappears after the decision, as a *prima facie* reason does, and the adviser has no moral grounds for complaint. The reasons that practical authority creates are dissimilar. Not only are authoritative commands straightforward reasons to act (as opposed to reasons to believe that there are reasons to act), but also they create directed duties of obedience. When such duties are not discharged, then, on our analysis of practical authority, there is a *pro tanto* wrong. Hence, the commands of practical authority are *pro tanto* reasons.

Authority, however, renders the illocutionary act of commanding into a reason for action. Authority means to create a reason; it does not mean to communicate or to point to one. An authoritative command is meant to be a moral reason itself; there is a duty of obedience involved. Thus, if the relation of practical authority holds and that duty is not discharged, then there is a *pro tanto* wrong.

The commands of practical authority are *pro tanto*, not *prima facie*, reasons. Are they more than that? Does practical authority provide all-things-considered reasons? In that case, ever acting contrary to the dictates of an authority would be to go against what we have a decisive reason to do – that is, to obey the authority. Few

believe that the dictates of authority are always decisive.[48] If A has authority over B, then to believe that 'because A said so' is always the decisive reason for B to act is to believe that the commands of an authority are never outweighed by other considerations. Only the fiercest authoritarian believes that authority endows 'because I said so' as an all-things-considered, moral reason, applicable in every case. Only the fiercest authoritarian would believe that, under a practical authority, civil disobedience is never justified.

We might not think that the reasons authority provides need be so demanding. Practical authority generates *pro tanto* reasons, which matter to the moral landscape, yet those reasons might not always be decisive in our deliberations. They might be trumped by other reasons, such as beneficence, efficiency, partiality, or even justice. But if it is outweighed, the *pro tanto* nature of an authoritative reason commits us to the view that we are acting wrongly, in one way. There is one way in which we have cause for regret. In short, the directives of practical authority make a difference.[49]

Consider a banal but classic example concerning efficiency and wastefulness. Suppose I am approaching a four-way stop sign at an intersection in a desert. No

---

[48] However, some do. Consider the phrase 'My country, right or wrong.' We might understand this as an expression of patriotism, but perhaps it can also sensibly suggest a claim about the decisive strength of a state's commands. I thank Hans Klein for discussion on this point.

[49] Andrei Marmor, following Raz, claims that we cannot understand the concept of practical authority unless we clarify the idea that practical authority must make a practical difference. I believe that the difference comes with its claim to create a *pro tanto* obligation to enact the content of directives. Such an obligation registers in the moral landscape even when it is outweighed by a stronger reason. In short, the posit of a content-independent *pro tanto* reason plus the wronging criterion explain 'the difference' practical authority makes. Marmor's idea about the difference-making of practical authority is similar, but not identical to my own. He does not discussion duties owed to those who possess practical authority. See Marmor (1995), p. 349.

other persons are around. A purported authority (the state) orders that I stop. If the authoritative reason is outweighed by a reason of efficiency – say, stopping and subsequently accelerating uses fuel unnecessarily – then the *pro tanto* standing of that reason nevertheless implies that I am in the wrong, in one way. Of course, one might question that implication; however, the response to the classic traffic signal example is meant to answer the question in its traditional guise: 'Is there a *prima facie* [*pro tanto*] obligation to obey the law?'[50] Putting the incorrect use of '*prima facie*' aside,[51] the traffic signal example, and many others besides, poses the underlying question – namely, 'Does authority render 'because A commanded' into a *pro tanto* moral reason?' The analysis of authority developed here suggests that if authority truly obtains, then the answer is yes. However, we should be careful to add that the concept of authority does not entail that these *pro tanto* reasons are always decisive in our moral deliberation.[52] Practical authority makes a difference to our space of

[50] Smith (1973)

[51] It is incorrect because the question is not meant to address the value of obeying the law as a rule of thumb or a general moral heuristic, as the *prima facie* tag suggests. The question rather is: Does disobedience to the law commit us to a moral wrong simply because it is disobedience to the law? Is the legality of a law a *pro tanto* moral reason itself, independent of the content of the law? In his paper, M.B.E. Smith even recognizes his use of *prima facie* to be incongruous with the normal 'lawyer's question,' which does represent a traditional use of the term. Smith (1973) A. John Simmons also contests Smith's use of '*prima facie*.' See Simmons (1979), pp. 24-28.

[52] I believe that this is also the position that Leslie Green, in *The Authority of the State*, takes over the strength of the duties created by authority. Consider the following passage. He seems to suggest the idea of a *pro tanto* duty provided above, absent the phrase. Green writes, 'Let us begin by setting aside the issue of whether the state's authority claims to bind its citizens prima facie, or whether its claims are absolute. In one sense of that slippery term, no authority can be prima facie for no authority presents itself to the agent as merely one consideration among the many he is entitled to weigh up. Authoritative injunctions purport to be categorical, to bind. But that does not entail that it purports to defeat all other considerations. Authority

reasons, and even if that difference is not always decisive it is a difference nevertheless.

We may then amend the *robust formula*[53] of authority to take on board this consideration concerning the strength of authority's reasons:

(4) For two agents, A and B, A has authority over B if and only if A's act of commanding 'Let B Φ' creates a *pro tanto* obligation for B to Φ, such that if B did not Φ, B would wrong A.

The robust formula captures content-independence, the wronging criterion, and the *pro tanto* strength of authority's reasons. Note, however, that the robust formula of authority is not the most demanding conception. The *most demanding formula* of authority replaces the *pro tanto* obligation above with an all-things-considered obligation. Under the most demanding formula, the commands of a practical authority are decisive moral reasons for those subject to the authority to execute the commanded actions.

1.4.2. Joseph Raz presents another view of the strength, or more precisely, the function of authority's reasons. For Raz, authority's reasons are meant to be

---

may be prima facie in the sense that it is capable of being overridden though not ignored, provided that what is overridden is a categorical requirement. Whether a certain form of authority is absolute or not is central to the question of whether it is justified, but it is irrelevant to the nature of authority and to the dilemma we currently face.' Green (1988), p. 29

[53] Throughout the thesis I will refer to 'robust' authority or the 'robust formula' as a term of art to specify the conception of practical authority developed here.

exclusionary, first and foremost. This means that the commands of authority are meant to obviate some of the reasons of the subjects to that authority, *i.e.*, to exclude some of their reasons from consideration. This view rides on the back of a distinction that Raz draws between first-order reasons to act in some way and second-order reasons to act (or to refrain from acting) for some first-order reason. Exclusionary reasons are meant to be second-order reasons not to act for some first-order reasons.[54]

Raz's portrayal of the strength of authority's reasons diverges somewhat from the one provided above. However, the Razian view that authority provides exclusionary reasons does not conflict with the idea that authority (also) provides *pro tanto* reasons for its subjects to commit certain actions. One may agree with Raz concerning the exclusionary nature of the directives of authority without having said anything about the reason-giving force of those very directives. Although it is unlikely, we could conceive of an authoritative directive as maximally exclusionary – that is, a directive which stipulates we are not to act on the grounds of any of the reasons that we have. Suppose, then, an authoritative directive that is maximally exclusionary. Would that feature alone yield a reason to act? It seems not. Unless the authoritative directive itself has some reason-giving force, we have no reason to act at all. The point is that the exclusionary nature of an authoritative command and the *fact* that the authority commands is itself a reason are distinct. Moreover, an

[54] Raz provides an extended treatment of 'exclusionary reasons' in *Practical Reason and Norms*. Exclusionary reasons are (the negative forms of) second-order reasons: any reason to act for a reason or to refrain from acting for a reason. Exclusionary reasons are reasons to not consider some class of reasons for (or against) Φ-ing in deliberation. In short, exclusionary reasons are reasons to restrict the range of inputs to judgment. The presence of exclusionary reasons changes our assessment of situations where there are reasons in conflict. For one Razian typology of reasons, see Raz (1975), pp. 27-40.

analysis of the strength of authority's reasons that exclusively focused on their exclusionary nature would be insufficient.

Raz does not hold that the exclusionary nature of authority's reasons is inconsistent with those reasons also having a *pro tanto* character.[55] He notes that authoritative commands do not only exclude some reasons of the subjects, but the commands are also meant to replace those reasons.[56] Replace them with what, we might wonder? Well, with what else but, at the least, a *pro tanto* reason to obey the command because it was issued by the authority. Authority provides not only an exclusionary reason but also a more basic 'first-order' reason. It must do so in order to have any reason-giving force.

---

[55] However, H.L.A. Hart does. Hart also regards authority's commands as exclusionary or what he calls 'peremptory' or 'deliberation-excluding.' Hart writes, 'The commander's expression of will is not intended to function within the hearer's deliberations as a reason for doing the act, not even as the strongest or dominant reason, for that would presuppose that independent deliberation was to go on, whereas the commander intends to cut off or exclude it. This I think is precisely what is meant by speaking of a command as 'requiring' action and calling a 'peremptory' form of address.' Hart (1982), p. 253.

If the above argument about the necessity of a *pro tanto* or 'first-order' feature of authority's reasons needs a target, then Hart will serve. Hart's view cannot be correct. If authority's reasons are content-independent and peremptory, then they must also have *pro tanto* strength. Absent that feature, a command would not supply a positive reason at all; it would only estop all of our (other) reasons. On Hart's view, authority's commands would then leave us reasonless. That is an odd conclusion, which falls short of a satisfactory analysis of authority. Authority's reasons must have some 'first-order,' *pro tanto* strength. However, *cf.* Gardner and Macklem (2002), p. 465 – suggesting that exclusionary reasons cannot be understood as a conjunction of their exclusionary function and their *pro tanto* function. (Although, I do not see why not.)

[56] This is a consequence of his 'pre-emptive thesis.' Raz presents a 'no-double-counting' argument for the position that authority's reasons replace the reasons which they exclude. See Raz (1986), p. 58. For my discussion of Raz's arguments, see sections (5.2.3-5.2.5).

When considering the case of Jeremy, a soldier who is commanded by a higher-ranking officer to appropriate a van, Raz says:

> 'The best way to explain Jeremy's argument (*i.e.* 'it is not for me to judge the merits of the case') is by saying that he regards his commander's order as both a first-order and an exclusionary reason. It is for him a reason for appropriating the van and for not acting on certain first-order reasons which apply to the case and which but for the exclusionary reason would have entailed that he ought not to appropriate the van.'[57]

The reasons that authority provides are not only exclusionary; authority also provides *pro tanto* reasons. I believe that this is what Raz means by a 'protected reason.'[58] Moreover, Raz notes that authoritative reasons exclude some of our reasons; he does not say that they exclude all of our reasons, all of the time. He seems to understand the strength of authoritative commands by the extent of their exclusivity, as opposed to the weightiness of the 'protected' *pro tanto* reason itself. That is fine; however, it does not obviate the question of that reason's weight in justification. In sum, it seems that even the exclusionary nature of authority's reasons, posited by Raz, is consistent with the notion that the reason is, at bottom, a *pro tanto* (and not necessarily decisive) consideration to commit some action.

---

[57] Raz (1975), p. 42

[58] Raz describes authoritative directives as giving protected reasons for action, where a protected reason to Φ is a reason to Φ combined with an exclusionary reason not to act on reasons not to Φ. See Raz (1975), p. 192.

When we enquire about the strength of authority's reasons, we are not querying, first and foremost, the domain of reasons that authority's commands exclude; rather, we are querying the weight of the very reason that the authoritative command itself provides. How weighty or demanding is the duty that authority imposes on us? This is a different question, as Raz understands, than the question of how extensive of a range of reasons are excluded by authority's reasons. When we query the strength of authority's reasons we query an aspect of their *pro tanto* standing. We are querying not only authority's exclusionary power, but also, and more importantly, the directed duty created by the commands of practical authority. Just how *wrong*, we wonder, would the failure to obey be?

Chapter 2 – The Right to Rule and the State's Self-Image

§ 2.1. Introduction

2.1.1. The analysis of practical authority presented in Chapter 1 improves upon the *minimal definition* with which that chapter began. Recall the minimal definition.

> (1) For two agents, A and B, A has authority over B if A's command 'Let B Φ' creates a reason for B to Φ.

In an attempt to meet the requirements for a conceptual analysis of practical authority, I believe that the minimal definition should be replaced by the *robust formula* of practical authority.

> (4) For two agents, A and B, A has authority over B if A's act of commanding 'Let B Φ' creates a *pro tanto* obligation for B to Φ, such that if B did not Φ, B would wrong A.

The *robust formula* is attentive to the strength of the reasons which the commands of authority provides (*pro tanto*), to the nature of those reasons (content-independent), and to the nature of the correlative duties of subjects (obedience in the strict sense, the wronging criterion). It provides a more complete picture of what practical authority is. The overarching goal of the present chapter is to argue that the robust formula of practical authority is predominantly attributed to the modern state.

A beguiling way to present the claim that robust authority is commonly attributed to the state is to refer to the state's 'self-image.'[1] If we could temporarily think of the state as a person and then imagine that this person confronted itself in the mirror, then how would we explain what it would see? How would the state's personality appear to itself? It is a question of imagined self-imagine. One common answer is that the self-image of the state is that it has authority – on the robust formula of that concept – over some persons subject to its jurisdiction. The state's self-image is of a robust authority over persons. Call this the *self-image claim*. In this chapter, I want to explore the state's self-image and, more importantly, why it is thought that the state is something that could be ascribed a self-image.

An equivalent way of couching the self-image claim is that the state would understand itself as possessing the right to rule. The self-image of the state is that it possesses this right, which means that it may impose duties of strict obedience on those subject to its jurisdiction for a wide range of actions. It is common to refer to the authority of the state as the right to rule. Section 2 analyzes the nature of rights and the right to rule. It develops the right to rule and the correlate duties it imposes upon subjects as consonant with the robust formula of authority. Section 3 then considers and rejects an alternative construal of the right to rule posited by Robert Ladenson as well as alternative formulations of the duty correlate to the right to rule suggested in the work of Christopher Morris, Ken Greenawalt, and William Edmundson. Sections 2 and 3 attempt to stitch together two distinct but consistent presentations of the practical authority attributed to the state: the state as possessing

[1] The 'self-image of the state' is a useful term of art developed by Leslie Green. Green (1988), pp. 63-88

practical authority on the robust formula developed in Chapter 1 and the state as possessing the right to rule. In so doing, they further unpack the conceptual analysis of practical authority.

The above thought experiment of the state in the mirror may seem bizarre. To imagine the state as a person capable of admiring its reflection seems to participate in an erroneous anthropomorphism. In fact, as we will see below, there is a very long tradition of thinking of the political community as a kind of person that stretches back to late medieval jurisprudence. However, the concept of the modern state as we would recognize it arose in the 17th century, and it was Hobbes, the greatest theorist of the modern state, who most skillfully crafted the lens through which state authority is viewed – namely, through the eyes of the person that is the state.

It is Hobbes's theory of personation and his argument for the authority of the state that enable the self-image claim. Hobbes unites a theory of persons with an argument about authority to derive the authority of the state. The result is, in part, our conceptual inheritance: the state as an entity that can successfully enter into relations of robust authority with other persons. The conception of the modern state, including the species of authority commonly attributed to it, finds it earliest, most sophisticated formulation in the work of Hobbes. As such, Section 4 will review precisely how Hobbes's theory of personation and authority combine to deliver a prominent conception of the state. There is still much to be gained from a close study of Hobbes, including a view of the intricate (and misguided) argument that is responsible for the predominant view of state authority. Section 5 returns to the self-image claim. It analyzes the relationship between the Hobbesian conception of the state as a kind of fictive person with practical authority and the *de facto* conception of the state as a

group of natural persons who claim authority and who have that claim recognized. Section 5 stands as a conclusion of the first two chapters, pulling together the various presentations of state authority therein. It then provides a vista for the chapters that follow.

§ 2.2. Rights and the Right to Rule

2.2.1. Authority is often couched as the right to rule. The state's authority is normally couched in terms of its possessing the right to rule. So far the discussion of the concept of authority has centered on a description of reasons authority provides to those within its jurisdiction. Very little has been explicitly said about rights. Yet, a conceptual analysis of authority would be incomplete without an account of the right to rule, and in the present section I offer an account of what precisely that right is. Given the utility and widespread use of the Hohfeldian account of the general structure of rights, an analysis of authority as the right to rule does well to employ Hohfeldian terms.

I do not intend to stake out a particular stance in the long debate on the nature and function of rights, both codified and natural. Rather, I begin with a claim – first introduced by Hohfeld and over which there has developed a kind of consensus – about the conceptual structure of rights. A right is one or more than one Hohfeldian incidents in combination.[2] Hohfeld provides a conceptual scheme for analyzing

[2] Kamm (2002) points out that Hohfeld provides the basic conceptual structure of rights. *Cf*. Hohfeld (1923). The position that all rights are a combination of one or

rights. That scheme contains four incidents: privileges, claims, powers, and immunities. The first two incidents are fundamental. The latter two are meta-incidents – or rights about rights. Let's briefly review his lexicon of incidents in detail.

A *privilege*, also called a 'liberty' or 'permission,' confers an exemption from a duty. It states that some person is at liberty with respect to some action, Φ, *i.e.* she is permitted to Φ. This is the idea that normally stands behind the proposition, 'A has a right to Φ.' Privileges can be single or paired. Single privileges confer exemptions from general rules. Take, for example, the privilege to wear an eye-patch to work on 'Talk like a pirate day' or the executive privilege to withhold documents from an inquiring legislature. Paired privileges confer discretion. Paired privileges can inform the proposition, 'A had no duty to Φ and no duty not to Φ.' In some positions the chess player has the discretion to take a pawn *en passant*. In those positions the capture of the pawn en passant is at the player's discretion. She has the privilege-right to capture or not. When a person has a privilege-right to Φ, others have grounds not to require her either to Φ or not-Φ.

A *claim* is what Hohfeld referred to as a right 'in the strictest sense.'[3] A claim of a rights-bearer calls up the duty of another specified agent. Claims can inform the proposition, 'A has a right that B Φ.' Claim-rights are rights that entitle the right-bearer to the performance of a specified action by some agent. For example, the rights of employees to health care or the rights of the person not be physically

---

more Hohfeldian incidents is best attributable to Wenar (2005). I follow Wenar in my analysis.

[3] Hohfeld (1923), p. 36

assaulted imply claim-rights. Those rights imply that some persons have duties to perform actions, including the act of forbearance, with respect to the right-bearers. Formally, when a person, A, has a claim-right that another, B, perform some action, Φ, then B has a duty to A to Φ. Claim-rights call up or 'correlate' with directed duties, which are duties owed to the rights-bearer.[4]

A *power* is the ability to alter – to waive, annul, or create – claims or privileges. It is a second-order or meta-right. It is a right to change the normative relations between persons. A power is the ability of one person to alter the normative position of another person, that is, their mix of rights and duties. For example, a judge has the power to alter the normative position of a convicted criminal. The judge has the ability to alter or nullify some of their rights to property or even their rights of free movement. Powers, like privileges, can also inform the meaning of propositions of the form, 'A has a right to Φ.' In the case of powers, Φ pertains to an action that takes some person's rights as its direct object.

There are two additional noteworthy comments to the notion of *powers*. First, powers like privileges can be single or paired. If they are single, then powers are nondiscretionary. Take for example the power of a judge to issue a mandatory prison sentence that nullifies some convicted person's right of free movement. If powers are paired, then they are discretionary. Again, a judge may have the power to nullify the right of free movement of a convicted person or to not nullify that right (for example, it is the in judge's discretion whether or not the conviction merits prison time or only a pecuniary fine). Second, the range of rights and duties that may be altered by some person with a power-right is *circumscribed*: Just because a person has a power-right

[4] For an explanation of this correlation, see Thomson (1990), pp. 61-70.

does not mean that the particular power-right-bearer can alter or nullify *any* right or duty of another person. I might have the power to waive off the customary duty of a waiter to smell the cork before I sample the wine, but obviously that does not entail that I have power to nullify any of his rights to property or bodily integrity. Given our relationship, there is some presupposed, circumscribed limit on my normative power over the waiter.

The last of the Hohfeldian incidents is the immunity. An *immunity* is a protection a person has against another's ability to alter her normative situation – either her rights or her duties. For example, a presidential pardon protects its bearer from the ability of the some persons, such as police and judges, to annul several of her rights – of privacy, of free movement, *etc*. Like a claim-right, an immunity can inform the proposition, 'A has right that B not Φ.'

Each of our rights – be they codified or natural – is an assertion of one or more of these kinds of Hohfeldian incidents in combination. The justification for that claim about the nature of rights is meant to be inductive. It requires an ability not only to describe successfully, but also to elucidate any assertion of a right by reference to Hohfeldian incidents.[5] Take, for example, the basic right of a person over their own body, or what Rawls calls, 'the integrity of the person.'[6] This right is a package that takes all four Hohfeldian incidents as ingredient. The right includes *claims* against others refrain from touching your body, such that they have duties owed to you not to

---

[5] Wenar (2005) 235-236. J.J Thomson also thinks this is a plausible claim. *Cf*. Thomson (1990), p. 67

[6] This particular Hohfeldian package relies on Wenar's diagram of the right of bodily integrity as 'a complex molecular right.' See Wenar (2005), p. 233. On the Rawlsian 'integrity of the person,' see Rawls (1971), p. 247.

touch your body. The right includes paired *privileges* to move (or to not move) you body in certain ways. The right includes also the *power* to waive or not waive for some specific others at specific times the *claims* against others to not to touch your body, and thus, the duties they owe to you to refrain from touching your body. And, to complete the package, the right includes the immunity against others nullifying your *claims* against others to not touch your body. Hence, the rights we invoke them in our everyday normative discourse can be quite complex packages of Hohfeldian incidents.

2.2.2. What package of Hohfeldian incidents reflects the right to rule? I submit that the right to rule is a combination of both a Hohfeldian claim and a specific Hohfeldian power. The right asserts the claim that some persons perform a specific action, namely, that they obey, in the strict sense, the commands of that agent or group of agents. It also asserts the capacity of an agent or group of agents to alter the normative position – that is, the mix of rights and duties – of those persons under her jurisdiction (a power). The right to rule is a combination of a right of authorization (a power) and a right of the performance of some action (a claim). Formally, we may state the combination of these two incidents. A's right to rule with respect to B consists of a combination of the following two propositions:

(1) 'A has a right that B Φ' – where Φ is to obey A's commands in the strict sense of obedience.

(2) 'A has a right to Φ' – where Φ is to alter B's normative position, that is, to create, waive, or annul the rights and duties of B.

The latter proposition reflects that the right to rule incorporates a normative power. It points out that A is authorized to create, alter, or annul some of B's rights and duties within a circumscribed range. That the right to rule includes a Hohfeldian power takes precedence in many discussions of the concept of authority. Some believe that authority is merely the exercise of a normative power. Leif Wenar, in a discussion of Hohfeldian powers, holds that 'all rights that are powers confer authority…rights that are single powers confer nondiscretionary authority[, and] a right that is a paired power confers discretionary authority.'[7] For example, because a judge has a normative power with respect to some convicted person's set of rights and duties, he has either discretionary or nondiscretionary authority, depending on the penal code, to issue a sentence; he is authorized to do so. That the latter incident is integral to the nature of authority is rather obvious. If some person, A, does not have the ability to affect the rights or duties of another person, B, then it is simply nonsensical to suggest that A could have authority over B.

The suggestion is that perhaps practical authority – that is, the right to rule – is just a normative power. If all we mean by authority is the exercise of a normative power, then we should investigate who has such normative powers, or 'meta-rights.'[8] The answer, in short, is everyone. Some rights – packages of Hohfeldian incidents –

[7] Wenar (2005), 231. The concept of normative power is central to Joseph Raz's account of authority, which I will devote greater attention to below. For a broader overview of the relation of power and authority, see McLaughlin (2007), pp. 43-60.

[8] Kamm (2002), p. 479

that we would consider natural or inalienable, such as the right to bodily integrity, include normative powers in their packages. Also, and more basically, it has seemed to some moral philosophers that the invocation of any claim-right is an exercise of a normative power. If a normative power is the ability to alter some person's normative position (the set of rights and duties they have), then when some person, A, invokes a claim-right, she thereby creates a correlate duty on the part of someone else, B, which changes B's normative position – a duty is added to B's mix. When they are invoked, claim-rights obviously affect the normative position of others in a very straightforward way: they invoke the duties that are their correlates. When a person makes a claim-right, it reflects the presupposition of their normative power. Some have taken this insight to suggest that the normative power presupposed in the making of a claim-right is an exercise of the practical authority moral persons have over each other. For instance, this seems to be Stephen Darwall's position.[9]

If Darwall's position is sound, and the invocation of any claim-right is an exercise of a normative power, what then is the difference between the two notions? J.J. Thomson in an analysis of rights that also embarks from the Hohfeldian schema

---

[9] Consider what seems to be a central thesis of Stephen Darwall's *The Second-Person Standpoint*. Darwall refers to the normative power of the right-bearer as a species of practical authority and holds that this authority amounts to 'the standing to address second-personal reasons', that is, reasons which are addressed to other agents and which other agents have a moral responsibility and an accountability to respect. Among 'second-personal' reasons, claim rights are certainly prominent, if not a second-personal reasons *par excellance*. In separate places, Darwall stresses the connection between normative power and a claim-right: 'A second-personal reason is one whose validity depends on presupposed authority and accountability relations between persons and, therefore, on the possibility of the reason's being addressed person-to-person. … A justification 'of the right sort' for imposing upon another's freedom and directing his will exists only if one has the authority to make a claim on his will.' Darwall seems to equate the very possibility of making a claim-right, that is, the presupposition of normative power, with authority. Darwall (2006), pp. 8, 19-20

identifies the difference between the two in the correlates of claims and powers. She notes, 'Rights in the strictest sense are claims, and certainly no power is itself a claim, for no power is correlative with a duty.'[10] The invocation of a claim may reflect a normative power, but the two are not equivalent because a normative power does not, by itself, create a duty on the part of someone else.

Thomson's thesis seems plausible; however, it is not quite correct. Consider again the innocuous case of a restaurant customer who has (a very circumscribed) normative power over her waiter. The normative power of the restaurant customer does not, itself, suggest that the waiter owes him anything, except, perhaps this: the duty to obey when the restaurant customer exercises some aspect of the circumscribed normative power (*e.g.* 'Could I have a glass of water, please?').[11] Perhaps Thomson's treatment of the Hohfeldian incident of normative power misses its single correlative duty.

That single correlative duty would be the duty to obey in the strict sense – that is, to commit some action simply because the bearer of the normative power 'said so' – when the normative power is exercised and that exercise is within circumscribed bounds.[12] Ascribing the correlative duty to obey in the strict sense to the exercise of a

---

[10] Thomson (1990), p. 59

[11] This could just be another description of the Hohfeldian incident, 'liability,' which Hohfeld recognized as the correlate of a normative power. I thank William Edmundson for discussion on this point.

[12] Interestingly, G.E.M. Anscombe's discussion of the authority of the state, which seems mainly concerned not with authority *per se*, but with a state's 'bearing the sword', is privy to this point. Anscombe writes, 'Authority on the part of those who give orders and make regulations is: a right to be obeyed. More amply, we may say: authority is a regular right to be obeyed in a domain of decision.' Anscombe (1981), p. 132

moral power is only intelligible if the particular exercise of the moral power is intended to create a duty on the part of another. It does not seem plausible to think that the same correlative duty to obey in the strict sense obtains when the exercise of the moral power is to waive or annul some previously held duty.

Perhaps Darwall is correct. Perhaps we exercise normative powers with the invocation of every claim-right we make. In any case, the particular Hohfeldian incident of normative power is a commonplace of our normative interaction. If *this* is what we mean by authority, then we exercise authority with almost each social interaction that pertains to rights and duties. I suspect that this is what Darwall intends. However, in this register, 'authority' is used as a term to label some conceptualization of normativity, that is, some possible answer to what Christine Korsgaard calls 'the normative question' – that is, 'why should we do the actions that we ought to do?'[13] One kind of answer to the normative question relies on the suggestion that normative action respects some authority or 'normative power' that we all share and that is presupposed in our making normative claims on one another.[14] The idea is that persons have some latent authority that generates normative reasons to respect them. John Rawls held that 'Persons are self-originating sources of valid claims.'[15] By this Rawls meant to point to an intrinsic feature about what it is to be a

[13] Korsgaard (1996), p. 17

[14] Consider Stephen Darwall's definition of authority in his text, *Philosophical Ethics*: 'authority: A status from which the fact that one should do, think, be, or feel something can derive. For example, a moral rule is said to have authority if it generates normative reasons for acting as it requires, a political figure is said to have authority if his pronouncements generate normative reasons, and so on.' Darwall (1998), p. 233

[15] Rawls (1999c), p. 330

person which generates reasons to treat them in certain ways. Some philosophers are comfortable referring to this feature as authority. On that reading, authority is just whatever generates normative reasons. It is a term that stands as an answer to the normative question.

However, if *that* is what we mean by authority – authority as normativity – then the questions naturally arise: what is special about the authority of those that we colloquially call 'the authorities'? What is special about the authority of parents or of God over their respective subjects? More to our purpose, is there anything special about the authority of the state as distinct from the moral power that moral persons bear. How do we distinguish the state's authority from the authority latent in every person's capacity to make normative claims? Is there anything *distinct* about the authority of the state? At root, is there a significant difference between the right to rule, which is often ascribed to the state, and the Hohfeldian incident of a normative power, which is perhaps carried by each of us?

One way of positing a difference is to point out that the state imposes duties of obedience on its subjects. The state's right to rule correlates with the duties of those within its jurisdiction to obey. The duties the state imposes with its authoritative commands are directed; they are owed to the state. However, this way of casting the difference will not do. In the above reply to Thompson, I suggested that, at times, the exercise of the normative powers that we have also correlates with duties of others to obey in the strict sense. Recall the restaurant example. The significant difference between the state's right to rule and our normative powers cannot be that the former correlates with directed duties of strict obedience whereas the latter does not.

The difference rather concerns the range of duties that correlate to the exercise of the different rights. The claim right to be obeyed is the first Hohfeldian incident in the right to rule. The claim right to be obeyed creates duties to Φ for a larger domain of possible actions than the exercise of the normative powers we presuppose moral persons to have. The exercise of the claim-right to be obeyed and, hence, the right to rule is less circumscribed than the exercise of the presupposed normative powers of moral persons.

Return to the restaurant example. I may have the normative power to waive off the right of a waiter to offer the cork of the wine bottle at dinner, but that in no way suggests that this waiter has a duty to obey an extensive range of my commands just because I issued them. Given the nature of our relationship and my claim rights that are party to that relationship, he may have the duty to obey a circumscribed range of commands – 'No cork please.', 'Check please.' – and that might suggest that my normative power in the restaurant case entails *a* right to be obeyed. But it in no way entails *the* right to be obeyed in the strict sense – that is, the right to create, *de novo*, duties to perform all kinds of hitherto unspecified actions, *e.g.* 'Appropriate that van,' 'Give me fifty percent of your earnings so that I may redistribute them.'

Of course, what I may claim of the waiter extends beyond our business relationship. To see as much, consider Darwall's preferred example. Suppose someone (unknowingly) steps on your foot. Darwall seems to hold that you can exercise a kind of normative power – an authority inherent in your status as a person – and tell him to get off your foot because, so to speak, you 'say so.' In Darwallian parlance you would offer him a 'second-personal reason' whose validity depends on

presupposed authority relations between you.[16] It seems plausible that we may command strangers to remove their feet from ours and in so doing exercise some normative power inherent to our personhood or tap into some 'self-originating source of valid claims.' Yet, we may not command the same stranger 'Now, give me fifty percent of your earnings for me to redistribute and, by the way, do it because I said so.' Our presupposed normative power does not cover *that* command. The claim-right to be obeyed, however, covers not only that command but also many more serious commands besides.

This is not to suggest that even the claim right to be obeyed is completely uncircumscribed. It does not seem remotely possible that one can exercise the claim right to be obeyed when commanding some person to dunk another into a vat of boiling oil and so on. The claim-right to be obeyed might also have certain built-in limitations to what can be commanded; however, its limitations vastly exceed other exercises of normative power (for example, of the fine-diner, of he-who-has-his-foot-stepped-upon, *etc*.).

Not everyone who can make a claim-right (which is exactly every person), and hence not every person who has some presupposed normative power, has authority in the sense that the state is commonly supposed to have authority. The distinction rests on the difference between a normative power alone and the 'authority molecule' composed of the Hohfeldian incident of normative power conjoined with the Hohfeldian incident that indicates the specific claim right to be obeyed. Often, and under certain conditions, we attribute to the state the right to rule, which includes the

[16] Darwall begins his book with this stepping-on-foot example. See Darwall (2006), p. 3-8.

claim-right to be obeyed. Even though moral persons may have a presupposed normative power that implies a claim-right to be obeyed, that power-right falls short of the claim-right to be obeyed that is ingredient to the state's right to rule. The state claims the right to impose and to withdraw duties of obedience to commit actions that range far beyond what the exercise of our presupposed normative powers can impose.

2.2.3. I briefly want to show that this presentation of the right to rule is consistent with the robust account of the reasons of authority presented in Chapter 1. A focus on the claim-right to be obeyed shows that the right to rule is consonant with the presentation of the authority's reasons. Above, I suggested that the two most important criteria of authority's reasons are content-independence and the wronging criterion. The claim-right to be obeyed is consistent with both. Duties created by the exercise of this claim right are content-independent. The duty that correlates with the right is, first and foremost, the duty to obey the command, which is independent of whatever action is implied in the content of the command.

Also, the right to be obeyed is a claim right of the form 'A has the right that B Φ.' This suggests the wronging criterion. Claim-rights correlate not only with duties but, moreover, with directed duties.[17] If A has a right that B Φ and if B fails to Φ, then B fails to discharge a duty that is owed to A. Translated into the register of the right to rule, the thesis of the correlativity between claim-rights and directed duties supports the wronging criterion. If A has the right to obeyed, and B does not obey A, then B's noncompliance is a failure to discharge a duty owed to A; B wrongs A. The account of reasons given above, which are anchored in the criteria of content-

[17] Thomson (1990), pp. 61-70

independence and the wronging criterion, and the present account of the right to rule, anchored by the Hohfeldian incidents of normative power and the claim-right to be obeyed, present a consistent analysis of the concept of authority.

The present accounts of the right to rule and the robust formula of authority are consistent. The demonstration of their consistency is not meant to be an argument for either. Rather, my purpose is only to point out that they are merely different, but consistent, approaches used to explain and to clarify the *traditional* view of the authority of the state and its right to rule, 'now and around here.'[18] The traditional view of state authority – what we may call its self-image – is one that relates commands to duties. When translated into the register of rights, the traditional view of state authority ascribes the right to issue commands to the state, a right which entails duties of strict obedience.

§ 2.3. Alternative Presentations of the Right to Rule and Its Correlate Duties

2.3.1. The above account of the state's right to rule is the traditional account; however, this is only one possible account of state authority (and the right to rule) among several. In order to bolster the self-image claim – that is, the claim that the state is understood to possess the right to rule which is consistent with robust

[18] David Copp acknowledges this to be the traditional account of state authority: 'The traditional view is that the legitimacy of a state would consist in its subjects' having a moral obligation to obey its law. Corresponding to this obligation would be the state's right to the obedience of its subjects.… The traditional view expressed in Hohfeldian terms, is that a legitimate state would have a moral claim that its subjects obey the law.' See Copp (1999), pp. 10, 18.

authority – it must be shown that other, alternative conceptions of the right to rule fall short of what is meant when it is proclaimed that the state has authority. To a large extent, I have already been in pursuit of this line of argument. In Chapter 1, I argued that epistemic or theoretical authority falls short of the practical authority which is commonly ascribed to the state. I suggested that the same goes for the conception that equates authority with normativity or the mere possession of a moral power. Also, I argued that the most demanding formula of authority overreaches. What remains is to respond to two further objections to the self-image claim. One objection is that, even if the self-image of the state entails the imposition of duties, they are not duties of strict obedience. Another objection is that the self-image of the state does not even entail an imposition of duties on those subject to its jurisdiction.

2.3.2. The self-image of the state is of an imposer of duties. I stipulate that the right to rule that is commonly attributed to the state correlates with duties of strict obedience. However, this is not the only possible position to take on the right to rule. Perhaps, rather, the self-image of the state is that, by the fact of its commanding, it claims to impose upon those subject to its authority duties of non-interference with the administration of those commands. The suggestion is the state's right to rule does not correlate with the duty to obey, but rather with the duty not to interfere.[19]

[19] Both Christopher Morris and William Edmundson hold the position that a justifiable conception of the state's practical authority is one where the right to rule correlates only with the duty to not interfere; however, neither of them make this claim about the state's self-image. In fact, both hold that the state's self-image entails the capacity to impose duties of strict obedience to enact authoritative directives. Kent Greenawalt argues also that a conception of practical authority does not necessarily correlate with a duty of strict obedience, but again, his arguments do not seem to concern the self-image claim. In short, their arguments are not about how

Note that the question at hand does not concern whether a duty not to interfere with the state's directives is more defensible than a duty to obey them. Rather, the question concerns the self-image claim. It concerns what is conceptually entailed by the state's possession of robust authority or the right to rule. The suggestion at hand is that the authority of the state entails the following: when the state commands 'Let B Φ,' B has a correlate duty to refrain from interfering with those actions of state administration intended to ensure that some other person, C, executes ψ. However, it is difficult to see how the state's self-image of a capacity to impose duties to obey differs from a self-image of a capacity to impose duties not to interfere. There are two reasons why it is difficult.

First, in many cases with respect to state directives the attempt not to interfere with their enforcement is practically indistinguishable from the attempt to obey the directive itself. The clearest way to refrain from interfering with the enforcement of a directive is to commit the directed act, thus precluding the necessity for further acts of enforcement. From the standpoint of the persons who have duties imposed, duties of non-interference and obedience look similar.[20]

Moreover, the difference between the duties looks even more negligible when we consider the self-image of the state. Even if the state were *really* to intend when it

---

state authority is normally viewed. Rather, their arguments seem to attempt to *save* state authority from that view. See Morris (1998), p. 216; Edmundson (1998), pp. 35-70; Greenawalt (1989) pp. 47-61.

[20] Thomas Christiano makes this point with the following analogy: 'If one is playing a game of baseball with an umpire and one refuses to comply with the directives of the umpire, one is in effect interfering with the umpire's carrying out of his duties by not complying with the directives of the umpire.' See Christiano (1999).

commands 'Let B Φ' that B not interfere with the enforcement that ensures that persons ψ, all of the significant features that we attribute to practical authority remain the same. For if the duty not to interfere is a logical consequence of an authoritative command, then the duty will still be (i) owed to the authority, (ii) at least *pro tanto*, and (iii) content-independent. The duty not to interfere is a duty owed to the authority that B has for the sufficient reason that the authority commands 'Let B Φ, where Φ is to not interfere when I, the authority, make C ψ.' To acknowledge oneself as bearing practical authority over others is to believe that they ought to Φ because you command. That remains the case even when the variable, Φ, is informed by the following content: 'Not to interfere when the authority makes another commit some action.' What remains central to the concept of practical authority is that, even when the commanded action is non-interference, the reason that counts in favour of the commanded action is the illocutionary act of the command. Hence, despite suggestions to the contrary, we might still believe that the self-image of the state is as an imposer of duties of strict obedience. One does not save state authority by muddling it.

2.3.3. Robert Ladenson presents another challenge to the view that the state's right to rule entails duties of strict obedience for those persons subject to its authority. He advocates what he calls the 'Hobbesian conception,' by which he understands that the authority of the state does not entail the imposition of any correlative duties on persons subject to its authority.[21] On this view, neither the Hohfeldian element of a

[21] Ladenson (1980)

normative power nor the claim-right to be obeyed are ingredient to the right to rule. Rather, Ladenson posits that the right to rule is a kind of justified privilege or permission right – or what Ladenson calls a 'justification right' – to coerce.[22] The permission right to coerce is much like the permission right to self-defence. It is a right that is justifiable only under certain conditions. Moreover, it is a right that does not correlate with any duties of other persons owed to the bearer of the permission right. Ladenson believes this right implies nothing about either duties of strict obedience or other duties of compliance with authoritative directives. He says, '[N]o neat logical connection holds between the right to rule and the duties of subjects with regard to allegiance to the state and compliance with the law.'[23]

For Ladenson, not only is the right to rule a justified permission to coerce, but also it is an exclusively-held justified permission to coerce. Only one government in an area can possess this justified permission to coerce. Private citizens, whether individually or in groups of vigilante associations, cannot possess this 'justification-right.' As Ladenson sees it, authority on the 'Hobbesian conception' consists in an exclusively-held justified permission to coerce. Ladenson's work here is stipulative. He does not offer a substantive argument for why the government is the exclusive possessor of a justified privilege-right to coerce.

Is this a convincing account of authority? Perhaps not. On this account, authority is identified with the justification to commit certain types of actions, which absent such a justification are *pro tanto* wrong. This conception of authority connects with the practical reasons of those subject to the authority, but it does not connect

[22] Ladenson (1980), p. 139

[23] Ladenson (1980), p. 141

with their reasons *in the right way*. Coercion is action which attempts to direct the action of others. Coercion influences the deliberation of the coerced. It is true that if the government coerces, it thereby influences the practical reasoning of persons. When a government issues coercive threats, it influences practical reasoning is the same way that the mafia influences practical reasoning. For Ladenson, the difference is that a government with authority has a justified permission to coerce, whereas the mafia does not. However, the way these two groups affect the practical reasoning of others is fundamentally the same. Neither attempts to impose or refer to a moral duty to perform the action that the coercion attempts to bring about.

The justification of coercion is a central topic in political philosophy and one on which we will focus heavily in Chapter 6. However, it is incorrect to identify the justification of coercion with authority. Authority, on the way the concept is normally conceived in 'our cultural tradition,' is not a justification of a particular kind of *action*, but rather a *relation* between the commands of one and the reasons for action of another.[24] That authority is such a relation is assumed by the minimal definition with which the present chapter began. Even epistemic authority, which is more minimal than the minimal definition of practical authority, relates the speech-utterances of some expert with the reasons for action of his audience. For instance, we do not think that epistemic authority is only the justified permission of so-called experts to pronounce what they think. In that case, epistemic authority would be

[24] This is Joseph Raz's main complaint concerning Ladenson's account of authority. It simply falls to far afield of what is normally referred to as authority. Raz claims, 'Ladenson's analysis is not merely not an analysis of the concept of authority which is part of our cultural tradition. It is an analysis of a concept that does not have much use in our world.' See Raz (1985). A similar complaint of Ladenson's account may be found at Shapiro (2002), pp. 395-398.

indistinct from the main Hohfeldian incident ingredient to right to free speech. In short, the broadest concept of authority normal to our culture is at bottom *relational*.

Ladenson's 'Hobbesian' account cannot even incorporate the government's right to punish, but only its right to coerce. For the specific action, *punishment*, seems to presuppose that some duty has been neglected. However if the authority of governments in no way implies duties – if not even by referring to duties that persons have independently of the act of an (epistemic) authority's referral – then Ladenson's account cannot ascribe to authority a right to punish, but only to coerce. His account precludes the elision he makes between the right to punish and the right to coerce. Moreover, the question of how coercion is justifiable absent any reference to duties is mysterious.

Perhaps the most charitable way of putting the argument against Ladenson is that he has abused the concept/conception distinction.[25] The account he presents is not a conception of the broader concept of authority. Rather, he begins to describe another moral concept altogether, which has at its core the justification of some morally significant action routinely performed by states.[26]

[25] On that distinction, see Rawls (1971), p 5.

[26] For more on *that* concept, which is distinct from the concept of authority, see Chapter 6 of the present thesis.

§ 2.4. Hobbes on Personation, Authority and States

2.4.1. We may also wonder if Ladenson presents a particularly Hobbesian conception of authority. Scott Shapiro, for instance, chides Ladenson for altogether missing the Hobbesian account of practical authority that relates commands with content-independent reasons for action.[27] As Shapiro implies in this critique, it is this conception of authority that informs Hobbes's view of civil law. The critique is perhaps unfair to Ladenson. Hobbes held a very complex account of authority. There are three conceptions of authority at work in Hobbes's *Leviathan*. They are interrelated, but they are also distinct. They are (1) authority as a privilege right, (2) authority as the *specific* privilege right to speak or act for a person where that person bears responsibility for the actions committed, and (3) authority as a relation between commands and practical reasons. All three are ingredient to Hobbes's account of the authority of the state.

It is well worth examining Hobbes's account of state authority. Hobbes is the greatest theorist of the modern concept of the state. In fact, there is no pre-modern concept of the state that significantly predates Hobbes. The concept of the state that contemporary analytic legal and political philosophers have inherited is one which Hobbes was among the first to articulate in detail. Moreover, Hobbes provides the most sophisticated theory of the conception of practical authority that is commonly attributed to the state. His theory of the state and its authority is deeply rooted in a theory of personation – that is, a theory of what it is to be and to represent a person. In *Leviathan* Hobbes's arguments about the origin of the state and its authority (Book

[27] Shapiro (2002), p. 396 fn 27

II) directly follow the chapter he devotes to his theory of personation (Chapter 16). His account of what it is to validly represent or be represented by another and the consequences that flow from such representations is the key to understanding the modern conception of the state. Here, I will explore Hobbes's distinct conceptions of authority and the way they combine in his theory of personation to clarify both his (and our) concept of the state and its authority.

First, Hobbes defines authority as 'the Right of doing any action.'[28] This definition of authority parallels what we have above described as a Hohfeldian privilege right. For Hobbes, natural rights – those uncodified rights that exist in the pre-political world as Hobbes envisioned it – are Hohfeldian privilege rights held by a person to perform those actions necessary 'for the preservation of his own Nature; that is to say, of his own Life.'[29] This conception of authority as the general notion of a privilege right is elemental to Hobbes's political philosophy. This is also the conception that Ladenson identifies as the 'Hobbesian conception' of the authority of the state – that is, the privilege right or justified permission to coerce others. This is one description of state authority as Hobbes might have seen it, but it completely bypasses the theory of personation on which the concept of the state is grounded. It also mischaracterizes the particular species of authority that Hobbes believes is entailed by that theory of personation. To see this, let's review Hobbes's theory of persons.

One privilege right that persons naturally have is the right to authorize others to represent them or to 'bear their person.' For example, attorneys represent their

[28] Hobbes, (1991 [1651]), p. 112 (xvi, 4)

[29] *Ibid*., p. 91 (xiv, 1). See also Thomson (1991).

clients, but only if the clients have previously authorized the attorney to be their representative. For Hobbes, the very concept of a person is dependent on such roles of representation. Absent relations of representation or mimesis, the very concept of a person unravels. As Hobbes cleverly notices in *Leviathan* the etymology of our word 'person' is the Latin, '*persona*' which was understood as a theatrical term for the mask that actors wear on stage as they represent their dramatic characters.[30] The word '*persona*' is a combination of '*per*' (through) and '*sonare*' (to sound). We are the masks through which the sounds of representation proceed. For Hobbes, we cannot conceive of the concept of a person absent representation. He defines the concept as follows:

> A Person, is he, whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction.[31]

The Hobbesian concept of a person is clearly dependent upon roles of representation; however, beyond that, what the root conception of what exactly a person is equivocal in Hobbes's opera. There are two interpretations of what Hobbes understood as the root conception of a person. First, a person, at root, is an entity capable of *representing*. A slogan for this view announces 'There are no persons but spokespersons.' Second, a person, at root, is an entity capable of *being represented*. The slogan for this view is 'There are no persons but those that are spoken for.'

---

[30] *Ibid*. p. 112 (xvi, 3)

[31] *Ibid*. p. 111 (xvi, 1)

Philip Pettit, David Runciman, David Gauthier, Hanna Pitkin, and A.P. Martinich favour the former account; Quentin Skinner favours the later.[32] Both exegetical views are supportable by recourse to various statements that Hobbes makes throughout his work. I will follow the main line that a person is an entity capable of *representing*. I follow this line of interpretation only because it is more convenient and involves fewer distinctions to be drawn to complete Hobbes's account of personation; however, this is an incorrect interpretation of Hobbes. Skinner's interpretation is correct and represents Hobbes's mature view. That is clear once we look at Hobbes's statements on personhood and personation outside of the single, ambiguous definition in Chapter 16 of *Leviathan*.[33]

For the present purposes of getting a grasp on how Hobbes understood the modern concept of the state this exegetical debate is not vital. Hobbes's theory of persons is an intricate quilt containing many distinctions that I will unfold. At a certain point in the pursuit of those distinctions, there is a convergence between the line that begins with persons as, at bottom, *representatives* and the line that begins

---

[32] See Pettit (2008), pp. 55-81; Runciman (1997), pp. 6-33, 223-229; Runciman, (2000); Pitkin (1967), p. 18; Gauthier (1969), pp. 121-126; Harrison (2003); Martinich (1992), pp. 165-166; Skinner (1999); Skinner (2007).

[33] Hobbes definition of a person in Chapter 16 the English *Leviathan* (1651) is ambiguous. However, in Chapter 42, 'Of Power Ecclesiasticall,' in a discussion of the person of God, Hobbes clearly writes, 'But a Person (as I have shewn before, chapt. 13 [Hobbes must mean chapter 16]) is he that is Represented, as often as hee is Represented.' See Hobbes (1991 [1651]), p. 339.

Moreover, in *De Homine* (1658), Hobbes unambiguously states '*a person is he to whom the words and actions of men are attributed, either his own or another's*: if his own, the person is *natural*; if another's, it is *artificial*.' For the first English translation of *De Homine*, see Hobbes (1978b [1658]), p. 83. In the Latin *Leviathan* (1688), Hobbes also makes remarks about personhood that are consistent with Chapter 42 of the English *Leviathan* (1651) and with *De Homine* (1658). I reference those comments below in footnote 41.

with persons as, at bottom, *what is represented*. After that point, the dispute becomes merely terminological. Initially, however, the dispute is far from terminological; it concerns the very basis of personhood.

To begin to unfold the Hobbesian quilt of distinctions: the first distinction we may draw is between persons who represent or speak for themselves and persons who represent or speak for others. Hobbes calls the former 'natural persons' and the latter 'artificial persons.' We are natural persons when we speak for ourselves and artificial persons when we speak for others. Within the sphere of artificial persons, there are those who represent 'Truly' and those that represent 'by Fiction.' An artificial person who represents truly is a person, *p*, who represents some other person, *q*, and *q* truly owns or can be held responsible for the words said or actions performed by *p* in *q*'s name. In order to represent another truly it must be the case that the responsibility for your words and actions ultimately redounds to them. In Hobbes's words, *q*, is the 'author' who ultimately owns and bears responsibility for the actions performed by the artificial person, *p*, who is *q*'s spokesperson. For such a relationship of true, artificial representation to obtain at least two conditions must be satisfied. First, *q* must have a privilege right to authorize *p* to be his spokesperson.[34] Second, *q* must exercise this privilege right by covenanting with *p* – which for Hobbes does not necessarily entail the absence of conditions of duress – that *p* may represent *q* in some domain. 'For no man is obliged by a Covenant, whereof he is not Author; nor

[34] 'For unless he that is the author hath the right of acting himself, the actor hath no authority to act. Therefore if someone covenants or shall have made any contract whatsoever with an actor, not knowing whether that actor hath authority or not, he doth so at his own peril.' Hobbes, (1978b [1658]), p. 84

consequently by a Covenant made against, or beside the Authority he gave.'[35] If these two conditions hold, then *p* is an artificial person who represents *q* truly.

True representation by an artificial person is the normal case of valid representation. Hobbes suggests that valid relations of representation imply what we may identify as a second conception of authority, that is, the permission or privilege right to speak for some person. This second conception of authority is narrower than the first, which identifies authority with the *general* notion of a privilege right. The second conception equates authority with the *specific* privilege right to speak for a person, including the 'natural' case where the person is oneself. This is a privilege right that persons can possess; authority is something to have. This second conception is manifest in chapter 16 of *Leviathan*, but most concisely stated in *De Homine*, where Hobbes writes, 'they are said to have authority that act by right of another.'[36]

Consider a few details about this specific privilege right, which Hobbes calls 'authority.' In the normal case of a 'natural person,' to speak for oneself is to commit to take responsibility for the words spoken or actions committed. Initially, the right to speak for a person when the person is oneself is exclusively held. Others do not have this right to speak for a natural person unless the natural person has voluntarily transferred the right. The right to speak for a person (including oneself) is a right that may be alienated; it is a right that can be transferred to another.[37] Following Hobbes's

---

[35] Hobbes (1991 [1651]), pp. 112-113 (xvi, 6)

[36] Hobbes, (1978b [1658]), p. 84

[37] I am unsure whether or not it can be alienated without being transferred to another person. Can one simply renounce, without transfer, the right to speak for oneself and

terminology, the person who has recently acquired the right to speak for another is the 'actor.' The person to whom the transferred right to speak for refers is the 'author.' Upon transfer, the actor has authority, that is, he may permissibly act and speak for the author.

This second conception of authority as an authorized permission to act in another's name contains the machinery by which Hobbes derives the third, *robust* conception of authority. However, before we subject this transition to analysis in (2.4.4) below, it is necessary to flesh out the range of 'persons' which may be said to possess authority. Most significantly, we must pursue Hobbes's understanding of the person that is the state.

2.4.2. Contrast artificial persons who represent 'truly,' that is, under the proper conditions of authorization, with artificial persons who represent 'by Fiction.' An artificial person who represents by Fiction is a person, *p*, who represents some other person, *r*, and *r* cannot be said to own or to be held responsible for the words said or actions performed by *p* in *r*'s name. We might say that *r* cannot by itself voluntarily take on the status of being represented by *p*. However, after *r* becomes represented by *p*, Hobbes is emphatically clear that *r* attains some status of personhood, no matter what *r* is absent representation. This emphasis becomes clear in his later work in *De Homine* and the Latin *Leviathan*. Runciman calls this attributed status of personhood 'persons by fiction.'[38] To believe that 'persons by fiction' are *really* persons requires

---

thus destroy any claim of responsibility for their words and actions? This seems doubtful.

[38] Runciman (2000), p. 271

that we believe a fiction. Skinner calls the same notion 'purely artificial persons' to contrast with those (non-pure) artificial persons in the normal case – that is, natural persons being represented by a spokesperson authorized to speak in their name.[39]

It is at this point that the two lines of interpretation converge. Despite the term we attach to the idea, everyone acknowledges that Hobbes thought that there is a domain of entities that, even though they may not initially be persons, once represented, attain some kind of status as persons. In this domain, Hobbes places entities as diverse as Children, Fooles, Mad-men, bridges, hospitals, churches, Idols, Figments of the brain, Gods of the Heathen, the true God, and dramatic characters such as Agamemnon.[40] As Hobbes concedes in the English version of *Leviathan*, 'there are few things, that are uncapable of being represented by Fiction'; however, when he translated *Leviathan* into Latin, he reformulated this passage to say as there are few things incapable of being represented, that is, 'there are few things incapable of being persons.'[41] Runciman might amend Hobbes's phrase to convey that there are few things incapable of being persons by fiction; however, as Hobbes and Skinner point out, persons by fiction or 'purely artificial persons' are persons nevertheless. What that means for us – that is, what that means for how we orient our actions toward those things – depends on a final categorization.

Within the domain of persons by fiction or purely artificial persons there is a final distinction that we must clarify to complete the Hobbesian typology of persons. In *De Homine*, Hobbes refers to a subset of persons by fiction or purely artificial

[39] Skinner (1999), p. 16

[40] Hobbes (1991 [1651]), pp. 113 (xvi, 9-12); Hobbes (1978b [1658]), p. 83

[41] Hobbes (1991 [1651], pp. 113 (xvi, 9); Hobbes (1688), p. 80

persons that cannot be identified with the purely artificial persons he alludes to in *Leviathan*. Simply call this a distinction between 'persons by fiction that we take seriously' and 'persons by fiction that we do not take seriously.' Children, Fooles, bridges, are instances of the former. The Gods of the Heathen is an instance of the former for the Heathen, as the true God is an instance of the former for the contemporary faithful. The dramatic character Agamemnon, however, is an instance of the latter category. He is a person by fiction that we do not take seriously.

What is the difference? What does taking seriously a person by fiction mean? Consider what Hobbes says about Agamemnon in *De Homine*.

> For it was understood in the [ancient] theatre that not the player himself but someone else was speaking, for example Agamemnon, namely when the player, putting on the fictitious mask of Agamemnon, was for the time being Agamemnon. At a later stage [when masks are not necessarily worn by actors], however, this was understood to be so even in the absence of a fictitious mask, namely when the actor declared which person he was going to play.[42]

What is the difference between Agamemnon and the Children, Fooles, bridges, and the Gods? What is true of Agamemnon in the 'later stage' of theatre to which Hobbes refers is true of other persons by fiction – that is, some actors are understood by some audience to represent or act on behalf of another person. In both cases, Hobbes would understand that there is the willful suspension of disbelief that the thing, which is not

[42] Hobbes (1978 [1658]), p. 83

otherwise a person, becomes a person through representation. It becomes a person by fiction. The difference, however, lies in the fact that the particular person by fiction, Agamemnon, is confined to a particular, well-defined stage for a particular, well-defined period of time. Agamemnon is confined to a provisional, temporary willful suspension of disbelief regarding the actor who is playing Agamemnon. Agamemnon cannot come off the stage and interact with us. If an actor came off the stage and tried to interact with us as Agamemnon, asking us in Agamemnon's name to commit some action, the willful suspension of disbelief would itself be suspended. We cannot take ourselves to be seriously interacting with Agamemnon. Agamemnon cannot, even through the necessary mediation of the actor, affect our space reasons. If the actor attempted the stunt to come off the stage, we would laugh in the actor's face, or rather, in the face of the implicit mask.

Some persons by fiction, such as Agamemnon, we don't take seriously. Others, we take very seriously. The difference is that, with regards to the latter, the suspension of disbelief (that these things are actually persons) is not necessarily willful nor is it provisional. They act on the same stage as we do. For many persons by fiction – Fooles, bridges, the Gods of the Heathen, Microsoft Inc. – they, unlike Agamemnon, interact with us through intermediary spokespersons. One difference, as Runciman points out, between Agamemnon and persons by fiction that we take seriously is that 'one is a person by fiction whose attributed actions are backed up by the actions of real persons, and the other is not.'[43]

That is a difference, but it is not the essential difference. The actor who plays Agamemnon could be both particularly strong and confused and begin to direct

[43] Runciman (2000), p. 276

Agamemnon's threats toward us and back them up. The essential difference is that we would never believe that we are interacting with Agamemnon through an intermediary, but only with a very confused thespian. In order to take persons by fiction seriously it is necessary to believe that it is the persons by fiction and *not* the intermediary spokespersons who affect our space of reasons. They do so because we sustain the fiction that they can. They affect our space of practical reasons just as natural persons do because we sustain the fiction that, through representation, they *are* persons and hence, beings to which we owe duties and whose utterances we take to affect our reasons for action.[44] For some 'persons by fiction' or 'purely artificial persons' we are committed to taking seriously the fiction of their personhood. Hobbes wants to convey to us the fact that there is a very real sense in which 'all the world's a stage' and 'thinking makes it so.'

The notion of persons by fiction which we take seriously is one that Hobbes inherited, ultimately, from Roman law. In Roman law, a corporation (*universistatis*) as a legal person could take part in standard legal relations – forming contracts, owning property, bringing accusations, being liable. As Pettit points out, this is a role-based concept of what a person is as opposed to a metaphysical or theological

[44] Runciman knows this, and spells it out clearly when he states, 'What distinguishes Agamemnon from the state [and other persons by fiction which we take seriously] is that the part of Agamemnon remains within a world which is itself a fiction, the world of the play…The clearest terminology might be one that identifies characters like Agamemnon as 'purely fictitious persons', meaning fictions locked in a fictitious world, while the state, like idols, madmen, and bridges, is a 'person by fiction' in Hobbes's original sense, a fiction given a place in the world of truly responsible action by the combined efforts of other real persons. *The state, in other words, is a person by fiction, but also a person in the real world*.' Runciman (2000), p. 276

one.[45] Such legal persons in the fourteenth century would become known as *personae fictae*, that is, persons by fiction. We have been taking persons by fiction seriously for a very long time.

The legal person, or *persona ficta*, depended on the authorization of some higher, non-fictional authority, the King perhaps, or God. Otherwise, references to such persons by fiction would merely be, as Hobbes said, 'breath.'[46] Merchant companies could be persons by fiction, but that depended on higher authorization of persons who were not conceived as fictions. However, Italian juristic theorists of the fourteenth century – particularly Bartolus and Baldus – first applied corporation theory and the concept of *persona ficta* to kingdoms themselves.[47] For Baldus, a kingdom was not only to be identified as a collection of men. Moreover, it was also a unique legal person in its own right in the form of a corporation, and this person could perform actions. Baldus writes, 'The person of the king is the organ and instrument of that intellectual and public person; and that intellectual and public person is the principle source of action.'[48] The very source of political authority had become a person by fiction. Baldus and late medieval Italian juristic theory was halfway to the concept of the modern state and halfway to Hobbes.[49]

---

[45] Pettit (2008), pp. 55-56

[46] Hobbes (1991 [1651], p. 123 (xviii, 4)

[47] Canning (1996), pp. 172-173

[48] *Ibid*., p. 173

[49] In Frederic Maitland's introduction to his translation of Otto *Gierke's Political Theories of the Middle Ages*, he writes that this conception of the *persona ficta* influenced English legal thinking, particularly that of Edward Coke, an early 17th

2.4.3. The state is perhaps the 'person by fiction' or 'purely artificial person' which is taken most seriously. For Hobbes, the state is not only the person by fiction which we take most seriously, it is also necessary to construe all further persons by fiction, including God.[50] Even if it is uncommon to share Hobbes's enthusiasm for the state, there is a palatable sense in which we regard the state as a person unto itself. What we have inherited from Baldus and the Italian juristic thought of the late medieval ages is still with us. We also have moved beyond it.

We have inherited a 'doubly-impersonal' concept of the modern state.[51] The predominant concept of the state is of an impersonal form of political authority that is distinct not only from the rulers who are its agents but also from those who are ruled. The political authority of the state is 'twice removed.' The tradition of popular sovereignty and republican political thought achieved the first distinction. The tradition of republican political thought – a tradition which connects the classical republican theory of the Italian city-states to Locke – distinguishes the authority of the city, citizenry, or commonwealth from the delegated authority of those entrusted to govern. The concept of authority in republican theory is once removed, that is, removed from those who actually do the day-to-day governing. There is no

---

century English jurist. As Hobbes was writing, the idea of the state as a *persona ficta* must have surely been 'in the air.' See Gierke (1987), p. xii.

[50] Consider this passage in *De Homine*: 'For, since the will of God is not known save through the state, and since, moreover, it is required that the will of Him that is represented be the author of the actions performed by those who represent Him, it needs be that God's person be created by the will of the state.' Hobbes (1978b [1658]), p. 85

[51] See Skinner (1989); Shennan (1974) pp. 9, 113-114.

distinction in republican theory, however, between the ultimate source of political authority in a body politic and the authority of the citizens who together constitute that body politic. Indeed, this is a fixed point of republicanism. As Skinner notes, classical republican theorists 'make no comparable distinction between the powers of the state and those of its citizens. On the contrary, the whole thrust of classical republican theory is directed towards an ultimate equation between the two.'[52]

The authority of the modern state, as we have inherited the concept, is twice removed. Its authority is identical neither to the delegated authority of the governing agents nor to the authority of the citizens who are subject to its directives. This double distinction can be seen in the way Hobbes's argues for the authority of the state. Hobbes believes that the foundational covenant which natural persons make with each other in order to exit the state of nature engenders a new artificial Person. Hobbes defines this person by fiction as 'One Person, of whose Acts a Great multitude, by mutuall Covenants one with another, have made themselves every one the Author.'[53] Hobbes conceives of the person of the state as an *emergent property* of the foundational contract by which parties exit the pre-political state of nature.

To get clear on this point, recall that Hobbes emphatically rejects the idea that the sovereign – be it a monarch or assembly – represents 'the People' or the body politic as a unified entity. Hobbes did not believe there was any entity 'the People' which exists prior to the institution of political authority and which contracts to be represented by the sovereign. Rather, there are only individual persons who constitute a 'multitude.' Hobbes is clear on this point. 'A Multitude of men, are made *One*

[52] Skinner (1989), p. 112

[53] Hobbes (1991 [1651]), p. 121 (xvii, 13)

Person, when they are by one man, or one Person, Represented…For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person One.'[54]

Nor did Hobbes believe that the sovereign 'bears the person' or represents each individual in the multitude who is party to the covenant by which persons exit the state of nature. Rather, the 'One Person' who is engendered by a series of mutual covenants does. The sovereign, in turn, represents this Person that the multitude creates in its foundational contract. As Hobbes says, the sovereign is 'he that carryeth this Person'[55] and is 'the public person' who serves as 'the representant of the commonwealth.'[56] In sum, the sovereign represents the person of the state who represents each person who was party to the series of original covenants.

How does Hobbes designate that Person who represents each person in the multitude and who, in turn, is represented by the sovereign? He calls it a 'Common-Wealth, in Latin Civitas.' He continues, 'This is the Generation of that great Leviathan, or rather (to speak more reverently) of that Mortall God.'[57] In the introduction to *Leviathan*, Hobbes also refers to the name of that person as 'the State.'[58] Hence, for Hobbes, the state is identical neither to the sovereign, who represents the state, nor is it identical the multiplicity of persons who contract to be its subjects. Moreover, the authority of the state is neither identical to the authority of the sovereign nor the authority of the subjects, although there is certainly a

[54] Hobbes (1991 [1651]), p. 114 (xvi, 13)

[55] Hobbes (1991 [1651]), p. 121 (xvii, 14)

[56] Hobbes (1991 [1651]), p. 399 (xlii, 130)

[57] Hobbes (1991 [1651]), p. 120 (xvii, 13)

[58] On this point, see Skinner (2007), pp. 173-175.

relationship between them. For Hobbes, the state is a distinct person with distinct authority over others.

This concept of a doubly impersonal authority pre-existed the term which came to denote it – 'the state.' The political thinkers who first attempted to formulate the concept – Ponet, Suarez, Bodin, and, most importantly, Hobbes – grappled with terms already in use, which did not quite fit their meaning.[59] Consider Hobbes's introduction to *Leviathan*. The artificial man on which Hobbes's focuses his attention is called 'that great Leviathan… a Commonwealth, or State, (in Latin, Civitas).'[60] Elsewhere, he calls this person of the state the '*persona civitatis*.'[61] The concept was the key in a theory of politics that was the product of the counter-revolutionary movements in early modern European history. (One way of inquiring why it is common to attribute the doubly-impersonal authority to the state is to make the historical enquiry as to why the intellectual arguments against republican notions of popular sovereignty initiated and prevailed in early modern Europe and why they then culminated in the concept of the modern state.[62]) As a political concept, the state – the source of political authority distinct both from ruler and ruled borne out by highly

---

[59] Skinner notes that Bodin's preferred term in *Six livres de la république* for the concept was 'république,' but on several occasions uses 'state' as a synonym and refers to *l'estat en soi* as the form of authority distinct from types of government and as the locus of 'indivisible and incommunicable sovereignty.' When Bodin was translated into English in 1606, 'state' unequivocally bears the concept. See Skinner (1989), p. 120. For a discussion of how Ponet grappled with the emergence of the concept of the state, see Harrison (2003), pp. 14-17.

[60] Hobbes (1991 [1651]), p. 9

[61] Hobbes (1991 [1651]), p. 183 (xxvi, 2)

[62] Shennan also makes the case that government policies and decisions encouraged the emergence of the very concept of the state, and that the study of that history is obviously not only an exercise in the history of ideas. See Shennan (1974), p. 10.

centralized institutions issuing coercively enforceable directives to persons in a well-defined territory – is no older than the late 16th century.[63] Given that Hobbes formulates the state as a locus of authority distinct from the sovereign who represents it and the persons who are its subjects, let's turn our attention to the particular *species* of authority Hobbes believes the state possesses, and more importantly, *how* he thinks the state comes to possess such authority.

2.4.4. The state is a person by fiction that we take seriously. Hobbes believes that this person, the state, has authority on the robust formulation over those persons who are subject to its jurisdiction. That is, Hobbes believes that a relation very akin to the *robust formula* of authority holds between the commands of the state and the practical reasons of its subjects. This is the third conception of authority that we find in *Leviathan* (it is also identifiable in *De Cive*[64]); however, Hobbes does not explicitly refer to this conception as 'authority.' Yet that Hobbes thinks that a relation of authority on the robust conception holds between state and subjects is clear from the arguments in Chapters 25 and 26 of *Leviathan*.

Hobbes defines a command as an imperative to commit some action addressed to some person who, once commanded, has a reason to commit that action 'without expecting other reason than the Will of him that sayes it.'[65] Hence, Hobbes understands commands as content-independent reasons for those to whom they are addressed. Building from this definition of a command, Hobbes then defines the civil

[63] See Skinner (1989); Morris (1998), pp. 14-55; Vincent (1987), pp. 16-19.

[64] Hobbes (1978a [1642], pp. 271-288 (xiv)

[65] Hobbes (1991 [1651]), p. 176 (xxv, 2)

law as the commands of the person of the state addressed to those persons who are subject to its jurisdiction. Hobbes writes, 'Civill Law, Is to every Subject, those Rules, which the Common-wealth hath Commanded him, by Word, Writing, or other sufficient Sign of Will.'[66] In short, the law is the command of the state represented by the dictates of the sovereign. When subjects confront those commands, they have content-independent reasons to enact the content of the commands. Moreover, those reasons are duties owed to the Person of the state. Hobbes believes that if subjects violate the laws, then there is a sense in which the person of the state is wronged. For instance, in discussing the 'Justice of Actions' he states that 'Robbery and Violence, are Injuries [which Hobbes equates with injustice] to the Person of the Common-wealth.'[67] Thus, we may register the criteria of content-independence and the wronging criterion in Hobbes's third conception of authority, the one possessed by the person of the state.

Note that it becomes possible to attribute this conception of authority to the state once we regard it as a person, even if by fiction. If our space of reasons is to be affected by commands that can be attributed to some thing, that thing must be a person. A necessary precondition of a content-independent reason is the existence of a person's *will* as the single consideration that supplies the reason that counts in

---

[66] Hobbes (1991 [1651]), p. 183 (xxvi, 3)

[67] Hobbes (1991 [1651]), p. 104 (xv, 12-13). However, this passage is internally problematic for Hobbes. Hobbes defines an injury or an injustice as what results from the breach of a covenant, and Hobbes believes that the person of the state does not covenant with the individual subjects in its jurisdiction. Rather, it is an emergent phenomenon from their mutual covenants. If we loosened injury and injustice as a kind of wrong that is not necessarily a breach of contract, then we might 'save the phenomena' but at the expense of Hobbes's views on the necessity of a state to give cognitive content to the concepts of justice and injustice. For more on this passage, see Runciman (1997), p. 19.

favour of some action.[68] Persons are necessary for content-independent reasons. Moreover, it takes a person to suffer a moral wrong or an injustice. Once we conceive of the state as a person, it becomes possible to regard it as entering into relations with other persons, particularly relations of practical authority. It is clear that Hobbes attributes the robust conception of authority – the third conception we may locate in his work – to the distinct person by fiction of the state. The question now is why does he do so?

As Hobbes was not the only theorist of the state in the 17th century to conceive of the state as a person by fiction and to ascribe to it a particularly strong species of practical authority, the question of why may be posed generally. A sketch of an answer is that the authority of the state as a person by fiction was drafted on a conception of divine authority. Divine authority is an instantiation of practical authority on its most demanding formulation, borne by an agent more abstract than even the modern conception of state. Bodin holds that '*le prince est image de Dieu*.'[69] Hobbes refers to the Leviathan, that is, the state, as a 'Mortall God.'[70] Authority is in part relocated from one abstraction or person by fiction to another – from God to the state – but the particular conception of practical authority remains the same. Carl Schmitt later noted that 'All significant concepts of the modern theory of the state are secularized theological concepts.'[71] A general genealogical investigation

---

[68] Andrei Marmor defends this precondition of a content-independent reason. See Marmor (1995), p. 334

[69] Bodin (1993 [1583]), p. 137. (Book I, ch. 8)

[70] Hobbes (1996 [1651]), p. 120

[71] Schmitt (1985 [1922]), p. 36

into the concept of practical authority that affixes to the modern state may support that claim. However, let's prescind from this sketch of an answer and focus on the contractarian argument that Hobbes gives for the authority of the state.

Hobbes believes that the third, robust conception of authority is achieved through the transfer of the privilege right to speak for oneself, or what I have identified in Hobbes as authority on the second conception. The transfer occurs as a result of the foundational covenant, which is comprised of a series of individual oaths that take the following form: 'I Authorize and give up my Right of Governing my selfe, to this Man, or to this Assembly of Men, on this condition, that thou give up thy Right to him, and Authorize all his Actions in a like manner.'[72] Hobbes intends two consequences from this pact. The first is the genesis of the person of the state. The pact is a state-making (and a person-making) covenant. The second is the state's possession of robust authority over those who were party to the covenant.

In this passage, I take Hobbes to intend that natural persons perform an illocution whereby they transfer the initially exclusively-held privilege right of speaking for themselves to the state.[73] In so doing, the state becomes the actor and the other parties to the covenant become the authors who own or bear responsibility for those actions the state commits in their name. The illocution is a normal instance of authorization, except the purported actor and possessor of privileges to act in the

[72] Hobbes (1991 [1651]), p. 120 (xvii, 13)

[73] The idea that the permission to speak in one's own name is initially exclusively-held by the right holder might not be faithful to Hobbes. Hobbes claims 'there is nothing to which every man had not Right by Nature' Hobbes (1991 [1651]), p. 92 (xiv, 6). However, it strains the concept to suggest that, by nature, every person has the right to speak and act in any one's name such that they must take responsibility for the actions performed.

names of others is a person by fiction. When the state is so authorized it is attributed authority on the second conception, that is, it possesses the privilege rights to act and speak in the name of others.

Why should Hobbes think that being so authorized and, hence, having authority on the second conception, amounts to having authority over others such that a relation holds between commands and obligations? Hobbes moves from 'the state is authorized by person, *p*, to act in her name' to 'the state has authority over *p*.' This move is what A.P. Martinich calls the 'semantic shift' in Hobbes argument for state authority.[74] It is an unobvious move, and without argument, we should be wary of it. Skinner believes that Hobbes may account for the move in the following way. When the right to speak for a person (the author) is transferred to another (the actor), the author incurs new duties. Skinner says, 'the authorising agent acquires two contrasting obligations towards his representative. One is the duty to take responsibility for his actions. But the other is a duty of non-interference.'[75]

Consider the first duty Skinner believes the author incurs, the duty to take responsibility. It is true that if one is the author of words or actions committed in his name, whether by himself or by an actor, then the author bears responsibility for the actions. However, by itself, the taking of responsibility is not necessarily a directed duty that the author owes to the actor. Rather, it could just be implied by what it *is* to be an author. That the author will 'own up' and take responsibility is implied by the action that the actor has a permission right to perform – namely, 'acting in the name of.' It is not necessarily implied as a duty correlate to a right that the actor has against

[74] Martinich (1992), pp. 192

[75] Skinner (1999), p. 9

the author. We leave open the questions of which Hohfeldian elements would constitute such a right and whether an authorized actor would possess it.

We might just understand the 'duty to take responsibility' as entailed by the second duty Skinner posits – the author's duty not to interfere with an actor's representation. When an author is validly represented by an actor, there is a sense in which a purported duty of an author to take responsibility collapses into the duty not to interfere with the actor's acts of representation. One very good way to interfere with an actor's representation of some person is for that person to discontinue taking any responsibility for the actions that the actor purportedly does in their name. What more effective 'interference' could the author show? If the author incurs duties at all, then the one that merits the bulk of our attention is the duty of non-interference.

The duties Skinner points out are thought to emerge from the transfer of the right to speak for another. The two duties, particularly the latter, provide insight to explain how Hobbes makes the move from authority on the second conception – the specific privilege to speak for another – to authority on the third conception – the robust relation between commands and obligations. In order to make that move, Hobbes must make two claims. In order for the move from the second to the third conception of authority to be valid, both claims must be warranted. Here, I want to consider how Hobbes makes the claims. Later, in (4.4.4), I will interrogate their plausibility.

First, Hobbes must believe that the transfer of the permission right to speak for oneself generates a duty on the part of the author not to interfere with the actor's representation of the author. This is a directed duty which is owed by author to actor. This belief that duty of non-interference is generated with the transference of the

permission right to represent oneself is a consequence of a general claim that Hobbes makes about the transfer of rights. For Hobbes, when one transfers a privilege right, one necessarily incurs a duty of non-interference with respect to the recipient of the transfer.

> 'To lay downe a mans Right to any thing, is to devest himselfe of the Liberty, of hindring another of the benefit of his own Right to the same… And when a man hath in either manner abandoned [renunciation], or granted away [transfer] his Right' then is he said to be obliged, or Bound, not to hinder those, to whom such Right is granted.'[76]

Second, this duty of non-interference must be equivalent to the duty to obey another when commanded because commanded. That is, the duty of non-interference must be equivalent to a duty of strict obedience. Hobbes is committed to thinking as much; the duty of strict obedience is entailed by the conception of authority he attributes to the state. The duty of non-interference is a consequence of the transfer of the privilege right to the state, yet the duty the state imposes when it enacts commands in the form of civil laws is one of strict obedience. How do we explain the identity?

I think Hobbes's reasoning is as follows. Focus on the duty incurred by a transfer of the privilege to speak for oneself. What is incurred is a duty of the author not to interfere with the actor's representation of the author. The author owes the actor non-interference in the representation of himself. That is, the author owes the actor the maintenance of responsibility for what the actor does in his name. The

[76] See Hobbes (1991 [1651]), p. 92 (xiv, 6-7).

author owes the actor the treatment of the actor's actions as if they were his own actions. One such action is a command; a command is a kind of illocutionary act. Hence, the author owes the actor the treatment of the actor's commands as if they were his own commands.

How would the author treat his own commands? Let's introduce the notion of a self-command. Suppose B says to himself 'I am going to Φ' or, equivalently, 'I will to Φ.' This voluntary illocution is a statement of will. The voluntary illocution is a self-command. B commands himself to Φ, and he is committed to Φ-ing simply because he self-commanded. The voluntary illocution of will commits B to Φ-ing on pains of akrasia or self-contradiction – that is, what Hobbes calls 'Absurdity.'[77]

Now suppose A validly represents B; B is the author of A's actions. Suppose that A commands 'Let B Φ.' If A validly represents B, then Hobbes wants that we understand A's command 'Let B Φ' as equivalent to B's voluntary illocution 'I will to Φ.' Hobbes wants us to see that when A represents B, A's command to B is B's self-command. Hobbes believes that if B does not Φ because A commands, then B does so on pains of akrasia or 'absurdity.'[78]

Given that Hobbes believes A's commands are B's self-commands, if B is not to interfere with A's representing himself, then B must treat A's actions as if they were his own actions. This goes for commands as well. B would perform the actions

---

[77] Hobbes (1991 [1651]), p. 93 (xiv, 7)

[78] Consider Hobbes's comments throughout *Leviathan* about the lack of the right of complaint (but not lack of right of self-defence) that criminals have in the face of punishment as the authors of their own punishment. For a discussion of how the avoidance of absurdity or self-contradiction supplies the binding for of the Hobbesian contract that establishes state authority, see Harrison (2003), pp. 113-115.

referred to in the propositional content of the illocutionary acts of self-commands just because they are the content of those self-commands. Thus, B must treat A's commands in the same way. B has a reason to commit those actions that A commands when and simply because A commands. The command *is* the reason. In this way, B follows A's commands just as if they were his own self-commands. Hence, B only escapes 'absurdity' if he meets A's commands with strict obedience. Once it is clear that this is the duty implied, then it is equally clear that we have arrived at robust authority: the commands of one constitute duties of strict obedience for the other.

To see Hobbes's argument in the round, let's pull the two major claims together. Persons have a right to represent themselves – that is, they have authority on the second conception. By transferring this right to the state, they incur a duty of non-interference. This duty of non-interference is equivalent to the duty to meet the commands of the recipient of the right, the state, with strict obedience. Hence, by incurring a duty from the transfer of the right to represent oneself, a person's transfer of that right effectively creates the authority of the state. Upon transfer of one's right to represent herself, the state has the robust species of practical authority over her.

2.4.5. Before we move on, consider another way to account for Hobbes's derivation of state authority. David Gauthier, for instance, presents an alternative account.[79] Gauthier believes that the authorization – that is, the transference of the right to represent oneself – is insufficient to engender the authority of the state which Hobbes attributes to it. This is because Gauthier cannot see why the transfer of this right need

[79] Gauthier (1969), pp. 120-128

be permanent or exclusive.[80] We may endow some person, *P*, with the privilege right to represent us without giving this right either permanently or exclusively to *P*. Given that the granting of the privilege right to represent need not be permanent or exclusive, Gauthier cannot see why subjects could not merely withdraw their authorization of the state instead of meeting its commands with strict obedience. If the transfer of the privilege to represent oneself is not permanently alienable or exclusively held by the transferee, then this does constitute problems for Hobbes's conception of state authority. Hobbes does not intend that subjects can withdraw authorization at their discretion and, hence, undo state authority.[81] Gauthier's suggestion is that Hobbes requires and, in fact, supplies a further piece of argumentation.

Gauthier believes that the argument for state authority requires a further posit beyond each subject's authorization of the state to act in her name. For Hobbes to achieve state authority, Gauthier thinks that the subjects must contract with each other. Subjects must promise each other that they will not withdraw their authorization of the state's right to represent them. Each person's promise not to

---

[80] Gauthier (1969), p. 125

[81] However, Hobbes does believe that subjects can withdraw authorization if the commands fall beyond a certain 'domain and limits' test of what commands could even stand as reasons to act, even though they are issued by the authority. This 'right of exit' approach to Hobbes renders Hobbes more 'liberal' than is commonly assumed. In a restricted sense, Hobbes is also a 'domains and limits' theorist about state authority. This the approach to Hobbes favoured by Richard Tuck. See his 'Introduction' to *Leviathan* at Hobbes (1991 [1651]), p. xviii. For more on how a 'domain and limits' test affects the reason-giving-force of authoritative commands, see section (4.3.1) of the present thesis.

As we will see in section (4.4.4), the worries that Gauthier raises are detrimental for Hobbes's view of authority. As I argue presently Gauthier cannot control their damage by twisting the grounds of obedience in Hobbes's conception of authority. His account unties Hobbes's very portrayal of state authority.

withdraw from the state their individual transference of the privilege right to represent themselves is what creates the obligation to commit those actions which the state commands. As Gauthier explains, he attempts to amend the problems in Hobbes's account of state authority 'by introducing into the definition reference to the fact that the subjects are obliged by covenant among themselves to maintain their authorization of the sovereign.'[82]

This interpretation of Hobbes's argument is interesting, and perhaps supplies more in the way of moral grounds to perform those actions the state requires; however, Gauthier's interpretation does not ground the robust authority of the state which Hobbes attributes to it. This interpretation does not account for the duty to meet commands with strict obedience, that is, to commit them when and just because they are the commands of the state. In Gauthier's interpretation, if we traced back the grounds of the subject's obligations to perform those actions which the state commands we will see that they are rooted in a promise amongst each other to continue to obey. In short, when confronted with the question 'why commit those actions which the state commands' Gauthier believes that their answer must be 'because I promised others that I would not withdraw my authorization and, hence, will do what the state commands.' The response 'because I promised others' is not the same as 'because the state commanded, *simpliciter*.'[83] Hobbes's ultimate conception of state authority requires the latter. His conception of state authority is

[82] Gauthier (1969), p. 127

[83] Nor can the promise among the contractors to each other ground state authority on pains of double-counting. For the 'double-counting' argument, see (5.2.2) of the present thesis.

that the *ultimate* reason to commit an action that the state commands is because it is commanded, *simpliciter*. Recall, for Hobbes, subjects to commands should expect no other reason that the will of the commander. As such, we must think that Hobbes understood the duty incurred by authorization to be the duty to meet state commands with strict obedience. In short, Hobbes attempts to move straightforwardly *from* an individual's authorization of the state *to* the authority of the state over that individual.[84] By focusing on the duties incurred in authorization and the duties implied by state authority, this is precisely this move which I attempted to reconstruct in the previous section (2.4.4.).

To review from further afield: Hobbes conceives of the state as a kind of person by fiction. To that person he attributes a robust conception of authority whereby its commands constitute obligations for others to act. The state's personhood depends on the attribution of this species of authority. It is how we take it seriously, that is, how we reify its existence. Hobbes derives this conception of authority from two more elemental conceptions of authority: the notion of a privilege right and the specific privilege right to represent a person. The authority of the state emerges from an individual's transfer to the state of the privilege right to represent himself. The duty created in that transfer amounts to the robust authority Hobbes ultimately attributes to the state. In sum, his theory of state and state authority is elegant and comprehensive. It is also misguided, as we shall see in (4.4.4).

[84] Martinich agrees with this interpretation. See Martinich (1992) pp. 165-173.

2.5. The State's Self-Image

2.5.1. What Hobbes theorized is what contemporary legal and political philosophers have inherited: a conception of the state as a practical authority over those subjects within its jurisdiction. The state is not a particularly easy concept to pin down; however, the conception for which Hobbes's work is the *locus classicus* unites the concept of the state with some thesis about practical authority. For Hobbes, the relation is analytic; he cements the concepts of state and practical authority. If an entity is the state, necessarily, it has practical authority over some persons.

For Hobbes's view to be plausible, he must understand the state as a kind of person, even if a person by fiction. The existence of a will is a precondition for practical authority because it is a necessary precondition for the content-independent reasons authority is thought to generate. Hobbes's theory of personation allows him to view the state as a single person with a single will (at least synchronously). Thus Hobbes sees the state is a person capable of possessing practical authority and as a being whose authority is capable of being represented. In order for Hobbes to cement his conception of state with the concept of practical authority he must understand the state as a single person with a will – that is, as a being capable of having a self-image.

We may have two worries with Hobbes's conception of the state. First, we may think his theory of personation as too fanciful and reject any conception of the state that depends on it. Perhaps a less committed approach to the state identifies the state not as the 'make-believe' person, but rather with a group of natural persons. Second, we may think that Hobbes's conception of the state as necessarily authoritative is too strong. Perhaps the state does not refer to persons (even if fictive) who necessarily

have practical authority, but rather to persons who *claim* to have practical authority over some purported subjects *and* who's claim is generally *recognized* as valid by some of those subjects. Those conditions – the claim to practical authority and its general recognition – are what have been referred to as the conception of a *de facto* state.[85] The conception of a *de facto* state and the state as Hobbes conceived it are not equivalent. Claiming to have authority and having that claim recognized as valid by some persons is not the same as claiming authority and that claim being true.[86] For perhaps the claim is erroneous or its recognition is based exclusively on coercion or venality.

The latter worry with Hobbes's concept of the state is intelligible. We may not want our concept of the state to depend on the truth of its claim to authority. The first worry, however, is not tenable after reflection. Hobbes's view of the state contains a reference to its personhood that may seem outlandish, but the conception of the *de facto* state is not necessarily a significant departure from it. In this respect, the concept of the *de facto* state is deeply Hobbesian. Here is why. It is not usually the case that the natural persons who claim practical authority make that claim *qua*

[85] Nozick argues the claim to have authority is not sufficient to be a state. See Nozick (1974), p. 23. Both the claim and some degree of its recognition are necessary. Green also understands the concept of the state by the conditions that define *de facto* authority. He says, 'A state cannot exist unless it claims authority with some success and general compliance' Green (1998), p. 239. Although, *cf.* Soper (1996) who holds that the law (and perhaps thus the state) does not make the claim to possess practical authority.

[86] A *de facto* state is perhaps contrasted with a *de jure* state – that is, a group of persons that truly claim to have practical authority over subjects. For more on *de facto* authority, see Wolff (1970), pp. 10-11.

natural persons, but rather as holders of a certain office in an institutional structure.[87] Those who claim state authority do not normally claim that they themselves – that is, natural persons with proper names and definite descriptions – have authority. Rather the claim is that they have authority only insofar as they embody a role within a state institution and, more frequently, its legal system. Jones does not claim authority as Jones, but rather as a minister, judge, police officer, *etc*. The claim to practical authority is *qua* a representative of the state. It is the state that has authority and, depending on their institutional role, those natural persons that claim authority claim it only as an enabler or a role-player. Just as the Hobbesian sovereign bears the person of the state, so do the natural persons who are the legal officials to whom it is normal to attribute authority. Both apply the mask of the state's image.

On either the Hobbesian conception or the *de facto* conception of the state, an understanding of practical authority is necessary. For on either view the state's self-image – that is, what the Hobbesian fictive person of the state would see in the mirror or the *de facto* claimant purports to see in the mirror – is a practical authority who can impose duties by command and who can be wronged. In Chapter 1, I sought to fill out the details of the species of practical authority which is commonly ascribed to the state. In the present chapter, I have sought to show how that conception is consonant with what is known as the right to rule and the duties correlate to that right.

The self-image claim is a metaphor. Depending on the conception of the state, it is a tool to capture the phenomenology that we would attribute to the state if it were

[87] There are perhaps exceptions. Consider parental authority. Within the remit of political authority it is normally the case that the claim to practical authority is mediated through an institutional role, but even then there might be exceptions. Consider Louis XIV's famous claim, 'L'etat, c'est moi.'

an entity aware of precisely what it does when it commands *or* that we attribute to legal officials when they command. However, as Hobbes understood, the self-image of the state is also more than a metaphor. To believe that the state has practical authority over persons is to believe that it can enter into moral relations with persons – *i.e.*, that it can impose duties on persons and that it can be wronged. To believe that the state can impose duties and be wronged is to believe that it has aspects of personhood, as Hobbes explicitly theorized. This is reflected when we speak metaphorically about the self-image of the state. Yet if we begin to reify our metaphors and act as though they affect our space of reasons, then we have moved beyond the realm of mere metaphor. The self-image of the state is not only a way of speaking about state authority; moreover, the posit that the state is something that could have a self-image – that it has a will and can communicate that will by command – is integral to an argument for state authority. Hobbes knew this.

Should we believe in the state's self-image? How should the claim to practical authority enter into our conception of what the state is? These are the central questions of political authority. As Leslie Green puts it, 'The problem with political authority can thus be properly be seen as the issue of whether, or to what extent, the citizen should share what we might call the self-image of the state, of whether they should accept its claim to be a duty imposer.'[88]

I think that, on any conception of the state, if the state's self-image is of a practical authority, then we should reject it. States do not possess practical authority over (almost all) persons whom they claim to possess practical authority. The state's commands do not constitute duties of strict obedience for persons. These are the

[88] Green (1988), p. 86

claims of the philosophical anarchist. In Chapters 3-5, I will develop and defend the argument for philosophical anarchism. In Chapter 6, I will detail what political philosophers should be focused on. It is not authority. This leads to a particular conclusion about how to understand the state, which I detail in the Conclusion.

Chapter 3 – Philosophical Anarchism

§ 3.1. Introduction

3.1.1. Philosophical anarchism is the view that the state does not have authority over those persons over whom it claims to have authority. Recall the authority relation:

(4) For two agents, A and B, A has authority over B if A's act of commanding 'Let B Φ' creates a *pro tanto* obligation for B to Φ, such that if B didn't Φ, B would wrong A.

In this relation, we may understand A to be the state and B to be any other person or set of persons over whom the state claims authority. If A is understood to be the state, then the philosophical anarchist denies that the relation obtains. The state's commands do not constitute duties for others in the way the authority relation stipulates. Specifically, the philosophical anarchist believes the following claim, (C):

(C) The state's act of commanding 'Let B Φ' never, in and of itself, creates an obligation for any person to Φ.

This is the *central claim* and the conclusion of philosophical anarchism. The present chapter is devoted to a presentation of the philosophical anarchist's argument towards that conclusion.

This chapter has three goals. The first, minor goal is briefly to stitch literatures. Philosophical anarchism is a position understood in "the duty to obey the law" debate. In that debate philosophical anarchism is the reigning view, and it amounts to the null position that there is no general obligation to obey the law. Section 2 considers how this reading of philosophical anarchism relates to the central claim, (C). It also responds to one small objection to the claim.

The second, major goal is to clarify what the philosophical anarchist argument *is*. It is conventional to represent philosophical anarchism as containing two camps: the *a priori* position of Robert Paul Wolff and the *a posteriori* position of John Simmons and others.[1] Jumping ahead, Section 5 elucidates the relation between those disparate camps and presents *The Unified Philosophical Anarchist Argument*. This argument incorporates insights from both camps. It is the correct formulation of the philosophical anarchist argument; it is the argument by which philosophical anarchism stands or falls. This chapter builds toward that argument, which has three premises. The first premise concerns the nature of practical authority and its ascription to the state. Chapters 1 and 2 were devoted to the first premise. The second premise is the presumption against authority.[2] The third premise is the *a posteriori* conclusion in the duty to obey the law debate. This chapter introduces both the second and third premises. Here, the third premise gets less treatment. Although

[1] The distinction belongs to Simmons. Simmons (2001), pp. 102-121

[2] Throughout this chapter and later chapters the presumption against authority is to be understood as a presumption against the practical authority, which was clarified in Chapter 1. I do not intend to defend any kind of presumption against epistemic authority.

Section 5 outlines the argument for the third premise, that argument enjoys a more complete presentation in Chapter 5.

This chapter, however, is especially concerned to motivate the second premise, the presumption against authority. Thus, the third goal of this chapter is to clarify and support that presumption. Sections 3 and 4 are devoted to this end. Section 3 discusses the function, significance, and justification of presumptions in moral reasoning. Section 4 presents the presumption against authority and offers some initial arguments in favour of this presumption.

§ 3.2. Philosophical Anarchism

3.2.1. Philosophical anarchism is easily confused with other views, not least of which is anarchism. To be clear, philosophical anarchism is not the view that coercion is never morally permissible. Neither is it the view that persons do not have moral obligations to contribute to the well-being of other persons or any other obligation of justice. Nor is it the view that persons do not have moral obligations to comply with the law promulgated by states (contrast 'comply with' with obey in Regan's strict sense). Nor is it the view that states should be decisively resisted because they are involuntary or solidify unjust distributions of benefits and burdens. Perhaps some or all of these positions have been endorsed by some member of the ideological field of anarchism; however, none of them is the philosophical anarchist position.

The philosophical anarchism defended here is a narrower position than what one could attempt to defend. Call 'anti-authoritarianism' the position that for any A and

any B, where A and B are moral agents, no A has authority over any B. Anti-authoritarianism denies that any agent, be it the state, God, parents, or other persons, has authority over any other. The position seeks to cast suspicion on all possible authority relations. The anti-authoritarian holds that no agent's 'saying so' constitutes an obligation for another person to act, such that if the second person failed to commit the act, she would wrong the commanding agent. Philosophical anarchism, by contrast, is the position that no *state* has practical authority over any person. It is a view about the relation between states and persons. The view defended here is philosophical anarchism, not anti-authoritarianism.[3]

The central claim of philosophical anarchism given above is not the most common claim associated with philosophical anarchism. The most common claim is what might be called the *standard formulation* of philosophical anarchism[4]:

(S) There is no general *pro tanto* obligation to obey the law.

Most defences of philosophical anarchism are of this claim, and moreover, philosophical anarchism seems to be the dominant position regarding the existence and scope of the obligation to obey the law.[5] The standard formulation does not differ

[3] Many of the arguments considered below could perhaps be mustered in the attempt to defend anti-authoritarianism. Nevertheless, I do not commit to the view because I believe it indicts the Hohfeldian concept of a normative power. One can deny the authority of the state without denying the view that persons have normative power in the Hohfeldian sense.

[4] Murphy (2007), p. 95

[5] With respect to the question 'Is there a general, content-independent, *pro tanto* obligation to obey the law?' philosophical anarchism seems to be the dominant

substantively from the central claim given above if the general obligation to obey the law refers to the obligation to obey in the strict sense – that is, the obligation to do what the law commands because and for the sufficient reason that the law is a command of the state.

If, however, the general obligation to obey refers, more weakly, to the obligation to comply with the law – that is, to follow the dictates of the law without further specification of the reason why one does – then there is room for a substantive difference between the standard formulation and what I take to be the central claim of philosophical anarchism. In that case, the philosophical anarchist would affirm the central claim, but that affirmation would not necessarily commit her to denying that there is no general *pro tanto* obligation to comply with the law. The philosophical anarchist does not, in principle, deny the possibility that there is a general obligation to comply with the dictates of the law. It is odd to conceive of what a general obligation to comply would be like, but perhaps a general obligation to comply with the dictates of the law refers to the view that there are independent obligations to comply with the specific dictates of each specific law. If there is an independent *pro tanto* obligation (an obligation whose grounds are independent of the fact that the law is issued) to commit those acts that each specific law requires, then perhaps there are grounds to believe that there is a general obligation to comply with the law. Of course, it is unlikely that the legal system of any state is such that there is an independent obligation to commit the acts required by each specific law; nevertheless, it is not conceptually impossible. For instance, imagine that a lawmaker who governs

---

position. See Edmundson (2004); Green (1988), pp. 89-121; Green (2009); Raz (1979b); Simmons (1979); Simmons (2001); Smith (1973); Wolff (1970). Wolff coined the term 'philosophical anarchism.'

a small city-state state, *S*, issues only two laws: (i) do not murder and (ii) do not inflict gratuitous pain upon others. Whatever we might say about desirability of life or the moral evaluation of life in this minimal state, the philosophical anarchist might resist denying there is a general obligation to comply with the law. As the actions required by both laws are independently morally obligatory, any moral agent would have reason to constrain her actions in the ways that the dictates of the laws require. There are reasons to comply with these laws. Rather, what the philosophical anarchist does deny is that there is, in principle, a general obligation to obey the dictates of the law for the sufficient reason that the law has been issued. He affirms that the obligation to commit the acts that the law requires is not grounded in the fact that those acts were commanded by the lawgiver.

In contemporary legal and political philosophy, the 'general obligation to obey the law' or 'the duty to obey the law' is understood to mean that, among other things, subjects have an obligation to do what the law commands for the sufficient reason that it is a command of the state.[6] Because it is so understood, when the philosophical anarchist denies state authority – *i.e.* when he denies that a state's act of commanding 'Let B Φ' creates an obligation for B to Φ – he *ipso facto* denies that there is a 'general obligation to obey the law' as that phrase is normally understood in political and legal philosophy. The philosophical anarchist who defends the standard

[6] Matthew Kramer expounds upon the meaning of the 'general obligation to obey the law': 'For centuries, political and legal theorists have pondered whether each person is under a general obligation of obedience to the legal norms of the society wherein he or she lives. The obligation at issue in those theorists' discussion is usually taken to be prima facie [again, *pro tanto* is the less ambiguous and preferred term], comprehensively applicable, universally borne, and content independent.' See Kramer (2005), p. 179. For further explanation of Kramer's conditions see Edmundson (2004), pp. 215-217.

formulation about the general obligation to obey the law is, in fact, defending what I call the central claim. When he says there is no general obligation to obey the law, he means that 'because the law was issued' or 'because the state commanded' does not itself constitute a moral obligation for anyone to act. The 'standard formulation' (a claim about a person's moral obligations) and the 'central claim' (a claim about the non-existence of state authority) have the same content.[7]

3.2.2. Before diving into the defence of philosophical anarchism, consider a preliminary objection that such a defence is not worthwhile. Some might hold that philosophical anarchism is a toothless or 'bloodless' doctrine.[8] Philosophical anarchism attacks a straw man, for, as the objection runs, no one actually believes that 'because the state commanded' constitutes obligations for persons to act. If *that* is

[7] Rex Martin points out that for many political philosophers, such as D.D. Raphael or Robert Paul Wolff, the connection between the authority of government and the obligation of the citizen is 'analytic.' '[T]he logic of justifying political authority reduces to the single crucial consideration that a government has authority to issue rules if and only if citizens have a strict obligation to obey those rules.' Martin goes on to claim that assessing political obligation is the 'logically prior issue' and the 'justification of political authority is thought to turn on it.' However, this is obscure. Why should the question of strict obligation of subjects be logically prior to the question of whether the state has the authority over them to issue commands. That is, why pose the relationship between authority and obligation as: 'The state has authority if and only if the citizens have strict obligations to obey?' Does it not make equal sense to pose the relationship as: 'Citizens have strict obligations to obey if and only, in the strict sense, if the state has the authority to command them?' Martin's subsequent discussion of the justification of state authority turns on the question of obligation being 'logically prior'; however, it seems more reasonable to think that the 'central claim' (a claim about authority) and the 'standard formulation' (a claim about the obligations of persons) of philosophical anarchism are logically equivalent. See Martin (1975), pp. 70-75.

[8] Miller (1984), p. 12

what philosophical anarchism is, says the objector, then everyone is a philosophical anarchist.

This objection rests on the belief that once we elucidate what philosophical anarchism *is*, then it will seem obvious that everyone endorses the view. That belief is false. It is perhaps obviously false if we remember that Hobbes, the greatest theorist of the modern conception of the state, was decidedly *not* a philosophical anarchist. Setting Hobbes aside, some political conservatives might hold that 'because the state said so' is sufficient reason to act in the ways that the law requires. Others will hold the more plausible view that 'because the state commanded' is a sufficient reason, but only when certain conditions about the state are fulfilled and thus justify the authority relation between the commands of the state and the reasons of some persons. Furthermore, some will believe that, for some states such conditions are fulfilled and thus those states do have authority over their subjects. Consent, communitarian, coordination, and epistemic justifications of the authority of states present alternative views of the conditions a state must satisfy for it to have authority over its subjects. It would be bizarre to think that every advocate of these justificatory approaches *only* claims that such arguments demonstrate that such counterfactual conditions would be sufficient to justify state authority, even though no state actually fulfills such conditions. Not everyone who has a view about the authority of the state is a philosophical anarchist.[9]

Nor is philosophical anarchism toothless. To be sure, philosophical anarchism is not a political theory for anarchist revolutionaries committed to the violent

[9] Or what John Simmons calls an '*a posteriori* weak anarchist.' Simmons (2001), p. 102-121

disruption of the political order. Philosophical anarchists affirm that there could be very many sufficient moral reasons to do what the law requires, even if 'because it was commanded' is not one of them. But the position is not toothless. If 'because the state commanded' is not a *pro tanto* moral reason, then political and legal commands that are not sufficiently justified by independent moral considerations may be disobeyed without moral impropriety. Since not all political commands and laws can be defended by independent moral considerations, some instances of civil disobedience are not *pro tanto* wrong. For example, a toothy or full-blooded consequence of philosophical anarchism is that with respect to laws that regulate lifestyle choice, such as those that criminalize the possession of marijuana or 'unnatural' sexual acts, that interfere with harmless choices, and that limit personal liberty without securing social benefit, the failure to comply with the dictates of the law is *in no way* wrong.[10]

Because philosophical anarchism is neither universally affirmed nor without consequence, it needs a defence. This chapter is meant to contribute to the defence of philosophical anarchism; however, my intention is not to forward a comprehensive and exhaustive defence of the position. For reasons explained below, such a defence would outlast my present purpose. By way of preview, a complete defence of philosophical anarchism requires a treatment of all the arguments that purport to justify the general duty to obey the law for the sufficient reason that it is a command of the state. In Chapter 5 I only consider a selection of those arguments, those that I

[10] Or so claims John Simmons, and for many such laws I am inclined to agree. Perhaps there are reasons of stability that count against the failure to comply some of these laws, but to my mind such reasons are not decisive in these cases. See Simmons (1993), p. 269; Simmons (1987), p. 279.

believe are the most plausible. The literature on political obligation contains some very comprehensive treatments, and it is now plausible to hold that with respect to this question of a general obligation to obey the law philosophical anarchism is the dominant position in political and legal philosophy. A contemporary consensus reflects that conclusion.[11] However, as we will see, the demonstration that all of the posited justifications nevertheless fail to establish the general duty to obey the law is only *part* of the philosophical anarchist argument. Another part concerns a very significant presumption which I will now begin to develop.

§ 3.3. The Significance of Presumptions

3.3.1. To understand philosophical anarchism, we must first understand the significance of presumptions in moral reasoning. It is often the case that moral reasoning is formally modelled with logical arguments. These arguments explicitly state premises and show which conclusions are entailed. The conclusions must follow in ways that preserve validity. It is helpful to analyze a bit of moral reasoning by crystallizing it in a logical argument. This enables us to focus on the premises, to see whether or not they are acceptable, and then to observe whether validity is transmitted to the conclusion. Presenting arguments in their logical form is an indispensable technique of philosophy; however, much of our real-time moral reasoning – much of our reasoning in general – is not as perspicuous.

[11] See Footnote 5, above.

Practical reasoning about what to do happens in real time. As such, when we consider what to do, we do not normally (if ever) lay out all the possible premises available to us and then determine which conclusions are entailed in validity-preserving ways. Moreover, even if we did adopt this unlikely procedure, we still would not be left with a reason for acting.[12] Rather, our real-time practical reasoning seems to operate differently. Practical reasoning employs what we might call default conditions, that is, prior reasons to act provided we encounter no reason to the contrary. Our inferences often take the inference pattern of default reasoning. Following Kurt Bach, we might canvass a principle that depicts a common inference pattern of practical default reasoning:

> *General principle of default practical reasoning*: If it occurs to agent A to Φ, then A is justified in Φ-ing, provided that two conditions hold:
>
> (1) *Absence of alternative reasons*: There occurs to A no thought of a reason that counts against Φ-ing.
>
> (2) *Reliability condition*: Such a thought probably would occur if it should.[13]

[12] As Gilbert Harman points out, logic has far less to do with good reasoning than is often assumed. He points out that 'so-called deductive rules of inference are not plausibly construed as rules of deductive acceptance.' That is, logical inference does not necessarily tell you what to *do*. For example, in the case of *modus ponens*, logic does not tell you to conclude q, given that p and if p, then q. That conclusion, to be sure, is entailed by the premises, but what is not clear is whether you should conclude q or, rather, reject one of the premises. Logic does not tell you when to draw a valid conclusion and when to instead give up a premise necessary to that conclusion. See Harman (1973), p. 157.

[13] Bach (1984)

Bach calls this pattern of reasoning the 'inference to the first unchallenged alternative.' His purpose is to argue that this rule of default reasoning is present in human practical reasoning, that it justifiably solves Gettier problems in epistemology, and that it plays a central role in the development of artificial intelligence. My purpose is less ambitious. I only wish to suggest that we often participate in default reasoning. There are some actions which, without much concentrated reflection, we implicitly hold as reasonable to commit and which we will commit provided no thought to the contrary arises. We may always ask 'what to do next?' Given that we are not constantly deliberating on that question, it must be the case that we reason according to our own default conditions. As it happens, we will always do *something* next. The location and analysis of our defaults are indispensable for theories of practical reasoning and for the development of computer programs, artificial intelligence, and so forth. However, we also employ defaults in many other areas of human enquiry, including the moral, legal, and political realms of reasoning. When our own default settings are rendered explicit in those domains of practical reasoning we call them 'presumptions.'

3.3.2. Presumptions are epistemic or practical norms which take the form 'believe p (or Φ) provided you do not have a reason of sufficient weight to do otherwise.' The use of presumptions is an entrenched part of our epistemic and practical reasoning in all areas of human enquiry. Presumptions matter. They have two central characteristics: the setting of a default reason and the allocation of the burden of proof. Both are clearly exhibited in this theological argument provided by Leibniz in his correspondence of 1702:

> For every being ought to be judged possible until the contrary is proved, until it is shown that it is not possible at all.
>
> This is what is called *presumption*, which is incomparably more than a simple *supposition*, since most suppositions ought not to be admitted unless they are proved, but everything that has presumption for it ought to pass for true unless it is refuted.
>
> Therefore the existence of God has presumption for it in virtue of this argument, since it needs nothing besides its possibility. And possibility is always presumed and ought to be held for true until the impossibility is proved.
>
> So this argument has the force to shift the burden of proof to the opponent, or to make the opponent responsible for the proof. And as that impossibility will never be proved, the existence of God ought to be held for true.[14]

In Leibniz's argument we can see the dual function of presumptions. First, a presumption marks a default setting: believe p (or Φ) unless you have a weightier reason to do otherwise. In the above argument, the default setting is to believe in God's existence. Second, presumptions allocate the burden of proof to those who argue against believing p (or Φ-ing). In the above case, it is the non-believers who carry the burden of offering an argument to not believe p (or Φ) that is decisive against the presumption. To employ a jurisprudential term, those who argue against

[14] Gottfried Wilhelm Leibniz to M. Jaquelot, November 20, 1702. See Leibniz (1887), p. 444. I owe this citation to Gaskins (1992), p. 1.

the presumption carry the risk of non-persuasion. If the presumption is strongly held, then the argument must be even more convincing. It is germane to our use of presumptions that they are not easily overturned. Leibniz clearly believes that there is no possible argument that proves God's non-existence. Hence the presumption holds: we are warranted to believe in God.

Leibniz's presumptive argument for God's existence may appear hasty. Perhaps it seems to involve some argumentative sleight-of-hand. Before I interrogate the shortcomings of presumptive arguments, notice how pervasive is the use of presumptions within various domains of practical argument.[15] Criminal and tort law, if not all of the law, are built on the deployment of presumptions. To begin, consider our legal default settings. The criminal law, at least in the Anglo-American tradition, is founded on the presumption of innocence until guilt is proven. Defendants in civil cases enjoy the default setting of non-liability. Second, through the use of presumptions, the law allocates burdens of proof. Plaintiffs in criminal or civil cases initially carry the risk of non-persuasion. They are required to meet the burden by proving their claim by a 'preponderance of evidence' or 'beyond reasonable doubt.' Litigation is a process whereby parties attempt to shift the burden of proof, at least until the set of accessible and relevant facts – that is, the evidence – has been exhausted in the consideration of judges and juries.

---

[15] Richard H. Gaskins's *Burdens of Proof in Modern Discourse* (1992) provides an illuminating discussion of the entrenchment and efficaciousness of presumptive arguments across many domains of enquiry.

Presumptions are also central to constitutional law.[16] It is an open question whether federal or state legislation (and, more precisely, which agencies or areas of legislation) will enjoy the presumption of consistency with the constitutional documents. Supreme Courts – the final legal interpreters of constitutions – adjust this presumption over time with profound impacts on public policy.[17] In short, the law employs presumptions in order to manage and overcome our ignorance of the set of all possible facts that are relevant to any legal question. This is necessary to impose decisions which are determinate, decisive and final. Presumptions are essential to the allocation of the assignation of guilt, liability, and constitutionality.

This common, if not obvious, observation about presumptions and the law is applicable in other areas of human reasoning. Moreover, it is helpful to employ the jurisprudential analogies of burden of proof and the risk of non-persuasion in order to clarify other areas of argument. We have already witnessed the use of presumptions in theology. Presumptions also play a role in moral and political philosophical argument.

A contemporary egalitarian debate is illustrative. Some egalitarian political philosophers argue that advantages or disadvantages that result from morally arbitrary causes – for example those that flow from the brute luck of our genetic endowments –

---

[16] In 1920s-1930s American legal discourse, there was a live debate about the 'presumption of constitutionality.' For the story of how this presumption was understood by the Supreme Court of the United States during the New Deal era and how this presumption shifted during the Warren Court (1953-1969) see Gaskins (1992), pp. 69-74.

[17] Gaskins (1992), chapters 2-3 provide an elucidating discussion of how the Warren Court in the United States adjusted constitutional presumptions (defaults and burdens of proof) by reinterpreting the constitutional principles of equal protection and due process with profound policy changes for the nation.

are *pro tanto* unfair and call for redistributive action. In short, people should not have what they do not morally deserve. This idea might be employed as a premise in a pattern of moral argument for equality of some currency or metric (*e.g.* resources, holdings, opportunities). However, as Robert Nozick and Susan Hurley have convincingly argued, no conclusions about distributive shares strictly follow from the fact that some advantages or disadvantages are morally arbitrary or undeserved, such as those that issue from our inherited endowments, genetic or otherwise.[18] From the fact that advantages are determined by morally arbitrary causes, nothing follows about how advantages ought to be allocated across persons – either equally, or if not equally, then in some other way that differs from the allocation by luck. Rather, as Nozick and Hurley argue, in order to view a fact about moral arbitrariness as contributive to an argument for equality, we must already *presume* that distributive shares should be equal. That is, we must already presume something like shares should be equal unless there is a weighty moral reason why they should be unequal, for example, desert or that the inequality would elevate the position of the least well off. We then point out that facts like a fortuitous genetic endowment do not supply reasons that would justify inequality. The point is that luck and the absence of responsibility are neither grounds for equality nor inequality. Rather, the belief in the value of equality is wielded as a presumption that suggests that differences in advantages that are due to luck – at least in some of its variants – are unfair or otherwise bad.

[18] Nozick (1974), pp. 216-224, 232-248; Hurley (2001); Arneson (2001); and Williams (1962)

As of now, the central philosophical question for egalitarians is not 'what is the currency of egalitarian justice, that is, the respect in which it is better if people are equal?' Nor is the central question one that focuses directly on luck and responsibility. The central egalitarian question is instead about the presumption of equality: why ought we to presume that an equal distribution of some currency across persons is valuable at all? Egalitarians must directly focus upon and defend their central presumption or default setting. Arguments at the root of a philosophical controversy are often arguments over presumptions.

In the law, presumptions often appear fixed. 'Innocent until proven guilty' seems patently irreversible. The point is doubly true if we recall the presumption *stare decisis*. Presumptions appear fixed because the law institutionalizes their use and employs them to allocate the burden of proof in ways that give a structure to court cases. However, presumptions do change. In legal argumentation, when presumptions shift, litigants begin to win cases which previously they could not have expected to win. In other domains of argument, because presumptions operate as our background default rules, shifts in presumptions often appear at first revolutionary and then with time as the normal, accustomed default.

Consider a likely reaction to Leibniz's above argument for the existence of God. Leibniz held that we are to presume God's existence and that it is this presumption which must be overturned. That is, believe in God unless you have a convincing proof not to. The debate over the demarcation criteria in the philosophy of science posits a different set of presumptions, which conflict with Leibniz's presumption. For example, in the history of the philosophy of science some philosophers have held that in order for any hypothesis about what exists to be presumptively credible the

hypothesis must be at least be empirically verifiable. Others argued that it is necessary that the hypothesis must falsifiable. Still others that the hypothesis be part of an ascending research programme or scientific paradigm governed by certain norms such as 'make efforts to test the hypothesis against empirical data' or 'take disconfirmations of the hypothesis very seriously.' These presumptions demarcate what is and is not science differently; however, they are all presumptions about the credibility of epistemic claims that do violence to Leibniz's argument. If we think Leibniz's argument is awry, then we most likely believe it is because he begins with an unwarranted presumption and not because we share in the belief with Ivan Karamazov that there is a satisfactory proof of God's non-existence or some equivalent thereof, for example, a departure of his concern for us. In short, for many, the presumption with which we are warranted to begin has shifted.

3.3.3. Given that presumptions shift, two questions are significant for the analysis of arguments which deploy them. First, what is the strength of a presumptive argument, that is, an argument which begins with a presumption as a premise? Also, given that presumptions shift, we should note that there is nothing necessarily suspect with arguments that are directly concerned to alter our presumptions. Some arguments are designed to shift the default settings of our practical reasoning and reallocate the burden of proof. There is, in principle, nothing dubious about such arguments. However, we should be inclined to ask when such arguments are successful. That is, when are changes in presumptions warranted?

To consider the strength of presumptive arguments we must attend to two things: the validity of the arguments and the warrant of the presumption. To consider

the validity of presumptive arguments, consider the following three presumptive argument schemas:

Presumptive argument schema A

1. Presumption: believe x unless proof for ~x [premise]
2. No current proof for ~x [premise]
3. .: believe x

Presumptive argument schema B

1. Presumption: believe x unless proof for ~x [premise]
2. If x, then y [premise]
3. No current proof for ~x [premise]
4. .: believe y

Presumptive argument schema C

1. Presumption: believe x unless proof for ~x [premise]
2. If z, then ~x [premise]
3. No grounds for z [premise]
4. .: believe x

Arguments A and B are valid, whereas C is not (the conclusion doesn't follow as there could be other available grounds for a proof of ~x). Leibniz's above theological argument is an instance of argument schema A. Presumptive arguments are likely to be more complex variants of A or B.

How strong are the conclusions that follow from presumptive arguments? Conclusions of arguments which include a presumption in the premise are no more warranted than the presumption itself. Given that presumptions shift, we should not understand such conclusions to be infallible. However, this is not necessarily a shortcoming of presumptive arguments. That a conclusion is defeasible does not mean that it is weak. If the presumption is very strongly held – and some presumptions *are* very strongly held – then that warrant will be transmitted to the conclusion, provided that the argument is valid.

There is another significant point about the conclusions of presumptive arguments. Presumptions are action-oriented. They supply warrants to act. That is their purpose as defaults. As presumptions are action-oriented, the conclusions that follow from presumptions are likewise action-oriented. This is an important point that distinguishes the employment of presumptions in practical reason from purely logical inference. As Harman pointed out, strictly speaking, a logically valid inference does not tell us what to believe or what to do.[19] Arguments that contain presumptions differ. Their conclusions do provide warrants to act.

Consider the second question about presumption shifts. Some presumptions are warranted. For example, in criminal court, the defendant is innocent until proven guilty beyond a reasonable doubt. We could conjure a presumption that conflicts with this presumption which is not warranted. For example, we could imagine the presumption that in criminal court, defendants are presumed guilty unless they could prove their innocence beyond a reasonable doubt. We clearly believe that the former presumption is warranted, whereas the latter is not. A shift from the former to the

[19] See footnote 12, above.

latter presumption would be unjustified. However, in other cases we are not as certain about the warrant of presumptions. Consider again the present uncertainty over the presumption of equality in arguments between egalitarians and their detractors. What would convince those that deny the presumptive value of equality to affirm the opposite? We might ask the general form of that question for any two sets of parties that differ over a presumption. That is, when is a presumption shift warranted?

To ask this question is to ask a very large and an overly general question about the logic (or dialectic, if you prefer) of theoretical change. In the face of this question, I will only offer a very small reply about what kind of grounds would *not* warrant a presumption shift. A presumption shift is unwarranted if the argument for the presumption involves what we might call the *problem of question-begging*. The problem of question-begging arises when the strongest arguments both for some presumption *p* and against *p* (in favour of a conflicting presumption *q*) are that the adoption or the rejection of *p* avoids the absurdities engendered by the endorsement of another presumption, *q*. When an argument over a presumption takes the form, 'Your presumption, *p*, engenders an absurdity, which would be avoided if we were to adopt my presumption, *q*' it is not a grounds for *q* if the advocate of presumption *p* can make the same kind of argument. Arguments for presumption shifts are not convincing when champions of conflicting presumptions both belief they can muster a *reductio ad absurdum* against their dispreferred presumption. In this context, a *reductio* would not present a solid case for a presumption shift. It would only evince disagreement without traction.

Apart from the problem of question-begging, arguments for changes in presumptions seem to be much like other arguments in moral and practical reasoning.

First, we check to see if the arguments for the presumption are valid. Then we check to see if both the presumption itself and the warrants in the arguments for the presumption are beliefs that we could hold in reflective equilibrium with the rest of our considered convictions, where a considered conviction is a judgment made under certain epistemically congenial conditions that we believe to be reliable. That is, when we employ a deliberative procedure with the intention to achieve reflective equilibrium, we first check to see whether or not the new presumptive principle would account for – that is, support or be supported by – some of our considered convictions. Then we check to see whether or not the presumptive principle would be inconsistent with other considered convictions which the principle does not account for. To the extent that a principle accounts for some of our considered convictions, and does not do violence to those it does not account for, then it is a principle that we could hold in reflective equilibrium. To that extent, it is justified. We may apply this method to the justification of presumptions just as we apply it to the justification of other normative principles. What other approach could we take? In practical philosophy, the method of reflective equilibrium is the only defensible method we have.[20]

[20] On reflective equilibrium, T.M. Scanlon says, 'this method, properly understood, is in fact the best way of making up one's mind about moral matters and about many other subjects. Indeed, it is the only defensible method: apparent alternatives are illusionary.' See Scanlon (2003), p. 149. For more on reflective equilibrium as a method of justification, see Rawls (1971), § 9; Rawls (1999b), p. 289; Daniels (1979); and McDermott (2009).

§ 3.4. The Presumption Against Authority

3.4.1. Authority requires a justification. Recall authority is a relation between the commands of one person and the practical reasons of another. It is a relation that holds between two agents. Absent any reason for this relation, we would disbelieve that it holds between ourselves and another person. For example, suppose I were to suggest that David Howell Evans[21] is an authority over you, that is, the commands of Evans constitute reasons for you to do what Evans says, simply because he commands, and if you did not, you would be wronging Evans. That is, when Evans commands 'meet Jones at Trafalgar Square at 10:15 sharp,' or 'buy Jones a sandwich,' or 'appropriate that van,' you have a reason to perform each of these actions simply because Evans commanded. This is implied when I suggest that Evans is a practical authority over you.

Without any further evidence, it is simply incredible that this relation holds between yourself and Evans. At confronting this suggestion, it is likely that you would not be in a state of ataraxia – that is, where you would neither affirm nor deny the proposition – with respect to Evans being an authority over you, but, more forcefully, you would deny that any such relation of practical authority holds between you and Evans. In short, there is no presumption for authority. This alone suggests that authority requires a justification. (The very fact that there is a literature of arguments that attempt to prove political obligation seems suggestive of the lack of a

[21] Guitarist for Irish rock band, U2. Also commonly known as 'The Edge.' Nickname thought to originate either with preference for walking on high precipices or the angularity of facial features, especially the nose.

presumption for authority). Moreover, as I will argue, there is a presumption *against* authority.[22] Your 'default setting' is to believe that Evans is manifestly not an authority over you. Hence, you require an argument to move you from the belief that Evans is not an authority over you.

The presumption against authority directs you to believe that some agent, A, is not an authority over you, unless you have a justification to believe otherwise. There are several grounds to think that this presumption is warranted. I will survey four such arguments. Republican freedom, autonomy, rationality and publicity are values which are either cherished in themselves or ingredient to moral action. Their requirements, which we ought to acknowledge as reasonable, are supportive of the presumption against authority. The presumption against authority stands in a kind of reflective equilibrium and these values. Not only is the presumption against authority consistent with these values, but also the endorsement of certain readings of autonomy and rationality as well as republican freedom and the publicity requirement implies a commitment to the presumption against authority. If you are committed to republican freedom, Rawlsian publicity, or autonomy or rationality on some of the interpretations below, then I believe you can be motivated to admit the presumption.

Even though the presumption against authority is supported by different corners in moral and political philosophy, I believe these disparate values reflect a single, root problem with authority, which is ultimately a problem with a very simple variant of voluntarism as an account of normativity. The problem is this: Absent further knowledge of a particular agent, those illocutionary actions which are his commands

[22] Mark C. Murphy formally notes his version of the presumption: 'If A and B are both rational beings, then in the absence of evidence to the contrary, we should disbelieve the claim that A is a practical authority over B.' Murphy (2002), p. 149.

cannot be taken, in and of themselves, as reasons to act. That claim ultimately grounds the presumption against authority. The above Evans-intuition-pump is meant to elicit an endorsement of this claim: absent further knowledge of a random agent, Evans, his commands are not reasons to act.

3.4.2. The presumption against authority may be seen within the value of freedom understood in the terms of a long-held conception in western political thought: the republican conception, which equates freedom with the absence of domination. One is dominated to the extent that he is in a relation where another might interfere with his life arbitrarily, even though interference may not actually occur. On the republican understanding, a person is free to the extent that he does not stand in such a relationship with others. Phillip Pettit, who has laboured to develop a defensible republican conception of freedom, defines it thus: a person or group enjoys freedom insofar as no other person or group has 'the capacity to interfere in their affairs on an arbitrary basis.'[23]

Republicanism as a theory of freedom must give an explanation of what is meant by interference and what is meant by arbitrariness. Hence, understanding the presumption against authority as an affirmation of republican freedom requires addressing at least two points of interpretation. First, how does an authority *interfere* with the lives of those subject to the authority? Second, how would such interference be *arbitrary*, absent the further justificatory statement entailed by the presumption? A person who has authority, A, has the capacity to impose duties on those over whom she has authority, B. The imposition of a duty on B is a kind of interference with B's

[23] Pettit (1999), p. 165; See also Pettit (1997)

life, even though the notion of interference employed differs from the Hobbesian sense of interference-as-restraint in the negative (Hobbesian) conception of freedom as non-interference. The command 'Let B Φ' affects B's life in at least two significant ways: first, B's normative position – her balance of rights and duties – is affected by the command. Having a moral obligation to Φ where there was none before is a kind of interference; the subject's life, her moral life, is different than it was before the command. Perhaps we may call this *normative interference*. Second, B's prudential calculus will be affected if she believes consequences will come as a result of committing or failing to commit Φ. Such consequences could be as minor as the self-awareness of having discharged or failed to discharge a duty sincerely held. Alternatively, the consequence could be as major as suffering a punishment invoked by others to ensure that some duties are discharged.

When an authority commands 'Let B Φ' there are two ways in which we may regard that command as arbitrary. The first is that B's Φ-ing might not track B's 'welfare or worldview.'[24] If Φ is an action that B now has a duty to execute given A's command, and Φ-ing does not add to B's welfare – say on either B's objectively or deliberatively understood interests or on his subjective preferences – then the command 'Let B Φ' is arbitrary. This understanding of arbitrariness, however, is not what the presumption against authority rebels against. Consider again the claim that David Howell Evans is an authority over me. My disbelief of that claim does not issue from the fact that Evans might command me to Φ where Φ-ing does not track my 'welfare or worldview.' Even if Evans never commanded me to Φ where Φ-ing was not in my best interest or in accord with my weightiest preferences (perhaps

[24] Pettit (1997), p. 56

Evans commands very rarely or perhaps he has been extensively spying on me), we could still find his command 'Let Jeremy Φ' arbitrary. This arbitrariness is represented in the failure to adequately address the question, *why Evans*? A's command 'Let B Φ' could be arbitrary in a second way: A's command 'Let B Φ' is arbitrary when there is no obvious reason to believe that A's commands constitute obligations for B.

Under some weak assumptions about what constitutes interference and arbitrariness, the presumption against authority represents a preference for freedom under the republican understanding of that concept. The republican conception holds that we are free to the extent that we are not in a relation where another may arbitrarily interfere with our lives. The objection originates in a belief that freedom as non-domination is something to cherish. The presumption against authority finds that the commands of authority constitute a kind of *interference* and that the belief that some randomly chosen person, say David Evans, is an authority over another is *arbitrary* and is thus objectionable absent further justification. If one is committed to the value of republican freedom, then her commitment can be motivated to support the presumption against authority.

3.4.3. Authority has also seemed to be at odds with autonomy and rationality.[25] The conflicts between authority and these ideals of practical reasoning are normally

[25] Wolff (1970) believes that the primary conflict between autonomy and authority indicted the reasonableness of authority. Joseph Raz and Leslie Green understand the appearance of the conflict as one between authority and rationality. See Green (1988), pp. 23-26 and Raz (1979a), p. 3.

couched in terms of a 'paradox of authority.'[26] This formulation suggests than one of our ideals of moral or practical reasoning may conflict with the requirements of authority. References to the 'paradox of authority' imply that what authority requires is necessarily in conflict with what is required by other ideals of practical rationality. If they are genuine, then the conflicts between robust authority and these standards of practical reasoning support the presumption against authority.

In what follows, I will consider several formulations of what seems to be the root conflict between robust authority and the requirements of practical reasoning. Some formulations couch the conflict as one between authority and autonomy, others as between authority and rationality. Nevertheless, when the formulation of the conflict is coherent (some are not) the same root problem is being described, even if it is referred to under different headings. The singular, root problem is located with the requirement of content-independence. Content-independence, as it pertains to practical authority, requires that when a practical authority commands, the illocutionary act of the command itself *is* the reason for the commanded subject to perform the commanded action. However, we may wonder whether the illocutionary act of a command stands, in and of itself, as a reason that obligates another to execute content of the command? Can the *command* – that is, the illocutionary act of the command and not the content of the command – of another be a reason that obligates? The answer depends on what *makes* a consideration a reason and how it is that a certain consideration counts in favour of a certain action. In short, it depends on account of the normativity of reasons.

---

[26] Green (1988), pp. 23-26; Raz (1979a), p. 3; Hurd (1999), p. 69. A lengthy discussion of the 'paradoxes' of authority can be found at Shapiro (2002).

Voluntarism is the broad account of normativity that identifies the commands of others as reasons that obligate us to act in certain ways. Christine Korsgaard calls voluntarism the view that an 'obligation derives from the command of someone who has legitimate authority over the moral agent and so can make laws for her.'[27] Voluntarism identifies the source of the normativity of reasons with the *will* of another. There are two problems internal to voluntarism as an account of normativity – namely, *who* has the normative power to obligate others by command and *why* do they have it? We might refer to the former as the *scope* of voluntarism and the latter as the *grounds* of voluntarism. Different species of voluntarism respond differently to those queries. Theological voluntarism has announced God as the obvious candidate for *who* has the normative power to obligate by command. Why he has this power is presumably grounded in some aspect of divine nature.[28] Hobbes, departing from theological voluntarism (but not too far as Hobbes also holds, or at least genuflects toward, a theological voluntarist argument[29]), answered the former query with the purely artificial person that is the state. In (2.4.4), I gave an account of why Hobbes thinks that voluntarism is true of the state.

Call *simple voluntarism* the view that answers the first question – *who* has the normative power to obligate others by command – with 'any person' and is silent with

---

[27] Korsgaard (1996), p. 18

[28] However, *cf.* Murphy (2002).

[29] Recall the famous Hobbesian line at the end of his discussion of the laws of nature, 'These dictates of Reason, men use to call by the name of Lawes, but improperly: for they are but Conclusions, or Theoremes concerning what conduceth to the conservation and defence of themselves; wheras Law, properly is the word of him, that by right hath command over others. But yet if we consider the same Theorems, as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes.' Hobbes (1991 [1651]), p. 111

respect to the second concern as to *why* they have this power. As an account of the normativity of reasons, simple voluntarism will not do. Unless we have defensible responses to both questions internal to voluntarism we will see the position as unfounded. The silence with respect to those questions prompts suspicion. For example, when it is proposed that Evans is an authority over us we are led to enquire, '*why Evans*?' More precisely, we are led to pose two questions that are at the heart of voluntarism: First, why do his *commands* obligate us? Second, why do *his* commands obligate us?

Philosophical anarchism is political philosophy's expression of uneasiness with simple voluntarism. The philosophical anarchist doubts that the commands of another can obligate us. Further, she holds that, absent any justification to the contrary, it is erroneous to believe that the commands of another obligate us. In short, philosophical anarchism begins with the claim that simple voluntarism is unfounded. Philosophical anarchism has produced various arguments that may be deployed to cast doubt on the simple voluntarist claim that the commands of any other are reasons that obligate us. They have been couched as arguments against authority and not as against voluntarism, which is a more academic term; however, irrespective of labels, the arguments are the same. Let's turn to them.

Robert Paul Wolff produced the initial, autonomy-based philosophical anarchist volley against authority. His initial description of the conflict between authority and autonomy is as follows:

> *Argument A.* For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is autonomous if he acts on what he believes to be the decisive reason that applies to him. [premise]

(2) Authority requires B to act because A commands 'Let B Φ' [premise]

(3) Authority requires B to act non-autonomously.

(4) There is a necessary conflict between autonomy and authority.

Roughly, this is Wolff's main argument against authority.[30] It is also William Godwin's.[31] The second premise is the content-independence requirement at the root of the concept of practical authority. Wolff believes that the first premise is bound up in the posit of the freedom of the will and the idea that 'men are responsible for their actions.' Wolff follows the Kantian view that persons are autonomous when they submit to the rules that they themselves have crafted. The soundness of the first premise is beyond my present scope; however, I note that the argument presented differs somewhat from Wolff's actual argument. In the text, Wolff 'moralizes' the conflict by describing it in a deontological register. He holds that we have a *duty* to

[30] Wolff (1970), pp. 1-19.

[31] Godwin is widely regarded as the 'first significant exponent' if not the 'founder of philosophical anarchism.' In his *Enquiry Concerning Political Judgment* supreme importance is placed upon the principle of private judgment – namely, that 'each person acts morally only in so far as each acts wholly on the dictates of his or her private judgment.' Philp (2009). That principle, analogous to Wolff's understanding of autonomy, motivates a similar position with respect to the reason-giving force of authoritative directives. For statements of Godwin's philosophical anarchism, see Clark (1977), Philp (2009), and, of course, Godwin (1971 [1798]), pp. 112-125. For a critical notice of the analogy between Godwin's and Wolff's anarchist positions, see Harrison (2007), p. 169.

be autonomous and that authority posits a *duty* to Φ because A commanded.[32] These two duties are in conflict whenever a purported authority issues a command and subjects obey. Wolff holds that the value of autonomy not only trumps authority every time, but also compromises the view that authority actually creates duties for subjects to obey.

The moralized and non-moralized versions of Wolff's argument do not hold water. In *Argument A*, (3) does not follow. It is open to B to act just for the very reason that A commanded. Perhaps B correctly conceives of A as an authority over him. On Wolff's account of the ideal, it is possible for B to preserve his autonomy while strictly obeying A. In short, the argument could have just as well-run:

Argument B. For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is autonomous if he acts on what he believes to be the decisive reason that applies to him. [premise]
(2) Authority requires B to act because A commands 'Let B Φ' [premise]
(3) B believes that A's command 'Let B Φ' is a decisive reason that applies to him.
(4) B acts because of A's command 'Let B Φ.'
(5) B acts autonomously.

[32] 'Moralizes' is Green's term. See Green (1988), p. 25. For a convincing argument that we do not have a duty to always act for (what we believe to be) an undefeated reason – whether we call that ideal rationality or autonomy – see Gardner and Macklem (2002), p. 468.

(6) There is no necessary conflict between autonomy and authority.

It could be the case that B believes A's command 'Let B Φ' is a decisive reason that applies to him (3), because B, in full awareness of his action, promised A that he would commit whatever act (subject to proper constraints) that A commands. If Φ-ing falls within the bounds of what A may command B to do, then B could believe that A's command is a decisive reason for him and act for that reason. On Wolff's understanding of autonomy, B could autonomously fulfill the requirements of authority. In sum, the possibility of promising blocks the necessity of a conflict between authority and autonomy.[33] The consensus is that the possibility that an obligation to *obey* (in the strict sense) could be incurred through the voluntary act of promising or express consent is the bollard to Wolff's argument.[34] Wolff even concedes as much.[35]

The conception of autonomy that Wolff presents ((1), above) does motivate a presumption against authority. But the presumption is rather weak and may be

[33] But not only promising. There are many reasons that could explain (3), 'B believes that A's command 'Let B Φ' is a decisive reason that applies to him.' For one, perhaps B *believes* that A is an authority because A satisfies a Razian normal justification thesis, or perhaps B *believes* that A is an authority because A bears a strong resemblance to the description of the messiah in some religious text. What allows the Wolffian argument to be easily overturned is that autonomy is recorded as the requirement to perform the acts that one *believes* is supported by a decisive reason (even though those acts may, of course, not be supported by the decisive reason).

[34] See Frankfurt (1973); Simmons (2001), pp. 110-112; and Green (1988), pp. 32-36.

[35] Wolff concedes that 'a contractual democracy is legitimate [meaning when some group says 'Let citizens Φ', the citizens have an obligation to Φ because that group commanded], to be sure, for it is founded upon the citizens' promise to obey its commands. Indeed, any state is legitimate which is founded upon such a promise.' Wolff (1970), p. 69.

overturned by justifications for why B might believe that A's commands constitute reasons for him. Hence, we cannot take the argument Wolff presents as supportive of the presumption against authority that is required by philosophical anarchism.

However, there is another 'paradox of authority' that employs a different understanding of autonomy to motivate the conflict. This conflict could lead to a stronger presumption. Consider Scott Shapiro's autonomy/authority paradox, couched in the following argument.[36]

Argument C. For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is autonomous if B never performs an act for a content-independent reason. [premise]
(2) Authority requires B to act because A commands 'Let B Φ' [premise]
(3) Authority requires B to act non-autonomously. [(1),(2)]
(4) There is a necessary conflict between autonomy and authority.

As in the above argument, the second premise indicates the requirement at root in the conception of practical authority; however, the first premise, the characterization of autonomy, has been tightened. This premise raises a higher bar for an agent to act autonomously. It is not just required for one to act for what one believes to be the decisive reason; moreover, autonomy requires that a moral agent

[36] Shapiro (2002), pp. 389-391

never take 'because A said so' as a reason that applies to her. Following Shapiro, 'To say that everyone should act in a morally autonomous manner is to make a claim about the *space of reasons*. Autonomous agents are those who recognize that the only reasons that exist are either content-independent or non-peremptory ones.'[37] Autonomous agents are autonomous not when they act on what they believe to be the decisive reason, but rather when they know that 'content-independent reasons' are never decisive because they are not really reasons, and hence, never act because of such non-reasons. To refrain from acting for 'content-independent reasons' is to take greater responsibility for one's actions; it precludes the justificatory significance of the excuse, 'I was only following orders.'

Shapiro attempts to present a more solid portrayal of Wolff's main argument that is immune to the common objections. The argument does run; however, it seems that this is only because the autonomy premise has been conceived specifically to conflict with authority. The Shapiro understanding is that only when one correctly believes that a reason is a real content-dependent reason and acts for that reason, then she acts autonomously; however, we might enquire: 'Is that what we really understand by autonomy?' If so, then premise (1) is not merely contrived and the conflict between the requirements of authority and autonomy will give a reason for the presumption against authority.

3.4.4. Shapiro's description of the autonomy/authority conflict is near to other common attempts to locate the 'paradox of authority.' A common way to unpack the

[37] *Ibid*., p. 390

'paradox of authority' is to compare the requirements of authority and rationality and to point out the paradox that ensues. Often that paradox is formulated as follows.[38]

Argument D. For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is rational if he acts for the decisive reason that applies to him.

(2) For any command of the form, 'Let B Φ' issued by A, either:

(2a) B already has a decisive, content-dependent reason to Φ.

(2b) B already has a decisive, content-dependent reason to ψ, where ψ and Φ are different actions.

(3) If (2a), then,

(3a) B ought to Φ.

If (2b), then,

(3b) B ought not Φ.

This argument is meant to show that if B aims to act rationally, then B cannot ever strictly obey authority. On the one hand, if (2a), then B ought to Φ, but not because A commanded. Rather he should Φ because he already has a decisive reason to Φ, and if he is rational, he will Φ. On the other hand, if (2b), then B ought not to Φ, because again, if he is rational, then he will aim to act for the decisive reason. Since the decisive reason does not support Φ he will not perform the act. Authority's

[38] For formulations of the conflict between *rationality* and authority, see Shapiro (2002), p. 391; Hurd (1999), p. 69; Green (1988), pp. 25-26; Raz (1979a), p. 3.

commands are in conflict with rationality either because they present an incorrect reason to do an all-things-considered correct action (given that the norm of rationality requires that we act for reasons that are decisive) or because they require the all-things-considered incorrect action. In short, authority's requirements are either trivial or wrong. Either they require an action that is not favoured by the weightiest reason or they require that we commit the action that is favoured by the weightiest reason, but not for that reason. Thus, it is irrational to believe that authority can offer a decisive reason to perform any act. If it is a basic tenet of rationality that we perform those actions for which we have decisive reasons, then authority conflicts with rationality. This is a common way to frame the conflict between authority and rationality, and we will return to it. Consider another argument that attempts to indict authority on the grounds of irrationality.

Argument E. For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is rational if he acts for the decisive reason in the balance of first-order reasons. [premise]
(2) A's command 'Let B Φ' is not a first-order reason. [premise]
(3) If B acted because A commands 'Let B Φ', he would be acting irrationally. [(1),(2)]
(4) Authority requires B to act because A commands 'Let B Φ.' [premise]
(5) There is a necessary conflict between authority and rationality. [(3),(4)]

Argument E is the argument that Raz attributes to the anarchist.[39] He argues that the conclusions do not follow because the argument is premised on a false account of reasons and of rationality. Specifically, Raz has problems with premise (1). Against (1), Raz holds that an agent is rational not if he acts for the decisive first-order reason in the space of reasons, but rather if he acts for an undefeated reason. A reason is undefeated if it is neither outweighed in the balance of reasons or if it is not pre-empted by what Raz calls an exclusionary reason. An exclusionary reason is, again, a reason not to act on the basis of other reasons. If we amend premise (1) to take on board the Razian approach to reasons, then the following argument results:

Argument F. For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is rational if he acts for an undefeated reason. [premise]

(2) A's command 'Let B Φ' is not a first-order reason. [premise]

(3) If B acted because A commands 'Let B Φ', he would be acting irrationally. [(1),(2)]

(4) Authority requires B to act because A commands 'Let B Φ.' [premise]

(5) There is a necessary conflict between authority and rationality. [(3),(4)]

On Raz's view, *Argument F* is also flawed, but not because the first two premises are unsound. A Razian approach to reasons might tempt us to hold that A's command 'Let B Φ' is not a first-order reason; rather, it is a 'second-order'

[39] Raz (1979)

exclusionary reason. (A second-order reason is just a reason to act or refrain from acting on certain reasons.) A's commands exclude the reason-giving force of other considerations within B's purview. Rather, the argument does not run because the suppressed premise upon which it relies is false. The suppressed premise is that all undefeated reasons are also first-order reasons; but, the suppressed premise is false. Exclusionary reasons can also be undefeated. As such, one can rationally act for an exclusionary reason. Hence, neither (3) nor (5) follow.

Is that correct? Can one *act* for an exclusionary reason? Raz's work elucidates the structure of practical reasoning, and that clarification might be thought to dispel the conflict that incites the anarchist's anxiety. However, solution does not quiet a possible charge of irrationalism. There is a conflict between authority and rationality that seems to persist despite Raz's work. We might admit that the commands of authority are exclusionary – that they serve to exclude other considerations as reasons for action. Yet, as I argued above in (1.4.2.) the commands of authority are *not only* exclusionary. They are also *positively* practical. Call a *positively practical* reason a reason to act where the action is not the act of forbearance. The commands of authority purport to constitute a positive reason to act and not only a reason not to act for other reasons. Even though the commands of authority might also be second-order, exclusionary reasons, they nevertheless purport to be first-order (positive) reasons. A focus on authoritative commands as exclusionary reasons does not confront the main charge of irrationalism, which is presented in the following argument:

Argument G. For two agents, A, who is a purported practical authority and B, who is a purported subject to A's practical authority:

(1) B is irrational if he acts for a consideration which is not a reason to act. [premise]
(2) A's command 'Let B Φ' is not itself a reason to act. [premise]
(3) If B acted because A commands 'Let B Φ', he would be acting irrationally. [(1),(2)]
(4) Authority requires B to act because A commands 'Let B Φ.' [premise]
(5) There is a necessary conflict between authority and rationality. [(3),(4)]

The argument is straightforwardly valid. Are the premises sound? Premise (4) is, again, what is at root in the conception of practical authority. Premise (1) is an uncontroversial statement of irrationality, according to which it is irrational to act on the basis of considerations that are not, in fact, reasons. The conclusion seems to hang on the soundness of premise (2). That makes this argument akin to other arguments above.

Arguments C, D, and *G* are propelled by the same motor – namely, the problem of taking the illocutionary act of a command as itself a reason to act. In *Argument C* that problem is couched as a violation of autonomy; autonomy is defined – albeit in a seemingly contrived way – as the aim to not act for content-independent considerations, of which commands are a perfect model. In *Arguments D* and *G* the problem surfaces as a straightforward violation of rationality; those arguments are buoyed by the premise that commands cannot be reasons. The arguments maintain

that we cannot act for the consideration of commands and also retain a commitment to autonomy or to rationality. The commitment to autonomy and rationality require that we act for reasons, and, absent a further knowledge, we will not consider the fact that an agent has commanded to be a reason.

Shapiro, however, maintains that the autonomy paradox and the rationality paradox are different critiques.[40] For him, the autonomy paradox attacks the content-independent nature of authority's directives. The rationality paradox, by contrast, 'attempts to show the impossibility of having an undefeated reason to obey authority and, hence, the irrationality of believing that one has such a reason.'[41] Shapiro believes the critiques from rationality differ substantively from the critique that autonomy conflicts with authority.[42] I do not.

The rationality critique relies on the same idea that motivates the autonomy critique: that the illocutionary act of the command, which is a content-independent consideration, cannot be a reason, and thus cannot be a decisive reason. If it were a reason, then the status of being a non-reason obviously would not prevent it from

---

[40] Shapiro (2002), p. 392

[41] *Ibid*.

[42] To continue his distinction, Shapiro notes, 'To be rational is to aim to act on undefeated reasons and to act in accordance with that aim. To be autonomous, by contrast, is to aim to act on non-CIP reasons and to act in accordance with that aim. It does not follow, therefore, that a rational agent is an autonomous agent. If an agent believes that he has an undefeated CIP [content-independent peremptory] reason for action, then he will be acting rationally but not autonomously if he acts for this reason. Conversely, autonomous agents are not necessarily rational. If an agent acts on a content-dependent reason that, by his own lights, is defeated, then he will be acting autonomously but irrationally.' *Ibid*.

Shapiro's distinction here only holds water because he makes rationality a response to beliefs about reasons instead about reasons themselves (as facts). For a convincing argument that rationality is responsive to reasons understood as facts (and not beliefs), see Gardner and Macklem (2002), pp. 442-447.

being a decisive or undefeated reason. Consider again *Argument D*. If a command were a reason, then in the case of (2b), (3b) would not necessarily follow. More lengthily, *if* A commands 'Let B Φ,' *if* B does not already have a decisive, content-dependent reason to Φ, and *if* the content-independent 'because A commanded' is, or might be, a reason, then it *does not follow* that B necessarily acts irrationally if B Φs. Again, perhaps B correctly believes the command itself to be a genuine reason, and perhaps B even correctly believes that, upon receipt of the command, it is a decisive reason. In that case, his Φ-ing because A commanded would be consistent with his aim to act for the decisive reason that applies to him; hence, there would not be necessary conflict between rationality and authority. There is a necessary conflict between rationality and authority if and only if we already assume that the content-independent command, 'Let B Φ' cannot be a reason for B. The argument for rationality paradox of Shapiro and others does not establish that claim; rather, the argument must *assume* it. To clarify philosophical anarchism requires that we say something further about the warrant of that assumption.

3.4.5. Before we do so, consider Chaim Gans' take on philosophical anarchism.[43] Gans does not think that the above considerations of rationality or autonomy support the presumption against authority. He labels the above arguments for that presumption as 'autonomy-based' arguments. In the first part of *Philosophical Anarchism and Political Disobedience*, Gans seeks to debunk such autonomy-based arguments. He thinks there are two main strategies for doing so. The first strategy is to suggest the

[43] Gans (1992), pp. 5-41

preservation of the subject's autonomy in some justified authority relations. Suppose, that an agent, B, not only autonomously endorses A's authority over, but also endorses A's authority for a reason that she regards as 'unchallengeable.' Gans suggests that, in this case, when B endorses A's authority, this endorsement 'logically entails' that B never has a consideration that is decisive against A's commanding 'Let B Φ' as a reason to Φ.[44] But we might think that this doesn't logically follow. It would follow if A was morally infallible in her commands with respect to B, that is, if A's commands perfectly corresponded with those actions that B otherwise always has the most reason to commit. However, for purported practical authorities short of God, practical authorities are not morally infallible. It might be the case that for some 'Let B Φ', B might actually have a decisive reason to not-Φ, *even though* B, in the past, autonomously endorsed A's authority. Luckily for Gans, he only suggests this argument; it is not one to which he commits.

Rather Gans deploys a second strategy. He seeks to refute what he calls a conceptual thesis of the duty to obey the law, 'according to which an acknowledgement of the duty to obey, by virtue of its very meaning, involves refraining from actions motivated by considerations which follow from the law's

[44] 'The normative position that views this duty [to obey the authority] as grounded on incontestable values, logically entails that it will outweigh other moral considerations in any instance involving it. Consider the case of a person who sees the duty to obey as justified on the basis of society's security…and deems these values which no other can possibly override. Such a person is not relinquishing moral autonomy when he or she acknowledges this duty as a surrender of possible action arising from judgments of the law's contents. According to her or his normative position no value can every override those of society's security and order, and as he or she sees the duty to obey the law as serving these values, a law's contents can never generate considerations that supersede them, given a situation to which the law applies.' Gans (1992), p. 12.

contents.'[45] Gans assumes the Razian view of authority where the commands of a *de jure* authority 'exclude' all other reasons from an agent's deliberation. Gans also assumes that 'autonomy-based anarchism' is, at bottom, an attack on this Razian 'pre-emption (or exclusionary) thesis.' He then presents a deflationary argument against such anarchism. In short, he argues that since neither the authority of the law, nor the duty to obey it, actually commits to the pre-emption thesis, the anarchist objection that there is, strictly speaking, no duty to obey is confused. Gans seems to think that Raz gets it wrong about the character of the law's authority, and as such, the anarchist whose project is primarily to refute Raz is also misguided. With this Gans believes he deflates 'autonomy-based anarchism' before he argues against what he understands as another variant of philosophical anarchism.[46]

Gans' basic argument against autonomy-based (philosophical) anarchism misfires. The objections from autonomy and rationality are not objections against the Razian pre-emption thesis as Gans seems to think. Rather, as I just argued, this set of complaints is lodged against the content-independence of the reasons of authority and the notion of a duty to obey, in a content-independent fashion, the commands of authority. Moreover, the notion of a pre-emptive reason (or an exclusionary reason) is distinct from the notion of a content-independent reason. Gans argues that a legal authority does not require that we refrain from acting for any other reason than 'because A commanded "Let them Φ."' Hence, his claim is that legal authority does

[45] *Ibid*., 13

[46] See Gans' arguments against 'critical anarchism,' (*Ibid*. p. 42-89), but *cf*. Simmons (2001), pp. 113-117.

not require total pre-emption or exclusion. He takes this to be an argument against the 'autonomy-based' considerations presented above.

The anarchist may willingly admit that legal authority does not require total pre-emption or exclusion. However, authority does seem to require the following: 'no matter what your other reasons might be to perform the action, Φ, you do have one clear, simple, distinct reason, and that is because we command you to Φ.' Authority may not entail the pre-emptive thesis; nevertheless, it implies content-independence, and this is the root of the objection from 'autonomy-based anarchism.' As such, Gans' arguments are directed at the wrong target. Hence, he doesn't undo the support the conflicts between authority and autonomy or authority and rationality render to the presumption against authority.

3.4.6. At bottom, what is central to the presumption against authority is its focus on the requirement that we act for a consideration that is content-independent – namely, to act because another has executed the specific illocutionary action of command. However, the presumption against authority draws its weight from the assumption that commands, in and of themselves, cannot be reasons. This assumption motivates the so-called paradoxes of authority. The deeper thought that lies behind the assumption concerns the nature of reasons. The thought is that simple voluntarism is a false account of the normativity of reasons. It does not count in favour of committing a certain action that some *other person* has commanded it.

The philosophical anarchist must believe this, and he must believe it because he endorses some other account of the normativity of reasons. Consider two alternative accounts. First, is an account that focuses on autonomy. It only counts in favour of a

certain action that a person can command *himself*, upon some sustained method of reflection, to perform the action. This is the Kantian approach. Commands can only be reasons if they are self-commands, given by, say, our 'thinking self,' taken after sustained reflection, to our 'acting self.' As Korsgaard says, 'The thinking self has the power to command the acting self, and it is only its command that can make action obligatory.'[47] A philosophical anarchist –*e.g.* Robert Paul Wolff – can adopt this approach to the normativity of reasons and hence reject (simple) voluntarism and adopt the presumption against authority. Another account of normativity endorses realism about reasons. A consideration only counts in favour of a certain action if that consideration *really is a reason* for that action. Reasons really are also part of the real world.[48] A philosophical anarchist might adopt this approach and contend that the speech utterances *of others* do not seem to be reasons to perform actions. Rather, they only seem to communicate or signal reasons. For we may always enquire into the further, content-dependent reason for the directive. A philosophical anarchist can adopt the realist view, maintain that we are only rational when we act for those reasons that *really* obtain, hold that commands, in and of themselves, do not seem to be reasons – that is, not at least until the questions of scope and grounds internal to voluntarism are answered – and, hence, adopt the presumption against authority.

In sum, one might arrive at the presumption against authority because one endorses an account of the normativity of reasons that differs from simple voluntarism. The above conflicts between authority and autonomy or authority and

---

[47] Korsgaard (1996), p. 165

[48] This, for example, is the view of Nagel and Larmore, among other moral realists. See Nagel (1986), p. 157; Larmore (2008), p. 112-122

rationality are but different manifestations of a deeper conflict on the source of the normativity of reasons – that is, on what *makes* some consideration a reason for acting. They are manifestations of a deeper suspicion of simple voluntarism. That suspicion – a suspicion about the correct account of the normativity of reasons – is one that explains the presumption that commands, in and of themselves, are not reasons.

3.4.7. Let's leave the 'paradoxes of authority' and look to a very different concern from which the presumption against authority gains support. In § 23 of *A Theory of Justice*, John Rawls describes five 'formal constraints on the concept of right.'[49] Rawls attempts to stipulate some generally applicable features about what would have to predicate any normative principle that we would elect as one to regulate our actions. In short, there are some general features about what makes a rule morally correct. One of those features is publicity: in order for a rule to be one that ought to regulate our behaviour, then it is a rule that everyone could endorse and agree upon when they are all informed by the morally significant facts. There is a condition of epistemic transparency which must be satisfied by the correct the moral rules that govern our actions and, *a fortiori* (for Kantians), it must be satisfied by our moral reasoning.

The content-independent reasons of authority damage the publicity condition. The rule, 'Φ when A commands to Φ because A commands,' is neither a principle which is epistemically transparent nor does it generate reasons which are epistemically transparent. To the contrary, 'because A commanded' is a reason that

[49] Rawls (1971), pp. 130-136, especially p. 133

blocks public deliberation about what actions to commit. In fact, it is *meant* to stop, 'pre-empt,' or 'exclude' the give and take of reasons, the publicity of which on a contractual moral theory endows the elected reason with its normative (ought-giving) force. The publicity requirement obviously presents a worry for the exclusionary character of authoritative commands. Perhaps it also presents a problem for their content-independent character. Perhaps the root problem with content-independent reasons, and hence the reasonableness of the presumption against authority, is its obvious conflict with the publicity condition that requires correct moral rules and reasons to be those that could be elected in a epistemically transparent, public forum. 'Because A said so' is not a good reason, especially if we know nothing further about A.[50] Perhaps it is not a reason at all. In fact, the suspicion is that it is not a reason at all. What makes a moral reason is that it is a consideration for action which could be publicly endorsed given a complete body of relevant, morally significant information. 'Because A said so' is a response that either refuses to offer further reasons to the public forum or refuses that publicity is a criterion of what makes a rule or reason normative.

The presumption against authority is supported from different corners in contemporary moral and political thought. If one is committed to republican freedom, the Rawlsian publicity requirement, or the values of autonomy and rationality on one of the above descriptions, then one is committed to the presumption against authority. I have attempted to demonstrate how this presumption exists in reflective equilibrium with more common, considered positions within political philosophy. However, the

[50] That is unless 'because A said so' is taken to stand in for our morally decisive reason to Φ because A is morally infallible or, at least, in fallible with respect to Φ. But, then we have moved beyond presumption.

reflective equilibrium method of justification can at times appear as justification by redescription. If you find this an unsatisfactory method of justification for the presumption against authority, then consider how you fare with the Evans-intuition-pump, which is meant to directly elicit beliefs that support the presumption. I believe both attempts motivate the presumption against authority, which, as we shall see, is the backbone of philosophical anarchism.

§ 3.5. A Unified Philosophical Anarchism

3.5.1. Now that the presumption against authority is in place, how does it fit into the philosophical anarchist argument? Let's consider more closely what that argument is. In his work on philosophical anarchism, Simmons draws a distinction between two kinds of anarchist arguments: what he calls '*a priori*' and '*a posteriori*' anarchism.[51] He attributes the *a priori* position to Wolff, while taking up the flag of the *a posteriori* anarchist. The difference is best seen by the broad arguments that canvass each position. Simmons – along with other *a posteriori* anarchists – endorse the following argument. Call it the *Conditional Argument*:

(1) There are some conditions that, if satisfied, would not justify the authority of the state over persons, and there are some conditions that, if satisfied, would.

[51] Simmons (2001), pp. 104-113. This distinction is one common to literature on authority. See also Christiano (2009).

(2) Upon inspection, those conditions that would justify the authority of the state over persons have not been satisfied.

(3) Therefore, the state does not have authority over persons.

In the broadest outline, this is Simmons' position on state authority. This very broad argument summarizes the philosophical anarchist conclusion to the 'duty to obey the law' questions. In the contemporary literature, the question of state authority has often been transposed into the question of a duty to obey the law (where duty is understood to be, at the least, content-independent). The search is for a condition or set of conditions, that if fulfilled, would justify such a duty to obey. The literature contains a slate of posited conditions, both voluntarist and involuntarist (*e.g.*, fair-play, the natural duty to obey, consent, instrumentalist accounts, gratitude, and samaritanism).[52]

The *a posteriori* position unfolds by considering and rejecting each of the variety of local arguments for the conditions that, if fulfilled by citizens, would trigger a duty to obey the law. Simmons and other *a posteriori* philosophical anarchists argue that *either* these conditions would not, even if satisfied, justify the duty to obey *or* that they would justify such a duty, but, for most citizens, such conditions are simply unsatisfied. Thus, there is a two-pronged test that the *a posteriori* anarchist believes must be met by any condition for it to trigger a duty to obey the law and thus serve as a grounds for the state's authority. That test has two criteria:

[52] See Simmons (1979), Green (2009). Edmundson (2004) provides an excellent overview of the current 'state of the art' of the justifications for the duty to obey the law.

(1) *Justification criterion*. The condition, if met, must be one that actually generates the duty to obey the law.

(2) *Fulfillment criterion*. The condition must be satisfied by the actions of those who will then incur the duty to obey the law.[53]

So, for instance, reasons of fair play, utilitarian reasons, or instrumental reasons are not thought to meet the justification criterion. Consent is thought to meet the justification criterion but not the fulfillment criterion, or at least not in a way that supports the *general* duty to obey the law entailed by the state's image of possessing practical authority.[54] *A posteriori* anarchists believe that of all the reasons posited to justify the duty to obey the law, none of them satisfy both criteria. Even though there are significant objections, this philosophical anarchist conclusion is the current 'reigning view' with respect to the duty to obey.[55] In a nutshell, this is the 'duty to obey the law' debate.

---

[53] Or if not by actions of those who will then incur the duty to obey the law, the condition must be satisfied in a way that is appropriate to it. For example, the Razian normal justification thesis could be satisfied, but it is not satisfied by the actions of those who then incur the duty to obey. Rather, this condition is satisfied in ways appropriate to it – viz., greater competence in some epistemic domain. For Raz's conception of authority, see section (5.2.3) of the present thesis. I thank John Gardner for discussion on this point.

[54] Simmons (1993), pp. 197-269 provides a strong presentation for the view that consent is a condition that does not meet the fulfillment criterion.

[55] Murphy (2007), p. 95; Edmundson (2004), p. 253

3.5.2. Above we considered Wolff's opposition to authority. He endorses an argument with respect to authority that does not easily transpose into the 'duty to obey the law' debate. Wolff is thought to hold that there is something conceptually incoherent about the state's possession of authority; hence, states cannot have it. Simmons and others attribute the following argument to Wolff. Let's call it the *Unconditional Argument*:

(1) No agent or group of agents *could* have authority over another agent.

(2) The state *cannot* have authority over citizens. [by (1)]

(3) Therefore, the state does not have authority over citizens.

This is a caricature of an argument, but is a caricature that has been attributed, perhaps not unfairly, to Wolff.[56] The usual objection is targeted against premise (1) – it is normally held that an agent, A, in fact, *could* have authority over an agent, B, if B had, for example, consented to obey A's commands. Hence, there are some conditions that, if satisfied, would justify authority.[57] The Wolffian *a priori* position falters; the only possible road to philosophical anarchism is the one taken by Simmons and others, who, after a survey of all the would-be local arguments for the

[56] Simmons (2001), 104-112; Green (1988), pp. 31-32

[57] Wolff could resist this by deploying the following argument: (1) One cannot give binding consent to perform an act that is gravely immoral. (2) To impair one's autonomy would be gravely immoral. (3) To give binding consent to someone so as to create a relation of practical authority between their commands and your obligations would impair your autonomy. Therefore, (4), one cannot give binding consent in order to create a relation of practical authority. Wolff, although he 'moralizes' the problem of authority and autonomy, does not lean too heavily upon this argument. In fact, I doubt that this is his considered argument. See footnote 35 above. I thank William Edmundson for discussion on this point.

duty to obey the law, conclude that the state does not have the authority presupposed in its self-image.

Wolff's treatment in the literature is uncharitable. The contribution of *In Defense of Anarchism* is not, in fact, a full fledged argument for philosophical anarchism. Rather, as suggested above, Wolff argues for the *presumption* against authority. (Perhaps, it should be reissued as 'In Defense of the Presumption Against Authority,' but that just doesn't have the same ring.) Simmons and others mistake an argument for the presumption against authority for an argument for the more expansive anarchist conclusion – that is, that states do not have authority. They then criticize Wolff for failing to offer an argument that supports the latter conclusion. Wolff's minor contribution is important; the presumption against authority is significant to philosophical anarchism. As we shall see below, Simmons and the *a posteriori* camp cannot do without the presumption or the arguments for it.

3.5.3. To summarize these points: It is misguided to posit a distinction *between a priori* and *a posteriori* arguments as if they were two routes to the same conclusion. They are not. Wolff's '*a priori*' point is that a focus on autonomy supports the presumption against authority. Authority relations stand in need of justification, otherwise we should deny them. The '*a posteriori*' point is that, after a survey of the local arguments that would support a duty to obey the law, there are no conditions which successfully justify the duty to obey the commands of the state and hence its authority. Moreover, it seems that the *a posteriori* argument is only relevant in light of the presumption. The *a posteriori* anarchists are concerned to say that the search for a justification of authority comes back empty-handed; however, their conclusion

implies it is necessary that a *search* be required at all.[58] The presumption gives the grounds for why a search is necessary. The presumption, made popular in the contemporary literature by Wolff, and *a posteriori* argument of Simmons and others work in concert to generate what we may call a *unified philosophical anarchism*. To see this view, consider *The Unified Philosophical Anarchist Argument*:

(1) *The Authority of the State*: For two agents, A (the state) and B, A has authority over B if and only if A's act of commanding 'Let B Φ' creates a *pro tanto* obligation for B to Φ, such that if B didn't Φ, B would wrong A. [premise]

(2) *The Presumption*: Absent a decisive reason to believe otherwise, for two rational agents, A and B, A does not have practical authority over B. [premise]

(3) *The A Posteriori Conclusion*: No condition satisfies both the *justification* and the *fulfillment* criteria. Hence, no condition generates the general duty to obey the law. [premise]

---

[58] I think Simmons is confused on this point. On the penultimate page of *Moral Principles and Political Obligations*, Simmons writes: 'But this conclusion does force us to view the position of man in political society in a different way, for it effectively removes any *presumption* in favour of obedience to established authorities. While the absence of political obligations does not justify disobedience, it does force us to discard as a maxim of action: "Other things being equal, obey the political authorities." Obedience remains as much in need of justification as disobedience; for we have no presumption in favour of obedience established by a community-wide obligation to obey.' Simmons (1979), p. 200.

Simmons' conclusion doesn't establish a presumption against authority. Rather, the presumption against authority must be a premise we adopt before we consider the justification of authority. Otherwise, why would we be interested to look for such a justification? Simmons' conclusion is stronger than just a presumption; it is the claim that there are no legitimate political authorities and *not* the presumption that there are no political authorities. The presumption can be overruled. The point of the conclusion is that it is warranted to reject political authority. It is not defeated, at least not by any considerations within our imaginative purview. Simmons' claim comes *after* dealing with several objections to the presumption. His argument presupposes the presumption; it does not establish it.

.:

(4) *The Central Claim*: The state's act of commanding 'Let B Φ' never, in and of itself, creates an obligation for any person to Φ. [(1),(2),(3)]

(5) *The Anarchist Denial*: The state does not have practical authority over those whom it claims to have practical authority. [(1),(4)]

This is the philosophical anarchist argument. There are many other arguments which might be attributed to philosophical anarchism, as we shall see. However, this argument is the ultimate argument by which the position is founded and judged. Chapters 1 and 2 were devoted to clarifying and defending the first premise. It is this robust conception of authority which we attribute to the state. The above remarks on the presumption against authority lend support to the second premise. In Chapter 4, it is defended from recent objections. The third premise, the *a posteriori* conclusion, which represents the current 'state of play' in the contemporary debate on the duty to obey the law, is bolstered in Chapter 5.

3.5.4. How strong is the conclusion of the philosophical anarchist argument? Recall the discussion of the strength of presumptive arguments. Arguments which include a presumption as a premise are necessarily provisional and defeasible. However, again, this fact does not imply that presumptive arguments are weak or easily toppled. If all of the other premises in the argument are sound and if the presumption is very strongly held, then the conclusion will be strong. To this end, it is important to show that the premises, including any premise which is also a presumption, are defensible.

As I have set it out, the philosophical anarchist argument has three premises. Each has its objectors. Some will deny the first premise, that is, that is that this specific conception of the relation of practical authority is attributable to the state. In Chapters 1 and 2, I attempted to give an explanation for why this conception of authority is the root conception of practical authority and to show that, since Hobbes, it commonly attributed to the modern state. Some will remain unconvinced. They will already believe that authority must refer to some other, less problematic kind of relation between the speech utterances of one and the reasons for action of another. However, that fact is of little consequence for the philosophical anarchist who is concerned to argue that states cannot participate in the specific robust conception of practical authority. Perhaps some believe that authority refers to some less problematic relation because *they are already philosophical anarchists*.

Philosophical anarchism must answer the salient objections to the other two premises. The following two chapters are dedicated to that task. In Chapter 4, I will consider and respond to some recent arguments directed against the presumption against authority. Then, in the first half of Chapter 5, I will defend the *a posteriori* conclusion.

Chapter 4 – Three Objections to Philosophical Anarchism

§ 4.1. Defending the Presumption

4.1.1. Most objections to philosophical anarchism are responses to the *a posteriori* conclusion. The field of argument over that position is well worn and, provisionally, it has gone for the anarchist. However, the *a posteriori* conclusion is not the only or perhaps even the most important premise in the anarchist argument. Philosophical anarchism begins with the presumption against authority.[1] The last chapter argued this presumption is an inescapable tenet of philosophical anarchism. It is also not accepted without scrutiny. This chapter considers some fresh objections to philosophical anarchism. These objections do not purport to follow the argumentative strategy to develop conditions that would establish relations of practical authority between states and subject. That is, they are not objections to the *a posteriori* conclusion. They are not objections that are located in the trenches of the duty to obey the law debate. Rather, they are arguments that intend to suggest that philosophical anarchism cannot even get off the ground. They attack the presumption against authority, which is an essential premise in the philosophical anarchist argument. This chapter is devoted to their response and thus to a defence of the presumption against authority.

---

[1] Technically, philosophical anarchism, as I present it in the main statement of the argument for that position (3.5.3), begins with a premise about what practical authority is; however, the first premise that gets the argument against state authority going is the presumption against authority. In this chapter, when I refer to the 'first premise' of philosophical anarchism, I mean the presumption against authority and not a stipulation of what practical authority is.

The chapter unfolds as follows. Section 2 presents and critically responds to an objection 'from the folk' presented in a recent paper by Mark C. Murphy. Section 3 responds to the 'domains and limits objection' presented by in a recent paper by Dudley Knowles and implied by arguments in Murphy's paper. Section 4 crafts an 'overreaching objection' to the presumption against authority, which is motivated by Stephen Darwall's recent work on the 'second-person standpoint.' It then deploys several responses to this objection. Those responses and the rejoinders that follow make their way back to a discussion of Hobbes's derivation of state authority, which we began in Chapter 2. Section 4 concludes with a demonstration of the flaws in Hobbes's argument for state authority.

The primary goal of this chapter is dialectical.[2] Establishing a normative position requires not only that we motivate the premises in its support but also that we respond to the most significant objections to those premises. Through crafting such responses, we are better able to apprehend the correct formulation of the normative position under scrutiny. Thus the secondary goal of the chapter is further to clarify philosophical anarchism by responding to objections directed against the presumption against authority.

[2] When I employ the term 'dialectic,' I only mean the back and forth of an argument (claim, response, rejoinder, *etc*.) and 'nothing more pretentious,' *e.g.*, that the argument is specially tailored to uncover presumptions or relations of power.

§ 4.2. Against the Folk

4.2.1. Most objections to philosophical anarchism have been objections to its third premise, the *a posteriori* conclusion. Given that a limited consensus has formed in its favour, recent arguments self-consciously seek to deny philosophical anarchism on other grounds. In a recent paper, Mark Murphy presents an argument that he claims shows philosophical anarchism to be false, 'even granting the success of every particular argument that the philosophical anarchists have wielded.'[3] Murphy's concession is that even if the *a posteriori* conclusion is sound, philosophical anarchism is nevertheless false. *Murphy's moral argument* for that conclusion is as follows:

(1) In reasonably just political communities, most citizens believe that they are morally bound to obey the law.

(2) If one believes that one is morally bound to Φ, then one is morally bound to Φ.

(3) Therefore, in reasonably just political communities, most citizens are morally bound to obey the law.[4]

In this argument Murphy begins with an empirical premise about 'the opinion of the folk.' I understand 'folk beliefs' or 'folk opinion' to represent claims that (i) normally occur in a linguistic community, (ii) rely on the conventional use of language in that community, (iii) are philosophically or scientifically untutored or

[3] Murphy (2007), p. 95

[4] Murphy (2007), p. 96

unreflectively held, and (iv) held by a large majority of language users in such a community. There can be folk beliefs about psychology (*e.g.* 'There is such a thing as fear.'), about physics (*e.g.* 'A dropped object falls straight down.'), and about morality (*e.g.* 'The consequences of an action matter for its evaluation.') It doesn't take more than an undergraduate text to convince us that the fields of psychology and physics constitute a kind of theoretical progress over the totality of the set of claims in folk psychology or folk physics. By theoretical progress, I mean the simplest kind – namely, that the well-supported claims of the former subjects are surprising and perhaps contradictory from the vantage of their folk counterparts. Perhaps some believe that the fields of moral and ethical enquiry differ. However, why should that be the case? Can the theoretical subject of ethics not make well-argued claims that are perhaps surprising and contradictory from the vantage of its folk counterpart? I hope so. This is presupposed from the Socratic dialogues forward.

Murphy's moral argument combines a premise about folk morality, premise (1), with the normative principle that he designates 'the conscience principle,' premise (2). The implicit conclusion of this argument is that the moral duty to obey the law entails the authority of the state (given correlativity and law interpreted as the commands of the state). As Murphy notes, the conclusion of his moral argument contradicts the central claim of philosophical anarchism. He claims both that the argument is 'transparently valid' and that both premises are sound and support the conclusion. Neither claim is accurate.

4.2.2. Murphy's moral argument is not transparently valid. In fact, it is not clear that this argument does not suffer a fallacy of equivocation, where the meaning of terms in

the premise is not equivalent to the meaning of terms in the conclusion. In order for this argument to demonstrate a conclusion that contradicts and defeats philosophical anarchism, the conclusion – that 'most citizens are morally bound to *obey* the law' – must mean something rather precise. Specifically, the conclusion must be that most citizens are morally bound to obey the law in the *strict sense*, that is, again, to enact the law's requirement for the sufficient reason that they are the commands of the state. It is the strict sense of obedience that philosophical anarchists deny when they deny the authority of the state.

In 'reasonably just communities' is *that* what most citizens believe? It is far from clear that they do. Rather, it seems more likely that what citizens in 'reasonably just communities' actually believe is that the law is 'reasonably just,' and hence that they have a moral duty to *comply* with such laws because they are just, or reasonably so, and not because they are the commands of the state. They believe they have a moral duty (of justice) to *comply* with the law, that is, to perform those acts which the law requires because, ultimately, justice requires it. If this more likely story were the case, then the terms in the first premise would really mean something distinct than what the conclusion *must* mean in order to indict philosophical anarchism. Such a difference in meaning would entail a fallacy of equivocation. The argument would not be transparently valid; the premises and the conclusion do not even refer to the same idea. Hence, Murphy's moral argument would not jeopardize philosophical anarchism.

We can assume from the first premise that most citizens of reasonably just communities believe that they should comply with the laws because, *ex hypothesi*, they are reasonably just. But why believe that most citizens of reasonably just

communities also believe the *further claim* that they should comply those same laws for the sufficient reason that they are the commands of the state? Do citizens of reasonably just communities believe that their duties to follow the laws requirements are overdetermined? Why assume, as Murphy must, that citizens not only see the distinction in reasons to follow the law but also affirm the further claim? Moreover, if justice trumps authority, might we, with Kant, fault them for acting for the wrong reason if and when they comply for reasons of authority and not justice?

Murphy does not directly treat these questions. Instead, he labours the point that philosophical anarchists already grant – that they must deny even a *pro tanto* reason to obey (in the strict sense) the law. The question at present is do citizens of 'reasonably just' communities actually believe that they have a *pro tanto* reason to enact the law's requirement for the sufficient reason that the state commanded such law? Murphy gives us no reason to think so.

He does, however, defer to Tom Tyler's study, *Why People Obey the Law*.[5] Murphy might argue that Tyler's study of perceived obligation in the 'reasonably just' community of Chicago, IL, USA shows, with statistically significant evidence, that most people – that is, the philosophically untutored 'folk' – believe that:

(1) They 'should obey the law even if it goes against what they think is right.'

(2) They 'always try to follow the law even if [they] think it is wrong.'

[5] Tyler (1990)

(3) 'That disobeying the law is seldom justified.'[6]

This empirical evidence does not show that most people believe the very claim that philosophical anarchism denies: that one should obey the state's commands because they are the state's commands. That *could* be a reason for persons to endorse (1), (2), or (3); however, there are many other reasons why people might endorse those claims. For instance, perhaps people believe that the law is an epistemically better placed to stipulate what their duties of justice specifically require. Or perhaps people recognize the value of the stability of legal systems. Those would be reasons to endorse any of the above claims that are distinctly not the reason of practical authority. Tyler's study only shows that in a 'reasonably just' community most persons endorse (1), (2), and (3). It does not account for *precisely* – or at least at the level of precision in reasons with which we are presently engaged in normative political philosophy – why they affirm such beliefs. Of course, this is to say nothing of whether or not they *ought* to affirm those beliefs.

Murphy cannot rely on Tyler's study; it does not give sufficiently precise information about the reasons for citizen's compliance.[7] Of course, this does not mean that we could not generate empirical evidence at the level of precision we require. Perhaps political and legal theorists could offer tutorials to those who interact with the justice system on the distinction between complying with a law for reasons of

---

[6] *Ibid*., pp. 45-46. Tyler reports that across the various 'waves' of his studies, no less than fifteen and no more than twenty-one percent of those surveyed responded with disagreement when prompted by the above three claims.

[7] Leslie Green also argues against drawing conclusions about the authority of the state from Tyler's empirical study. See Green (1999).

justice and obeying the same law for reasons of authority (such tutorials might become quite engaged) and then, some time later, survey those among the folk who grasped the distinction as to why they enact the law's requirements. Whether or not Murphy's argument commits a fallacy of equivocation would depend on the statistically significant results of *that* survey. But there is not, nor is there likely to be, such a survey. Moreover, how could such an empirical tallying of what would then be no longer folk beliefs, but rather philosophically informed beliefs contribute to a definitive answer the normative question of whether or not the state has authority? Why not just go ahead and conjecture (in perhaps a non-statistically significant matter) that since most philosophers who have already conducted such tutorials on each other deny the state's authority (recall the 'reigning view' of philosophical anarchism) that most folk-turned-philosophers would come to the same conclusion. When we plug this conjecture into the first premise, we get the following the premises together:

(1*) After substantial tutorials, most folk-turned-philosophers believe that they not are morally bound to obey (in the strict sense) the law.

(2) If one believes that one is morally bound to Φ, then one is morally bound to Φ.

Nothing about philosophical anarchism or about anything else follows from these two premises.

We can doubt the extent to which the folk belief in political obligation actually amounts to the precise belief that citizens ought to enact the law's requirements for the sufficient reason that the state commands and not for other reasons. (For that is

what it is to obey in the strict sense.) One is permitted to doubt this of the folk because the content of that belief is not philosophically untutored, and hence not what we would assume to be a posit of folk morality. If the folk believes something else, or something indistinct – *e.g.* 'Citizens should do what the law requires' – then Murphy's moral argument would suffer from an equivocation. It would not indict philosophical anarchism. Ultimately, it is an empirical question – what do the folk really believe? If we are to presume certain things when we employ the concept of folk opinion, then the presumption should direct against the view that the folk believe in duty to obey the law in the strict, philosophically reflective sense.

4.2.3. Perhaps the inclusion of 'reasonably just' obscures the distinction between citizens' compliance for reasons of justice and their obedience for reasons of authority. Recall that Murphy avowedly 'grants the success' of the arguments that philosophical anarchists have forwarded. One such argument is that the justice of the content of a command does not entail the duty to obey, in the strict sense, the person who issued the command.[8] Hence, it cannot be that Murphy intends that a community's being 'reasonably just' is a condition that justifies the duty to strictly *obey* the law. The point of his argument is to combine a widespread folk belief (if, in fact, the belief is actually distinctly and widely held, which we have no grounds to assume) with the conscience principle to generate a conclusion that contradicts philosophical anarchism. To actually jeopardize anarchism, the folk must endorse the duty to obey. If that is what matters, then why not dispense with the 'reasonably just' qualifier that only serves to blur the distinction between compliance and obedience?

[8] For that argument see (5.2.1) of the present thesis.

'Reasonably just' seems to be doing only rhetorical work. After we jettison it, the amended argument runs as follows:

(1') In political communities, most citizens believe that they are morally bound to obey the law.
(2) If one believes that one is morally bound to Φ, then one is morally bound to Φ.
(3') Therefore, in political communities, most citizens are morally bound to obey the law.

Here the actual argument is clearer. It is also more clearly dubious. In the argument what matters first and foremost is that the folk believe they are morally required to perform some action. The 'conscience principle' adds that because the folk believe they are morally bound to act in some way, they *are* morally bound to act in that way. Hence, if we want to know what the moral duties of the folk are, we only need ask them what they believe them to be.

This argument summons the Weberian tradition of thinking about state legitimacy. Max Weber does not traditionally hold a privileged position in the liberal canon; however, his conceptual analysis provides a clear point of departure to describe liberal concerns. Weber clarified a pair of terms about which liberals are forever preoccupied: the political association and the state.[9] Political associations are involuntary, and the state is that political association within a single area that has the legitimate power to exercise violence. The state, it is often recalled, has a monopoly

[9] Weber (1994 [1919]); Weber (1978), especially pp. 31-38

on the legitimate exercise of violence in a given territory. This is the classic Weberian definition.

Weber's concept of legitimacy is endogenous to his concept of the state. Weber believed that for states to legitimately exercise violence (that is, for a state to be a state), its citizens must believe that the commands of the state must be followed and that exercise of such violence in the case of noncompliance is morally permissible. For Weber, it matters less why citizens believe that the state is in this privileged position. What is centrally important is that citizens *do* believe it. For example, Weber notes that their belief could be engendered by the charisma of a natural-born leader.[10]

The Weberian concept of legitimacy is at bottom empirical and descriptive. Legitimacy describes the favourable attitudes of members toward a state. These favourable attitudes are the reservoir from which political leaders draw the political capital which they then spend through coercive state action. This Weberian reading of legitimacy is at the root of much contemporary political science. For example, Seymour Lipset defines legitimacy as 'the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society.'[11] In sum, Weber and the political scientists who follow him offer a descriptive and sociological interpretation of legitimacy: if the members of a state have a favourable attitude and beliefs about the capacity of a state to exercise coercive power, then its power is legitimate by definition.

---

[10] Weber (1978), pp. 266-267

[11] Lipset (1984), p. 88. For a recent study, see Gilley (2009).

In itself, the Weberian notion of legitimacy is non-normative and often, in the hands of positive political science, avowedly so. It marks that a majority of citizens have a certain belief – namely, that they have a duty to obey the commands of the state and that the exercise of state power is morally permissible.

However, 'legitimacy' often signals that some action or state of affairs is normatively justified. The common linguistic use of the word is normative, even if Weber's use is primarily descriptive. For those political theorists want to maintain that Weber's conception of legitimacy is also, in some ways, normative, perhaps Murphy's argument is relevant. Murphy offers to bridge the gulf between the *fact* that citizens believe in the duty to obey state commands and the normative claim that they *ought* to obey state commands. The gulf between empirical and normative proposition is prominent on the map of moral philosophy. Murphy's bridge is the *conscience principle*. Political theorists who continue to read Weber's conception of legitimacy as one that is nevertheless normative commit to something like it.[12]

4.2.4. Even if the folk do distinctly endorse the duty to *obey* and Murphy's argument does not suffer a fallacy of equivocation, Murphy's moral argument nevertheless fails to support its intended conclusion. The conscience principle serves as the premise that does all of the work in generating the normative conclusion that citizens have a duty to obey the state's commands. However, there are several problems with the use of the conscience principle in this argument. From the *fact* that the folk believe they

[12] For example, Bernard Williams has reading of legitimacy that is not a great departure from Weber. 'But when we get to our own case, the notion "MS" [Makes Sense] does become normative, because what (most) MS to us is a structure of authority which we think we should accept.' Williams (2005a), p.11

have a moral duty to obey the law, the conscience principle cannot generate the truth of the normative claim that they *ought* to obey.

First, Murphy's argument allows too much to be plausible. A simple *reductio* shows why. Suppose folksy citizens believe that they have a moral duty to obey the law because they are, in fact, subject to the psychological compulsion by the Great Leader and his minions. Psychological compulsion and manipulation explains their belief in his authority. Now combine the fact of their belief with the conscience principle, that is, if one believes that one is morally bound to Φ, then one is morally bound to Φ. The argument entails that this Great Leader is a practical authority over those citizens; they really have a moral duty to obey his commands. Would we, who can view the causes of their belief from a theoretical distance, also believe that they have a real moral obligation to obey him because they believe that they do? No. Would it even matter if the distribution of benefits and burdens which is a result of the state he presides over is, in fact, 'reasonably just'? Again, surely not.

Second, the general form of Murphy's argument displaces ethics as a theoretical field. Consider the argument in its general form, which replaces the specific moral duty to obey with a duty to perform some general action, Φ:

(1*) In folk communities, most folk believe that they are morally bound to Φ.

(2) If one believes that one is morally bound to Φ, then one is morally bound to Φ.

(3*) Therefore, in political communities, most citizens are morally bound to Φ.

In effect, the general form of Murphy's moral argument is to transform and certify every belief of folk morality. For the folk, if they believe in some moral duty, then it

would be wrong of them (at least in a *pro tanto* way) to fail to discharge it. As Murphy notes, the conscience principle stipulates that 'one is acting wrongly if one acts contrary to his or her judgment concerning what he or she is morally bound to do.'[13] I do not presume Murphy means that a violation of a sincerely held belief is wrong all-things-considered, but is rather perhaps *pro tanto* wrong. An action is *pro tanto* wrong if it requires further justification in order not to be wrong all-things-considered.[14] Nevertheless, the general form of the argument demonstrates that for any folk belief about our moral commitments, the content of that belief is conclusively a real moral duty. Such a conclusion is tantamount to a *reductio ad absurdum*.

Both Murphy's argument and the general form of his argument suffer *reductio ad absurdum* because both are indifferent to the issue of whether or not the initial belief of the folk that they have a moral duty is warranted. The epistemic belief that one has a moral duty is warranted if, among other things, one does have a real moral duty.[15] Murphy's argument serves to invert the proposition: A moral duty is justified if, in fact, one believes that it is.

---

[13] Murphy (2007), p. 98

[14] This is exactly Murphy's thought, although he uses the locution '*prima facie*' in place of '*pro tanto*': 'One way to test whether there is at least a prima facie duty to perform some action is to ask whether the failure to perform that action, as such, calls for further moral justification.' *Ibid*., p. 99

[15] I take this to be an uncontroversial claim. If support is needed, consider Nozick's 'tracking' account of knowledge: S knows p iff:

(1) S believes p;
(2) p is true;
(3) if p were true, S would believe p;
(4) if p were not true, S would not believe p.

Shakespeare's Hamlet is a friend of this inverted argument. 'There is nothing either good or bad, but thinking makes it so.' However, perhaps Hamlet goes beyond Murphy; their positions are not necessarily the same. Perhaps, by this line, Hamlet commits to the position that belief in the obligation to Φ is a necessary and sufficient condition for the actual obligation to Φ. The conscience principle, which Murphy endorses, stipulates that belief in the obligation to Φ is a sufficient condition for the obligation to Φ, but it does not stipulate that it is a necessary condition.

To further clarify Murphy's argument, we need a distinction between obligations that are dependent on the folk's belief that they are obligations and obligations which are not so dependent. Gary Chartier, in a recent response to Murphy's moral argument,[16] offers the following distinction between belief-independent obligations and belief-dependent obligations:[17]

(1) Agent A has a *belief-independent* obligation to Φ if the relevant considerations count decisively for Φ-ing, whatever A's understanding of these considerations or A's beliefs regarding them.

(2) Agent A has a *belief-dependent* obligation to Φ if A is aware of and understands the relevant considerations concerning whether or not to Φ and A

In the discussion of moral epistemology above, Agent A's belief 'that A has a moral duty' is not warranted on Nozick's account of knowledge unless (2), p is true, holds. Only then does A actually have that moral duty. See Nozick (1981), pp. 172-187.

[16] Chartier (2009)

[17] My distinction is an adoption of Chartier's distinction. See *Ibid*., p. 120.

> believes that at least one of these considerations counts decisively in favour of Φ-ing.

What moral philosophy is primarily interested to locate and clarify are belief-independent obligations, that is, obligations which are incumbent upon us to discharge even if we confusedly or incorrectly believe that such obligations do not apply to us. Moral philosophy at least requires the claim that we can have incorrect beliefs about what we owe to one another.

The distinction between belief-dependent and belief-independent obligations renders the conscience principle more intelligible. The principle generates belief-dependent obligations. If A sincerely holds the belief that he has a duty to Φ, 'no matter how dubious or ill-founded' this belief is, then A has a belief-dependent obligation to Φ.[18] Given that belief-dependent obligations are not the primary concern of moral philosophy, we need not be extremely troubled that A's belief might be 'dubious or ill-founded.' There are some curious questions regarding the nature of A's wrong if he fails to discharge what he sincerely believes he has an obligation to do but does not have a belief-independent obligation to do. Such questions are especially curious in cases where, unbeknownst to him, A actually performs the action

[18] Murphy (2007), p. 98

that is required by his decisive belief-independent obligation.[19] In light of the above distinction, we can rewrite Murphy's moral argument.[20]

(1'') In political communities, most citizens believe that they have a belief-independent obligation to obey the law.

(2) If one believes that one has a belief-independent obligation to Φ, then one has a belief-dependent obligation to Φ.

(3'') Therefore, in political communities, most citizens have a belief-dependent obligation to obey the law.

Murphy's original moral argument has been amended in way that does not suffer the above *reductio* problems. In the above example, the psychologically manipulated folk who sincerely believe they have a belief-independent obligation to obey the Great Leader may have a belief-dependent obligation to do so, that is, if the conscience principle holds. The generation of some duty, even if very odd and weak, saves the argument from the above *reductio* problems. However, the conscience principle entails an odd conclusion: those who believe they have duties to obey do not necessarily have what they think they have, that is, a belief-independent duty to obey.

Murphy's amended moral argument goes through; however, the amended argument is ineffectual against philosophical anarchism. There are several reasons

---

[19] Consider, for example, 'The Case of Lady Eldon's French Lace,' Kadish and Schulhofer (1995), pp. 633-640.

[20] This reformulation of Murphy's argument parallels one of Chartier's reformulations. See Chartier (2009), p. 121.

why. First, the argument generates the wrong kind of duty for both partisans of the duty to obey and for philosophical anarchists. For those who champion the moral duty to obey in the strict sense, the argument is *too surprising*. For those who believe in state authority, Murphy's argument shows that the obligation that they have – a belief-dependent obligation – is not the obligation that they *think* they have, *i.e.*, the stronger belief-independent obligation.[21] For those philosophical anarchists who deny state authority and disbelieve they have a duty to obey, the argument produces no reason for them to believe otherwise. It cannot even presume to convince the philosophical anarchist that she is confused.

Second, authority requires a stronger obligation to obey that what could be provided by a belief-dependent obligation. Recall the *wronging criterion* in the concept of practical authority commonly attributed to the state. By *authority* we mean:

(4) For two agents, A and B, A has authority over B if A's act of commanding 'Let B Φ' creates a *pro tanto* obligation for B to Φ, such that if B didn't Φ, B would wrong A.

The final clause, that B would wrong A, is the wronging criterion. The duty to obey an authority is a directed duty. For directed duties, failure to discharge them implies that someone is wronged. The duty to obey an authority's commands is a duty that is directed toward the authority. Failure to obey wrongs him.

[21] *Ibid*., p. 125

Are belief-dependent duties directed duties? If we violate the conscience principle, then who do we wrong? Perhaps we wrong ourselves, yet it is far from clear that the conscience principle generates directed duties towards others. The duty to obey an authority, however, is directed. Hence, even if most citizens have a belief-dependent obligation to obey the law, *that* obligation is not the duty that authority creates. The amended variant of Murphy's argument could not be a defence of authority. It does not generate the right kind of duty needed to establish robust practical authority. Hence, it is ineffectual against philosophical anarchism.

Let's review the difficulties with Murphy's moral argument. First, it likely suffers a fallacy of equivocation given the improbability that the folk endorses the distinctly non-folk belief that they have a moral duty to enact what the law requires for the sufficient reason that the law is a command of the state. Second, even if most citizens of political communities believe that, Murphy's argument suffers a dilemma. Either, by itself, it is embarrassed by *reductio ad absurdum*, or, when amended to avoid the charge of *reductio*, the argument provides no grounds for the philosophical anarchist, or anyone else, to endorse the state's authority.

4.2.5. In addition to the unsuccessful moral argument, Murphy also presents an epistemological argument against philosophical anarchism. In order to show that a belief in authority is unreasonable, one must not only counter the particular arguments that attempt to support authority, one must also provide a positive account for why the belief as such is unreasonable. Even if the philosophical anarchist is able to counter all of the particular, local arguments in support of authority, nevertheless he presents no positive ground that shows the folk's belief in authority is unjustified. According

to Murphy, in order to show that a belief, *p*, which is held by the folk, is unjustified or unreasonable, one must (i) show that to believe *p* is incoherent, (ii) show that highly implausible implications follow from *p*, or (iii) show that the belief in *p* rests upon a mistake. Murphy claims that philosophical anarchism has not achieved any of these objectives, and therefore the folk's belief in authority is not unjustified. So long as the folk do not believe in the authority of the state for the reasons that philosophical anarchism is motivated to counter in the *a posteriori* conclusion, then the philosophical anarchist has not shown that the folk's belief is epistemically unwarranted.[22] Murphy contends that the anarchist must provide a positive argument for why belief in authority is unreasonable. He holds that it is not enough to dislodge the available posited grounds for the belief. Murphy believes that the philosophical anarchist has not supplied such a positive argument, nor could he. That is his two-pronged 'epistemological argument.'

Murphy is able to make this epistemological argument because he equates philosophical anarchism with the *a posteriori* anarchism of Simmons, Raz, Smith and Green. *A posteriori* anarchism surveys all of the potential local arguments in support of authority and shows that no local argument satisfies both the justification and

[22] 'But even if we were to grant the success of these arguments [of the *a posteriori* philosophical anarchist], it is hard to see how such arguments alone are supposed to warrant the conclusion that the folk ought not to believe in political obligation… They [the anarchists] offer no positive reasons for skepticism, no basis for doubt.' Murphy (2007), p. 106 As Chartier points out, Murphy's epistemic argument against the anarchist relies on an anti-evidentialist position in epistemology. The evidentialist holds that epistemic agent, *E*, is justified in believing proposition, *p*, at time, *t*, if and only if *E*'s evidence for believing *p* at *t* supports believing *p*. See Chartier (2009), p. 131. Murphy's epistemological argument against philosophical anarchism assumes that evidentialism is incorrect. Even if we admit Murphy's anti-evidentialism, Murphy's argument still falters because he misconstrues what the philosophical anarchist argues.

fulfillment criteria, and hence, every local argument posited thus far fails to ground authority. Murphy would characterize the overall philosophical anarchist argument as the following:

(1) There is some set, *S*, of arguments $\{A_1, A_2, A_3, \ldots A_n\}$ which have been posited to ground the authority of the state.

(2) *The A Posteriori Conclusion*: No argument within *S* contains a condition that satisfies both the justification and fulfillment conditions.

(3) No argument within *S* grounds the authority of the state.

(4) *The Anarchist Denial*: The state does not have practical authority over those whom it claims to have practical authority.

Murphy's basic point is that (4) does not follow from (3). I agree. Murphy believes that this point shows that philosophical anarchism has failed to demonstrate that the folk belief in authority is unwarranted. However, if this is Murphy's characterization of philosophical anarchism, then he misrepresents the position. Philosophical anarchism is best expressed not by the above hobbled argument but rather by *The Unified Argument* (3.5.3), which includes the presumption against authority.

Presumptions are important in Murphy's epistemological argument. He holds that the presumption is with the folk. The burden is on others to show the folk that their belief in authority is unwarranted. I believe that the presumption is with the philosophical anarchist. The burden is on others to show the philosophical anarchist that his disbelief in the authority of some person over him is unwarranted. Which presumption is correct? Murphy holds that in order to show that a belief held by the

folk is unreasonable, it must be shown that their belief is incoherent, entails implausible implications, or relies on a mistake. The above arguments for the presumption against authority (3.4.1-3.4.7) intend to show that a folk belief in authority *is* incoherent or that it relies on an error. Perhaps the folk mistakenly confuse obedience for compliance. If the folk would reject David Howell Evans as an authority over them without further justificatory reason, then would it not be *incoherent* to not reject the state as an authority over them *without further justificatory reason*? Moreover, if the folk were to believe that either Evans or the state were an authority over them, without further justificatory reason, then they would commit to simple voluntarism as an account of the normativity of obligations. To endorse simple voluntarism is a *mistake*.

The above arguments for the presumption against authority may illustrate the incoherence and the error of the folk belief in the practical authority of the state; however, they may further discomfit Murphy's argument. Perhaps the folk hold *no* presumption in favour of practical authority and Murphy's basic premise is miscast. My reaction to Murphy's use of Tyler's empirical study was suggestive of that view. Moreover, if the David Howell Evans intuition pump is successful perhaps it evokes what is at bottom a *folk* belief: agents who claim practical authority over us do not have such authority unless their claim comes with proof. It is not clear that even the folk are on Murphy's side.

What is clear is that Murphy's epistemological argument is an argument which shows that *a posteriori* anarchism is insufficient to topple the folk's belief in the authority of the state. That is true. But Murphy's argument is not an argument against a stronger view of philosophical anarchist, expressed by *The Unified*

Argument, which includes the presumption against authority as a premise. Above (3.4.1-3.4.7) I attempted to provide some support for that premise, which holds that the presumption persons have – or, at the least ought to have if they are sensitive to freedom, autonomy, rationality and publicity – is against the robust authority of other agents. If the presumption against authority is sound, then the anarchist's burden to show the folk that their belief is unreasonable has been lifted. The burden would then be with the partisan of the authority of the state to show there are reasons that override the presumption. The point of the *a posteriori* arguments of Simmons, Green, and Smith is to convince us that this burden has yet to be lifted. Murphy's epistemological demands are met with the arguments for the presumption against authority. Hence, his epistemological argument meets the same fate as his moral argument. Neither reaches its intended conclusion. This concludes my argument against Murphy's 'folk objection' to the presumption against authority. Let's consider another objection to that important premise in the philosophical anarchist argument.

§ 4.3. Against the Domain and Limits Objection

4.3.1. Towards the end of Murphy's collection of arguments against philosophical anarchism he contends not only that the philosophical anarchist has not given reasons for why a belief in authority is unreasonable but also that it is unlikely that philosophical anarchists *could* show that the folk belief is unreasonable. The above arguments for the presumption against authority reject the first part of Murphy's

epistemological argument. However, the second part of Murphy's epistemological claim – that it is unlikely the anarchist *could* show the folk belief to be unwarranted – raises another current objection to philosophical anarchism that requires a response. This is the *domains and limits objection*. It is offered in the recent work of both Murphy and Dudley Knowles.[23]

As Murphy establishes, the folk belief in authority would be unwarranted if, *inter alia*, it had untoward practical implications. One such implication would follow if belief in authority gave rise to the possibility of the following conjunction of beliefs. For an authority, A, and a subject of that authority, B:

(Belief 1) If A commands Φ, then B has a decisive reason to Φ.

(Belief 2) If A does not command Φ, then B has a decisive reason not to Φ.

Murphy regards it as an untoward implication that the fact an authority has commanded can be a reason to Φ that trumps an otherwise decisive reason not to Φ, independent of the command. Happily, he believes that such a case is unlikely. Murphy contends that two reasons incline toward the unlikeliness of such a case. First, he claims that authority creates a *prima facie* obligation. He explains that term with the claim, 'if there is already some very strong set of reasons against the action, it is unclear whether we will be committed to the view that the requirement of obedience to law would overcome those reasons and commit us, all things considered,

[23] See Murphy (2007), pp. 108-111 and Knowles (2007).

to its performance.'[24] As we have seen, Murphy could mean at least two things by a '*prima facie* obligation' to obey authority. He could mean that the commands of authority have a tendency to point out those moral reasons which are decisive for us. This tendency to correctly point out what morality requires of us is the *service* authority renders us. Call this the 'service interpretation' of *prima facie* reasons.[25] Yet, this ability of authority is *but* a tendency. Hence, it is not infallible, and so we cannot be completely assured that when an authority commands B to Φ, B therefore has a decisive reason to Φ. In short, because authority creates *prima facie* obligations, no one *really* holds (Belief 1).

This 'service interpretation' of *prima facie* cannot be Murphy's. Nor can anyone who endorses a conception of practical authority that goes beyond epistemic authority believe that authority's reasons are *prima facie* on the service interpretation. There is nothing on that understanding of *prima facie* that suggests the commands of authority not only point out reasons we have but also *are* reasons for us, constitute reasons for us. Murphy acknowledges that authority gives 'further reasons.' By *prima facie* obligation, Murphy's intended meaning is captured by what I prefer to call a *pro tanto* obligation. A *pro tanto* reason to Φ might not be the decisive reason to Φ; nevertheless, it is a consideration that counts in favour of Φ-ing. On this reading of Murphy's claim, the folk really do not believe (Belief 1). For even the

---

[24] Murphy (2007), p. 109

[25] This interpretation of the reasons that authority provides resembles the 'service conception of authority' defended by Joseph Raz; however, Raz believes that the reasons authority provides go beyond the above 'service interpretation of *prima facie* reasons.' For Raz, the reasons that practical authority provides also have some *pro tanto* standing. I discuss Raz's 'service conception' in detail in (5.2.3) of the present thesis.

folk, now and around here, believe that civil disobedience is sometimes justified. Rather, according to a defensible reading of Murphy, what the folk actually believe is (Belief 1'): If A commands Φ, then B has a reason to Φ. We are now in a position to enquire if the belief in practical authority ever allows for the unappealing possibility of the conjunction of the following two beliefs:

(Belief 1') If A commands Φ, then B has a reason to Φ.

(Belief 2) If A does not command Φ, then B has a reason not to Φ.

To see that the conjunction of these two beliefs is unappealing, replace the variable, Φ, with any action that is immoral, causes harm to self, or is plainly absurd (for example, 'inflict gratuitous suffering,' 'eat nine hotdogs,' *etc*.) For the folk who believe in authority, the possibility of such a conjunction of beliefs would signify that the endorsement of authority has implausible implications and is therefore unwarranted. However, Murphy contends that even this conjunction of beliefs would be highly unlikely. He attributes that unlikeliness to what I will call 'the domain thesis.'

(D) *The domain thesis*: If A has practical authority over B, then the fact of A's commanding 'Let B Φ' is a reason for B to Φ *only for action-types within a certain domain*.

The domain thesis is not novel; Hobbes endorsed it.[26] The idea is that, for some actions, even if a practical authority commanded a subject to perform them, the fact that a practical authority commanded an act would not *even* provide a *pro tanto* reason for the subject to perform it. There are limits to what the variable, Φ, could be when A commands 'Let B Φ.' If those limits are exceeded, then the fact that an authority commands them nevertheless does not constitute any reason for those subject to his authority. Authority is couched as a triadic relationship. As Knowles suggests, the proper understanding of authority implies the form: A has authority over B with respect to some domain, C. The domain specifies those actions for which the fact that an authority commands 'Let B Φ' constitutes a further reason to Φ.[27]

How to define this domain? The normal course is to define it negatively: actions with such-and-such properties cannot be the content of a reason-generating, authoritative command 'Let B Φ.' For Knowles, there are three such properties: immorality, harm to self, and absurdity. Murphy captures a similar point with his claim 'that citizens are bound to obey the law when the law is not too unjust and when there are not sufficiently strong reasons to the contrary.'[28] We have strong reasons to not act immorally, harm ourselves, or act senselessly or absurdly. If an authority were to command those kinds of actions, we should not take the command as reason-

[26] For example, Hobbes states, 'Subjects owe to Soveraigns, simple Obedience, in all things, wherein their obedience is not repugnant to the Lawes of God.' Hobbes (1991 [1651]), p. 245 (xxxi, 1). For a discussion of Hobbes and the domain thesis, see Harrison (2003), p. 83.

[27] Knowles claims that the commands of practical authority only have their distinguishing peremptory (I would rather say *pro tanto*) and content-independent properties only when it is clear that those commands are *intra vires*, *i.e.*, the commanded actions fall within a proper domain. Knowles (2007), p.31

[28] Murphy (2007), p. 110

generating even though we continue to acknowledge their practical authority *intra vires*.

The addition of the domain thesis to the concept of practical authority is thought to greatly diminish the appeal of philosophical anarchism. Such is the conclusion of Knowles's paper, even if his argument against philosophical anarchism is almost entirely implicit. Murphy expressly relies on the domain thesis to suggest that the philosophical anarchist could not make the case to sway the folk from their belief in authority. Those who believe that the introduction of the domain thesis blocks philosophical anarchism likely believe that philosophical anarchism relies on the following argument. Call it *The Argument from Moral Error*:

(1) If A has authority over B, then the fact of A's commanding 'Let B Φ' constitutes a *pro tanto* obligation for B to Φ, such that if B didn't Φ, B would wrong A.

(2) There are some actions which A might command B to perform which would be immoral, absurd, or harmful to B.

(3) B can never have an obligation to perform actions that are immoral, absurd, or harmful to him or herself.

(4) Therefore, A's act of commanding 'Let B Φ' cannot constitute an obligation for B to Φ.

(5) Therefore, A cannot have authority over B.

This is the argument that Knowles and Murphy pin to the philosophical anarchist. This is an argument with global scope; it is meant to apply not just to the

state but also to every agent who claims to have authority. The root idea of the argument is that because the commands of those who claim authority can be morally erroneous, there cannot be practical authorities.

The response of Knowles and Murphy would be to deny premise (1). The partisan of the domain thesis claims that if A has practical authority over B, then it is not the case that 'Let B Φ' constitutes a reason for B *simpliciter*. Rather, the command is a reason only if Φ falls within the domain-restrictions on A's commands. Philosophical anarchism misunderstands the concept of authority. Knowles and Murphy would contend that the premise at the top of any argument concerning authority should not be (1), but rather:

(1') If A has authority over B, then the fact of A's commanding 'Let B Φ' constitutes a *pro tanto* obligation for B to Φ, such that if B didn't Φ, B would wrong A, *but for only those Φs that fall within the proper domain.* [29]

Once the concept of practical authority is amended by the domain thesis, the argument from moral error unravels. This is the domains and limits objection. Once it is understood that practical authority has inherent domain-restrictions, the philosophical anarchist position appears unfounded and untenable.

---

[29] This is another statement of the concept of practical authority. In his paper, Knowles is hesitant to claim this conceptual stipulation because he is uncertain how it fits with some religious understandings of God's authority. He does, however, suggest it as conceptual definition of authority. '[W]e should recognize that arguments that purport to establish the legitimacy of authority in the political (as in other) spheres might bring with them their own domain restrictions.' Knowles (2007), p. 41

4.3.2. Is the philosophical anarchist embarrassed by the domains and limits objection? It is unlikely. The domains and limits objection misattributes the argument from moral error to the philosophical anarchist. However, the anarchist denial of state authority does not depend on the success of that argument. A morally erroneous command of a practical authority would raise an eyebrow, but the philosophical anarchist does not require that possibility to make his point. The arguments for the presumption against authority (from republican freedom, from rationality, from autonomy, from publicity) do not or do not exclusively rely on moral error to make the case. Only one of the arguments from rationality conceives that an obligation to obey an authority entails either moral error or performing the right action for the wrong reason. Most arguments for the presumption against authority find fault with the content-independent property of authority's reasons. Either it renders reasons arbitrary, or it is epistemically nontransparent and nonpublic, or, at best, it leads us to have a duty to perform the right action for the wrong reason. The possibility that an authority could command an action that is (gravely) immoral or absurd is not prominent in the arguments for the presumption against authority. Thus, the domains and limits objection does not undo the bulk of the arguments for that presumption.

Moreover, the philosophical anarchist conclusion has force even if we admit the domain thesis and delimit the possible commands of an authority. The conclusion of philosophical anarchism applies equally to those actions that fall within the proper domain of authority as to those that would fall outside of it. For any action, the fact that the state commands it does itself constitute a reason to commit it. The anarchist denial holds both for commanded actions that are morally erroneous as well as for

those that are morally required. In both cases, philosophical anarchism sees a single problem. A moral agent should not perform either kind of action for the isolated fact that the state has commanded.

There is a second reply of the philosophical anarchist to the domain and limits objection. If the domain restrictions are sufficiently exclusive, then the incorporation of the domain thesis within the concept of authority renders the concepts of practical authority and epistemic authority indistinguishable. Consider Knowles's domain restricting principle, the fact of A's commanding 'Let B Φ is a reason for B to Φ if and only if Φ is not immoral. What work is 'immoral' doing in this restriction? There are at least two suggestions. First, 'immoral' might refer to any action that violates some deontological prohibition. Second, 'immoral' might refer to any action that is not required by B's otherwise decisive reason in his balance of reasons. If Knowles intends the latter, more exclusive interpretation, then A's authority is indistinct from the epistemic conception.[30]

If the domain in which the commands of the authority actually constitute reasons were sufficiently narrow and exclusive, then moral error would not even be possible for those subject to that authority. Moral fallibility would be ruled out *ex hypothesi*. And in that case practical authority with inherent domain restrictions is effectively indistinct from perfectly reliable epistemic authority. The conclusion that there is no authority but epistemic authority (or there is no authority that is not

[30] For why that conclusion favours the philosophical anarchist, see sections (5.2.4.) and (5.2.5.) of the present thesis.

coextensive with perfect epistemic authority) would not serve to refute the philosophical anarchist. Rather, it would satisfy her complaint.[31]

§ 4.4. Against the Overreaching Objection

4.4.1. There is a familiar quip directed against the philosophical anarchist. The people who drive around with 'Question Authority!' bumper stickers on their cars do not consider their own. This retort signals an objection to the philosophical anarchist argument. The objection is directed against the first premise, the presumption against authority. When we consider the scope and the implications of the presumption against authority, it becomes clear that we do not endorse it. For does it not indict our own authority and moral standing?

The presumption against authority is integral to the philosophical anarchist argument. In order for that position to be defensible, the presumption must be defensible. However, consider the following argument that suggests the presumption is unwarranted. Call it the *overreaching* objection:

(1) *The Presumption*: Absent a decisive reason to believe otherwise, for two rational agents, A and B, A does not have *practical authority* over B. [premise]

(2) The presumption against authority conflicts with what we *normally believe* to be the authority of individual persons. [premise]

---

[31] *Ibid*.

(3) The presumption against authority is unwarranted.

The objection focuses on the wide scope of the presumption. The presumption applies to agents, which means it applies not only to the state but also to all individuals. However, when we reflect on the moral standing of individuals, it is clear that we accord individuals an authority that conflicts with the presumption. Hence, the presumption overreaches. For some agents, particularly moral persons, we do not presume that they lack authority. Thus, as it stands, the presumption is unwarranted.

Let's focus on what motivates the second premise. It stipulates that we have a normal belief about the authority of individuals, and, as such, we do not presume the absence of relations of practical authority between rational agents. Rather, our normal baseline belief is that relations of practical authority do hold at least between individual persons. What motivates this baseline belief is that, at root, relations of authority are necessarily presupposed in the concept of what it is to be a person capable of moral action.

In what is now a famous formulation, Rawls wrote that persons are 'self-originating sources of claims.'[32] By that, he meant that the moral claims persons make upon one another 'carry weight on their own without being derived from prior duties or obligations owed to society or to other persons, or, finally, as derived from, or assigned to, their particular social role.'[33] If the weight or force of the moral claims

[32] Rawls (1999c), p. 330

[33] *Ibid*.

of persons is not derived from prior duties or one's particular social role, then from whence is the force of such moral claims grounded? Perhaps it is inferred from a relation of authority between the person who is the moral claimant and the person to whom the claim is addressed.

One of the central theses of Stephen Darwall's *The Second-Person Standpoint* is that the practical authority of an individual is a transcendental condition for a particular class of normative reasons, namely agent-relative moral reasons or what Darwall prefers to call 'second-personal reasons.'[34] That is, for moral claims or obligations to be possible we must presuppose the practical authority of the moral claimant over the addressee; however, it is not the case that the addresser or the addressee of a moral claim must be explicitly aware of the authority of the former. The condition is implicit and transcendental. Darwall's thesis is that moral claims – or, second-personal reasons – and moral obligations are only valid if this relation holds.[35] The 'second-person standpoint' is the necessarily presupposed standpoint from which a moral claimant addresses other competent moral agents.[36] The

---

[34] An agent relative reason is a reason whose formulation includes an ineliminable reference to the agent for whom it is a reason. See also section (1.2.1.) of the present thesis.

[35] 'Making a claim or a demand as valid always presupposes the authority to make it and that the duly authorized claim creates a distinctive reason for compliance (a second-personal reason). …I claim that it is part of the very concept that moral obligations are what those to whom we are morally responsible have the authority to demand that we do.' Darwall (2006), p. 11, 14

[36] Competence is an important qualifier in Darwall's argument. He refers to it by way of 'Pufendorf's point': 'genuine obligations can result only from an address that presupposes an addressee's second-personal competence. To intelligibly hold someone responsible we must assume that she can hold herself responsible in her own reasoning and thought.' Darwall (2006), p. 22

standpoint or 'grounds' of the moral claimant is her part in the normative relation which Darwall argues must be presupposed to hold between them. Moral reasons, Darwall argues, 'are relational all the way down. They ultimately derive from normative relations that reciprocally recognizing persons assume to exist between them.'[37] At bottom, the assumed relation and the presupposed standpoint are of practical authority.

Darwall emphasizes the presupposition of practical authority relations in moral claims. That presupposition must cash out into something like the following: when a competent moral agent, A, makes a moral claim that is addressed to a competent moral agent, B, *e.g.* 'Let B remove his foot from my foot,' B owes A the performance of the action which is the content of the moral claim *just because A 'said so.'* Note that this presupposition carries two central criteria of practical authority: content-independence and the wronging criterion. First, B has a duty directed to A; B owes A the performance of some action. If B failed to perform, then B would wrong A. Second, in the case where A tells B to remove his foot (a favourite example of Darwall's in the text), what generates the duty of B to remove his foot is not only or even that A is in pain and that A communicates this state of pain to B. Darwall regards that reason as 'third-personal.' The communication of A's pain is meant to appeal to an agent-neutral reason: everyone has a reason to relieve pain. Darwall does not believe that B owes A the performance of removing his foot because A communicates an epistemic claim about being in pain, which B ought to trigger a valid third-personal, agent-neutral reason for B to act. Rather, Darwall holds that

[37] *Ibid*., p. 60

what generates the duty that B owes A is the fact that A makes a second-personal address, such as a direct command or a request. The duty is triggered in a content-independent manner. What matters is not, first and foremost, the content of A's command, which, in this case, is that he is in pain, but rather that A gave B a second-personal form of address to perform, *i.e.* A 'told' B to perform. In order for A's telling alone – that is, without prior regard to the content of the commanded action – to generate a duty for B to perform, we must necessarily presuppose the normative relation of practical authority to hold between A and B. In a nutshell, that is Darwall's thesis.

Darwall employs this presupposition of practical authority to interpret the Rawlsian formulation of persons as 'self-originating sources of valid claims.'[38] The *source* of the claims is the normative power to command (and to be obeyed) or, more generally, to give second-personal forms of address. Moreover, this source is one that *originates* with the concept of a person. Part of what it is to be a person is to stand in a reciprocal, normative relation of practical authority with respect to other competent moral agents. When you address another by way of a moral claim, you are exercising an authority over the addressee which is inherent to your personhood. Likewise, when you are addressed by way of a moral claim, someone is exercising their authority over you.

Consider an example that may illustrate Darwall's thesis of the presupposition of practical authority. A person of religious belief denies for religious reasons a blood

[38] Rawls (1999c), p. 330

transfusion or an amputation which are the only means to saving her life.[39] Whether or not her reasons are erroneous or misguided, we would be wronging her *in one way* if we preformed the medical intervention that will save her life. (It is beyond the present scope to consider if we would wrong them all things considered.) Specifically, this one way of wronging is that we would deny her presupposed authority, which she has over us in virtue of being a person. Just because she refuses – that is, just because she 'says so' prior to any enquiry into *her* reasons (or the belief-independent reasons that properly apply to her) – constitutes for other morally competent agents an obligation to perform the content of her command and, hence, to refrain from the necessary medical intervention. If we do not respect her authority, which as Darwall argues we necessarily presuppose, then we wrong her.

This example is rather extreme, but it is meant to clarify the different reasons that might be in play when one person makes a moral claim on another to perform some action. Darwall's point is that the authority relation that underlies why we should respect the claim of the conscientious objector to medical intervention also grounds every second-personal form of address that we make to one another. That is, every moral claim we make is grounded by a presupposed relation of practical authority. This authority relation explains the normativity – the 'why we ought to do what we ought to do' – of every genuine moral claim.

Darwall's understanding of persons as self-originating sources of valid moral claims constitutes an objection to philosophical anarchism by supplying reason to doubt its first premise. If an authority relation grounds every valid moral claim that

[39] Of course, the reason does not have to be religious. That it is religious only highlights the fact that, in this example, there might be a reason in play besides the reason created by a presupposed authority relation between moral agents.

persons address to one another, then surely there is no such thing as the presumption against authority. As it turns out, David Howell Evans *is* an authority over you. This relation is on display if and when he makes a moral claim on you. It is incorrect to presume otherwise, and, as such, the initial premise of the philosophical anarchist is mistaken.

4.4.2. There are two ways to respond to the overreaching objection. The *first* is to undermine the grounds for endorsing (2), that is, the second premise of the overreaching objection which stipulates that the presumption against authority conflicts with what we normally believe to be the authority of individual persons. By opening two lines of argument, I will attempt to demotivate the grounds, suggested by Darwall, to endorse the second premise in the overreaching argument. First, we might understand persons as 'self-originating sources of valid claims' in ways that do not entail relations of practical authority. Second, even if relations of practical authority hold between individuals they supply, at most, only necessary and not sufficient conditions to ground moral duties. From this insight, a suggestion emerges. Perhaps the *other* necessary conditions to ground moral obligations are, upon reflection, also sufficient. Transcendental relations of practical authority are a distraction.

Even if these lines of argument are unsuccessful and (2) is sound, a *second* response shows that the overreaching objection is nevertheless unconvincing. There is a significant disanalogy between states and individuals. Despite Hobbes's theory of personation and despite the self-image which is commonly attributed to the state, we must remember that this is the realm of metaphor and fiction. A state *really* is not a person. By focusing on this disanalogy, I will suggest that the conclusion of the

overreaching objection does not follow from its two premises. The overreaching objection does not undermine the presumption against authority.

To begin, Darwall supplies one understanding of the Rawlsian formulation of persons as self-originating sources of valid claims. This is one reading of Rawls's formulation. It is far from clear that Darwall's understanding of the formulation is equivalent to Rawls's own meaning. In fact, the essay in which Rawls coined the phrase, 'Kantian Constructivism in Moral Theory,' suggests a different reading.

For Rawls, persons are sources of moral claims given that their 'moral personality' is itself a source of moral claims.[40] Moral personality is a technical term in Rawls's thought, and by it he means a kind of dual capacity of citizens: first, the capacity of citizens to give justice to others and, second, the capacity of citizens to form and pursue a conception of what is good in life, that is of those 'ends' which confer a purpose or meaning upon their lives. In Rawls's work, the conception of persons as self-originating sources of valid claims is an elaboration on the entitlement of citizens to make claims upon the design of public institutions in the name of their 'highest-order interests and final ends.' Moreover, 'these final ends along with their highest-order interests support such claims.'[41] This suggests that it is not the presupposition of an authority relation that makes persons sources of moral claims but rather their capacity to confer value upon the world in the pursuit of their 'final ends.' What those final ends are, specifically will vary across innumerable lines from person to person, yet in order to be admissible as a basis for moral claims each must be

[40] Rawls (1999c), p. 331

[41] *Ibid*., p. 330

consistent with the requirements of the public rules of justice. Persons could be sources of valid moral claims not because they stand in presupposed relations of authority over others, but because they have the capacity to form and pursue some personal project, goal, or end.

This understanding of the Rawlsian formulation is supported by Rawls's comments on how to represent the 'freedom of persons as self-originating claims' in the original position organon.[42] Rawls holds that the parties to the original position are not meant to justify their claims by reference to some antecedent moral principles or by some perfectionist values. The absence of the need for justifications of that sort 'is how freedom as originating claims is represented [in the original position as a device of representation].'[43] Rather, the claims of parties to the original position are justified in another way, which models the moral power of citizens to pursue conceptions of the good.

Parties to the original position are only motivated to maximize the share of social primary goods – those things persons want no matter their final ends – for whomever they represent (either themselves of their familial posterity). It is not that a particular conception of the good or perfectionist system of final ends calls for a certain bountiful basket of social primary goods. This is not why the parties are modelled as intent to maximize their share. Rather, it is that moral persons have the capacity to have final ends, and in order to exercise that capacity, they will need a certain basket of social primary goods. Lastly, absent any information about the content of those ends, which is veiled in the original position model, the parties are

---

[42] *Ibid*., p. 334

[43] *Ibid*., p. 335

rational to assume that more in the way of means presumed necessary to the pursuit of those ends is preferable to less. The parties are warranted to make this assumption for themselves and whomever else they represent. A disinterested preference for social primary goods is how Rawls's models 'freedom as originating claims' in the original position. This modelling suggests an alternative understanding of persons as 'self-originating sources of claims' which does not necessarily presuppose an authority relation. Rather, it models an egalitarian commitment that persons, given an equally important capacity to pursue their divergent interests and needs and to confer value upon the world, have an equal *pro tanto* claim on the distribution of benefits and burdens of social cooperation. For Rawls, that claim is defeasible only by recommendation of the difference principle.

Consider a second, more interesting line of argument to demotivate the grounds for endorsing the second premise in the overreaching argument, which holds that the presumption against authority conflicts with what we *normally believe* to be the authority of individual persons. Darwall suggests that a relation of practical authority is presupposed when individuals conduct second-personal forms of address, such as when they make moral claims on each other. This authority relation is thought to ground moral obligations. However, even if the correct way to conceive of moral obligations is via a presupposition of practical authority, such a relation is at most a necessary and not a sufficient condition to generate moral obligations.

To see this consider the above *domain thesis*: If A has practical authority over B, then the fact of A's commanding 'Let B Φ' is a reason for B to Φ only for action-types within a certain domain. Even if we there are transcendental relations of practical authority holding between persons, when one commands another – a kind of

second-personal form of address – to perform some action that is absurd or morally erroneous, we would not think that the necessarily presupposed authority relation even generates a *pro tanto* reason to perform such an act. Even if practical authority is a transcendental relation between persons, it could not make 'Eat nine hotdogs!' or 'Inflict gratuitous suffering!' reason-giving in any way. Authority only 'kicks' once we have delineated the proper moral domain.

Suppose that relations of practical authority are necessarily presupposed when persons make moral claims. Even if that is so, we require some independent moral principles to delineate what is properly within the domain of authority's valid commands and what is not. This kind of independent principle partitions commands that signal moral duties, *e.g.* 'Get off of my foot,' from commands that do not, *e.g.* 'Eat nine hotdogs' or 'Inflict gratuitous suffering.' In short, some independent moral principles are required to justify the domain thesis and to inform what commands are encompassed by the domain. As such, relations of practical authority cannot be sufficient to generate moral duties. Even if we grant transcendental relations of practical authority among persons, commands, in and of themselves, are not sufficient reasons. In that case some other independent source of reasons is required, and, in turn, practical authority would be only a necessary condition to ground moral obligation. Even if we grant that relations of practical authority are necessarily presupposed to hold between individuals, such relations cannot be singularly fundamental in the justification of moral claims and obligations.

Perhaps the invocation of relations of practical authority that transcendentally hold between persons is a distraction. Given that some *other* condition is necessary to ground moral claims and duties, perhaps this other condition is also sufficient. That

is, given that some independent account of why reasons obligate is necessary to delimit what could be properly within the domain of authority's valid commands, perhaps this independent account is sufficient to justify the reason-giving force of the moral claims and obligations in the first instance. Perhaps we do not even need to suggest that relations of practical authority hold between persons. That is, perhaps Darwall's transcendental presupposition of practical authority is not even a necessary condition to account for the reason-giving force of moral obligations. Darwall contends that in the normal course of moral claims, we presuppose that 'because A said so' is reason enough for others. The domain thesis shows that it is not reason enough, and perhaps it is not a reason at all. The suggestion is that those moral principles which define the domain restrictions on practical authority are principles that themselves account for the moral permissibility or moral urgency of committing certain actions. In short, the suggestion is that the presupposition of authority is a distraction. If this is tenable, then it would serve to demotivate the grounds Darwall offers to endorse premise (2) in the overreaching objection.

4.4.3. It is far from certain that we should admit (2), but even if one does, perhaps for the reasons that Darwall suggests or if one otherwise finds simple voluntarism a plausible account of the normativity of reasons, the overreaching objection is nevertheless unconvincing. There is a *second* response that the philosophical anarchist may offer against the overreaching objection. Darwall argues that it is a transcendental condition on the possibility of normative claims that relations of practical authority hold between persons. This argument, however, does not establish an independent presumption in favour of practical authority of other agents. We do

not conclude from such transcendental argumentation that it is *obvious* that others, such as David Howell Evans, have practical authority over us.[44] If anything, such transcendental argumentation, if successful, would meet the *burden of proof* set by the presumption against authority. We begin with the belief that others do not have authority over us. If Darwall is convincing, then it is only after sustained philosophical argumentation that we might be led to conclude that other persons do have practical authority over us. Yet, this might not upset the presumption against the authority of other persons. Meeting a burden of proof does not necessarily derail a presumption. A successful piece of transcendental argumentation does not necessarily establish its conclusion as a new *prima facie* reason.

Here is another, stronger way of making the same point. Philosophical anarchism begins with the presumption against the practical authority of other agents. To be convinced that an agent does have practical authority over us, we will need an argument that sufficiently meets the burden of proof which is set by the presumption. Darwall's arguments might meet that burden of proof. After sustained reflection, we may conclude that, in order for valid moral claims to be possible, other persons must have authority over us. (Even though I would resist the simple voluntarist account of normativity on which this conclusion relies.) The burden of proof is met for natural persons, but the presumption is directed against the practical authority of other *agents*, of which natural persons constitute a subset. Hence, just because it might be shown

[44] Darwall himself notes that he does 'not claim…that participants in second-personal interaction invariably do accept or are aware of these presuppositions, or even that the necessary assumptions must be accessible to them…My thesis is that the assumptions I identify are presuppositions of second-personal address in the sense that (second-personal reasons) can be validly addressed only if these assumptions hold.' Darwall (2006), p. 24

that moral persons have practical authority over us, we do not have sufficient grounds to overturn and jettison the presumption against the authority of other agents, including, most significantly, the state. With reference to the overreach argument, even if premises (1) and (2) are sound, the conclusion, (3), simply does not follow. Technically, the overreaching objection commits a fallacy of equivocation. The significant content of premises (1) and (3) – the practical authority of agents – differs from the content of premise (2) – the practical authority of persons.

This response to the overreach objection only holds provided we admit one crucial thesis: there is a significant disanalogy between states and persons. I have already mentioned in (2.2.2) a disanalogy between the authority ascribed to persons and states. However, more primitively, persons are fundamentally unlike states. Call this the *disanalogy thesis*. In contemporary political philosophy, there is support for the disanalogy thesis. Thomas Nagel puts the point that 'institutions, unlike persons, do not have their own lives to lead.'[45] Persons have agent-relative reasons to pursue what has partial and idiosyncratic value. States do not have such reasons. States do not have special obligations of partiality to friends and family. Nor do states have special obligations to self that arise from the pursuit of what we might call Aristotelian projects.[46] States do not have the kinds of reasons that come with the pursuit of those projects that confer coherence, meaning, and value upon a life, 'as it

[45] Nagel (1991), p. 59; *Cf.* Green (1988), p. 66

[46] Aristotelian project is an adaptation from Rawls (1971), pp. 372-380. An Aristotelian project is one that we commit to. The more skilled we become at it, the more interesting it becomes. In short, it confers a sense of value or purpose to our lives.

is led from the inside.'[47] There is no way that a state lives its life from the inside; for states, there is no 'inside.' There is simply nothing upon which an Aristotelian pursuit could confer value and meaning.

Of course, Hobbes did not hold the disanalogy thesis. For Hobbes, not only is the state a person, but the state must be a person in order to possess practical authority. The disanalogy thesis relies on a theory of the person that is at odds with Hobbes's root conception of a person. For Hobbes, a person is some thing to which words and actions can be attributed. Another interpretation is that a person is an entity that can speak or act in the name of (some entity).[48] In either case, for Hobbes a person is defined as a role-playing concept. To be a person is to be a locus in a relation of representation, either the thing represented or the thing doing the representation. Hobbes's conception of personhood is very thin and thus very inclusive. It is not just that Hobbesian persons can act or take responsibility for actions. Rather, Hobbesian persons are entities to which we can attribute action or responsibility for action. As Hobbes said, 'There are few things incapable of being persons.'[49]

To develop a defensible account of personhood is well beyond the scope of this project; however, it is germane to the argument to suggest than any successful account of personhood must meet at least one requirement. Any successful account of personhood must offer, at the least, what it is about persons that explains why we care about them – that is, why we owe them certain respect and treatment. There are

---

[47] Nagel (1991), p. 59

[48] See discussion above at sections (2.4.1.) and (2.4.2).

[49] Hobbes (1991 [1651], p. 113 (xvi, 9); Hobbes (1688), p. 80

manifold ways to initiate an explanation aimed at this requirement, and such an account could be more or less metaphysically committed. On the one hand, Boethius and Aquinas thought a person was an 'individual substance of rational nature,' which enables persons to participate in a religious life, which, in turn explains why persons are worth caring about.[50] On the other hand, Rawls attempted to formulate a less metaphysically committed view of the person by teasing out what is implied about persons by the public institutions of our political culture. For Rawls, persons are free and equal beings that have the capacity to give justice and to develop a conception of what gives their life value.

There are just two accounts among very many. Perhaps what it is to be a person is to have a sense of self, constructed from the materials of our history and culture, which are themselves valuable. Or perhaps what it is to be a person is to have a view from somewhere, and there is an implication about having a view from somewhere that reflects why persons merit certain kinds of treatment. Or, again, perhaps what it is to be a person is to have a capacity for rational agency – that is, because persons can respond to reasons they should be treated as though they are a source of reasons. Or perhaps what it is to be a person is grounded on the doctrine of *imago Dei* – that is, a person is what is created in the image of God. These are the merest beginnings of various accounts of personhood. What is salient, however, is that each works toward an account of what it is about persons that explains why they have value, why they are owed certain kinds of moral treatment.

Hobbes's conception of personhood neglects this requirement. To that extent, it is unconvincing. Moreover, Hobbes's conception of personhood facilitates

[50] Pettit (2008), p. 55

equivocation and moral error. Hobbes enables us to refer to almost anything as a person. Since it is normal to regard persons as entities that merit certain kinds of respect and moral duties, Hobbes facilitates the error of mapping what we regard as this commonplace feature of persons (which he does not share) onto what Hobbes defines as a 'person.' The result is that we are enabled, however erroneously, to treat Hobbesian persons as if they were entities that are owed the respect and treatment we reserve for persons – hence, the Hobbesian person of the state and the posit of its practical authority. We must keep in mind the disanalogy between what are persons and what are not and, more importantly, an inkling as to why the distinction is relevant.

The disanalogy thesis may seem obvious; however, it was not always so. Not only is it insupportable for Hobbes, but also the practical and theoretical project of justifying what is permissible and what is obligatory in the relations of states on the international stage has historically referred to an analogy between states and persons. Principles of self-determination and non-intervention have been grounded on the analogy between states and persons.[51] For example, Christian Wolff, who posited a principle of non-intervention, argued in 1749 that 'nations are regarded as individual free persons living in a state of nature.'[52] Against Wolff and any contemporary followers, Charles Beitz argues that the moral duties of states to do and to forebear are not grounded on an analogy between states and persons but rather on the demands of

[51] Beitz (1979), pp. 67-104

[52] Christian Wolff, *Jus gentium methodo scientifica pertractatum* (1749), section 2. I owe this citation to Beitz (1979), p. 75.

principles of distributive justice, which apply both domestically and internationally.[53] It counts in favour of the disanalogy thesis that the contemporary approach to grounding principles of non-intervention and self-determination dispenses with any similarity between individuals and states in favour of arguments concerning distributive justice. If we can account for the considered convictions concerning non-intervention in international ethics without reference to any analogy between states and persons, then we may set the analogy aside.

We should believe that there is a disanalogy between persons and states. A defensible account of what it is to be a person shows that states are not persons. Given that disanalogy, it does not follow from a transcendental argument about the practical authority of persons that we should not presume that other agents, including the state, lack authority. Even if we grant the transcendental argument about the practical authority of persons, the presumption should nevertheless hold against states. We should not withdraw the presumption that states are agents which do not have practical authority over us until we have an argument that indicates otherwise. The overreaching objection misfires.

A proponent of the overreaching objection may however press the following rejoinder. He may endorse the following claim. For shorthand, call it *the identity claim*:

> The authority of a state, *S*, is identical to the authority of the individual persons who are subject to *S*.

[53] Beitz (1979), pp. 67-183

It might be thought that this is a claim that Hobbes commits to in his derivation of state authority. For example, I believe Richard Tuck thinks as much.[54] The claim that the authority of the state is identical to the authority of individual persons bolsters the overreaching objection. If we may be convinced to withdraw the presumption against the authority of individual persons, then, given the identity claim, we should likewise withdraw the presumption against the authority of the state. In short, the rejoinder is that the disanalogy thesis is trivially true. States do not have their own lives to lead and, on that account, are manifestly not persons; however, this cannot motivate a valid response to the overreaching objection. The state's authority is just the same as the authority of individual persons or it is a faithful representation of their authority. If the identity claim is true, then an argument that undoes the presumption against the authority of individuals would also undo the presumption against the authority of the state. If the identity claim is true and if we have a convincing argument against the presumption against the practical authority of individual persons, then philosophical anarchism cannot get off the ground.

Focus on the identity claim. In order to service the overreaching objection, it stipulates that the state's practical authority is identical to the practical authority held by individuals, if individuals have practical authority in the way Darwall, for instance, believes that they do. Depending on how we interpret the identity claim, it is either trivially true or obviously false. If what is meant is that the state's authority is roughly the same *species* of authority – that is the particular robust formula of authority clarified in Chapter 1 – as the authority possessed by individual persons,

[54] In his Introduction to *Leviathan*, Tuck notes 'The sovereign's rights were purely those of any individual in the state of nature.' Tuck (1991), p. xxi

then the claim is trivially true. But, as I argued in (2.2.2), there is a difference between state authority and Darwallian individual authority regarding the range of effective commands. Darwall intends to draft the authority of individuals on the same robust conception that was drafted in Chapter 1 and attributed to the state in Chapter 2.[55] However, pointing out that the particular species of authority painted in self-image of the state is equivalent to the particular species of authority that Darwall attributes to individual persons is not a successful rejoinder to the disanalogy thesis. What is needed is a kind of defence of why the state's authority is the *same authority* – and not just the same species or conception of authority – as that possessed by those individual persons who are citizens of the state. That seems ruled out by the nature of practical authority. Practical authority relates the commands of one agent to the obligations of a distinct other. It is not the same as voluntary commitment. Recall robust authority elevates 'because *I* said so' into an obligation for some person subject to the authority. How can that '*I*' simultaneously refer both to the state, conceived of as a person by fiction, and to an individual, 'natural' person subject to that state? If proponents of state authority wish to reify the state's self-image as a person in possession of practical authority, then they cannot endorse the identity thesis.

4.4.4. To further consider the standing of the identity thesis, let's return to the analysis of Hobbes's theory of state authority, given above in (2.4.4). I want to return to Hobbes's argument for two reasons. First, it might be thought, as Tuck seems to suggest, that Hobbes's derivation of state authority contains this identity claim, or if

[55] He intentionally does so. Consider his reference to Hobbes. *Cf.* Darwall (2006), pp. 13-15.

not this claim, then a very similar claim. I don't believe Hobbes commits to the position that state authority is identical to the authority of those individuals subject to it. Hobbes cannot save the overreaching objection. Second, I want to return to Hobbes's argument for state authority to uncover its flaws, which I let lie in the initial presentation. It furthers the philosophical anarchist project to show that Hobbes does not make the identity claim and that the argument that Hobbes does employ toward the establishment of state authority is unsound. As Hobbes is the greatest theorist of state authority the philosophical anarchist owes him a response.

Above, I suggested that the identity claim does not seem to stand on its own. Nor does Hobbes offer anything in its support. To the contrary, Hobbes conceives of the locus of authority as the person of the state. The 'I' in 'because I said so' refers to the person (by fiction) of the state. For Hobbes, the state is the locus of authority that is distinct both from any conception of authority of the sovereign or from any conception of the authority of the citizens. Hobbes does not think the sovereign has robust authority; the sovereign is only the mouthpiece for the commands of the state. The state owns the commands; the sovereign articulates them.

Nor does Hobbes think that the kind of authority possessed by the state is, strictly speaking, identical to the kind of authority possessed by individuals. To see why, recall that Hobbes equates the duty of non-interference, incurred when a person transfers their right to represent himself to the state, with a duty to meet commands with strict obedience. For Hobbes, this equivalence is required to avoid akrasia, or what he calls 'absurdity.' Hobbes understands that after the foundational, state-making covenant, when the state commands 'Let B Φ,' this command is equivalent to B's voluntary illocution – that is, B's self-command – 'I will to Φ.' This equivalence

is important for Hobbes. It supports his commitment that the duty of non-interference requires meeting commands with strict obedience. However, Hobbes's equivalence does not support the identity claim in the above rejoinder. The identity claim says that the state's practical authority is identical to the practical authority of persons that are subjects of the state. That is to say, it is the claim that an individual's power to impose content-independent duties by fiat is identical to the state's power to impose content-independent duties by fiat. That is the equivalence needed in order to contravene the disanalogy thesis and support the overreaching objection; however, this is not the equivalence Hobbes posits. Hobbes does not believe that individuals have the power to impose content-independent duties by fiat over anyone else *but themselves*.[56] For Hobbes, the species of authority that individual persons have is not the robust conception he ultimately attributes to the state; rather, the species of authority that individuals possess are the privilege right to represent themselves – what I call the 'the second conception' – and the 'first conception' of authority latent in whatever other privilege rights that they have. The conception of authority that he ultimately attributes to the state is born of the transference of the privilege right of individuals to represent themselves. It is not something that individuals have before the foundational, state-making covenant. Hence, for Hobbes, the state has a right that individuals do not have: the power-right to obligate *another person* by command.

[56] This point is consonant with Hobbes view that in the state of nature there are no claim rights as such. The only species of natural rights is the permission. Persons do not have the capacity to make claims or impose duties upon others. This is how to reconcile Hobbes's seemingly conflicting comments about rights in chapters 13 and 14 of *Leviathan* – that is, Hobbes's view of the state of nature as a state where persons have natural rights, but yet the notions of right and wrong, justice and injustice have no place. For this line of interpretation, see Thomson (1990), pp. 49-50.

Hobbes can provide no support for the identity thesis, and thus cannot save the overreaching objection.

Before turning to Hobbes's actual arguments, let's review the dialectic that begins with the overreaching objection. That objection holds that the presumption against authority is unwarranted. This claim is bolstered by a suggestion that emerges from Darwall's work that we apply no such presumption to individuals. In fact, Darwall suggests that we must presume individuals to have robust, practical authority over one another to make sense of moral claims. The philosophical anarchist can question Darwall in his own right, as I have done. Or, she can grant Darwall the point and nevertheless hold that since individual persons are disanalogous to states (the disanalogy thesis), the withdrawal of the presumption against authority for individuals should not lead us to withdraw the presumption for states. The proponent of the overreaching objection may then reply with the rejoinder that the authority of the state is just identical to the authority of the individuals who are subject to it. Furthermore, they may attribute this claim to Hobbes. However, the claim is neither plausible, nor is it a claim that Hobbes makes.

Let's return to the argument which Hobbes *does* make for state authority presented in (2.4.4). To recapitulate: Individuals have the privilege right to act in their own name. They may transfer this privilege right to the state – that is, they may authorize the state to act in their name. When they do so, Hobbes believes, they incur a duty of non-interference. Moreover, upon analysis, this duty of non-interference is equivalent to the duty to meet state commands with strict obedience. Hence, when those individuals incur that duty, it follows that the state has robust authority over

them. In short, Hobbes attempts to move from an individual's authorization of the state to the state's authority over that individual.

This move is illicit. In order for the transfer of the right 'to act in the name of' to generate duties of non-interference which are equivalent to duties of strict obedience, the transfer would have to entail conditions which would be implausible to ascribe to authorization. Two such implausible conditions are permanence and exclusivity. The normal view of authorization is that when B authorizes A to act or speak in B's name, this act of authorization does not entail that A is permanently authorized to act in B's name. In that case B could never withdraw her authorization of A. Permanence is an implausible feature of authorization.[57] Nor does B's act of authorization entail that only A can act in B's name to the exclusion of every other person, including B. Again, this seems an implausible feature of authorization. Just because another has the permission to act in your name does not mean, *simpliciter*, that you cannot act in your name.[58]

However, for Hobbes to move from 'B authorizes A' to 'A has authority over B' the act of authorization must be presupposed to entail permanence and exclusivity. In order for the duty of non-interference to be equivalent to the duty of strict obedience the former duty must entail that the author treat all – or nearly all – of the actions of his representative actor as his own, including that species of illocutionary actions known as commands. I say 'nearly all' because Hobbes does not believe that

[57] Gauthier agrees. 'There is surely no reason to take authorization to be permanent. If it is intended to cover that commonplace procedure whereby I make someone else my agent, then it must be possible for authorization to be withdrawn as well as granted.' See Gauthier (1969), p. 125.

[58] Regarding this condition, again, Gauthier agrees. See Gauthier (1969), p. 125.

authorization continues to hold when an authorized actor performs an action that threatens the author's survival. For instance, if the state commands a subject to harm himself, the subject cannot be understood to own that action. For that action, the subject is neither author, nor is the state acting in the name of the author. Authorship and authorization unravel for those actions an actor might commit which would harm the author.[59] Taking this qualification on board, when an actor acts in an author's name and so long as the action does not threaten the author's survival, the author does not have the option to withdraw his authorization. Once granted the authorization holds, again, so long as the actions the actor performs do not threaten the author. Hobbes is committed to believing that authorization neither has a lapse date nor can be withdrawn at the author's discretion.

Moreover, Hobbes's move from 'B authorizes A' to 'A has authority over B' implies that A's permission to act in B's name is exclusive, that is, when A acts in B's name Hobbes intends it to be the case that *only* A has this permission right to the exclusion of all other actors, including B. To see this, suppose B self-commands 'I am going to not-Φ.' Imagine that the state then countermands 'Let B Φ.' Hobbes is committed to believing that if B is to not violate his duty not to interfere with A's exercise of the permission right to act in B's name, then B cannot act in his own name and execute the self-command. Rather, B must execute the content of the state's command. If the duty of non-interference engendered by authorization is to equate to the duty of strict obedience, then A's permission to act for B excludes B's permission to act for B. In turn, Hobbes must believe that authorization entails an exclusivity condition.

---

[59] See Hobbes (1991 [1651]), pp. 94-94 (xiv, 8).

In sum, Hobbes's derivation of state authority occurs in the move from 'B authorizes A' – meaning that A has authority, when authority is defined as the permission right to act in the name of – to 'A has authority over B' – meaning that A's commands constitutes duties of strict obedience for B. Hobbes only moves from authorization to practical authority by ascribing features to authorization that we would deny. In normal cases, granting someone the permission to act in your name entails neither permanence nor exclusivity, and it certainly does not entail them in concert. If one denies that authorization necessarily has these features, then one denies Hobbes this move. Hobbes derivation of state authority is implausible.

4.4.5. I conclude by reviewing the main line of argument. This chapter has attempted to deflate three objections to an essential premise in the philosophical anarchist argument, the presumption against authority. Those objections were the argument from folk beliefs, the argument from the domain and limits of authority, and the argument that the presumption against authority overreaches. However, the philosophical anarchist is not yet warranted to espouse her view. There is another premise that requires defence. Even admitting the presumption against authority, some may hold that there are certain conditions that nevertheless ground the authority of the state. The philosophical anarchist must undo their arguments in order to render the *a posteriori* conclusion and thus render her central claim plausible. It is to the defence of philosophical anarchism *a posteriori* to which we now turn.

Chapter 5 – An Authority Worth Achieving

§ 5.1. Introduction

5.1.1. The philosophical anarchist conclusion is that the state does not have robust practical authority. That conclusion applies equally if we consider the state as Hobbes did – as some fictive person apart from both sovereign and subject – or if we identify the state as the set of natural persons who create, interpret, and execute legal directives.[1] In the latter case, 'the state' merely denotes some group of natural persons and not some fairytale, fictive person about which we agree to suspend disbelief. On this view, there is nothing mysterious or about the state, *pace* Hobbes. It is just a group of natural persons that make a certain set of normative claims. Perhaps that is a modest, but intelligible version of the 'identity claim' (4.4.3). On either view, the philosophical anarchist argues that the position that the state is a robust practical authority over those whom it claims to possess authority is indefensible.

The anarchist offers the *Unified Argument* toward that conclusion (3.5.3). Two premises are at the engine of this argument. Thus far, I have attempted to motivate and defend the first premise, the presumption against authority. In this chapter, I attempt to defend the second premise, the *a posteriori* conclusion. To cover all of the dialectic – that is, the argumentative back and forth – surrounding this second premise

[1] The latter is similar to David Copp's conception of the state. For Copp, the state is a system of offices that are occupied by natural persons or, as Copp puts it, a system of 'animated institutions.' These institutions are creatures of a legal system that is 'in force' for a particular jurisdiction defined by both geography and membership. See Copp (1999), pp. 5-10.

is beyond the present scope; however, I will attempt to cover the major moves and present a new argument in support of it. Section 2 is devoted to that task; it completes the philosophical anarchist argument. With the *a posteriori* conclusion squarely in place, the conclusion of the *Unified Argument* goes through. The state does not have robust practical authority over persons. The view that the state's illocutionary acts of commands stand as reasons that obligate others to act cannot be rescued.

However, the state may aspire to epistemic authority. This is a kind of authority that is justifiable, and, moreover, some of the conditions that are proposed to justify robust practical authority only go so far as to justify epistemic authority. In addition, once we adopt a principle of parsimony, the fact that they justify the latter actually counts against the claim that they justify the former. This suggestion adumbrates the argument presented against Joseph Raz's service conception of authority in (5.2.3).

To believe that the state is an epistemic authority and not a practical authority alters the way in which we think about legal directives. The legal directives of an epistemic authority are not commands *sensu stricto*. They are not enacted with the intent to communicate to the subject that with the genesis of the command he has a content-independent duty owed to the commander to perform some act. In short, legal directives communicate reasons, but they do not necessarily communicate content-independent reasons. They are not necessarily commands. For instance, the legal directives of the state *qua* epistemic authority are signals or epistemic claims about what persons have a reason, or more strongly, a decisive (content-dependent) reason to do.

Once we adopt this view of legal directives, two considerations come forward. First, we care that the legal directives are enacted with the *intention* to signal what

reasons apply to persons in ways that those persons can apprehend. I discuss the importance of this first requirement as it bears upon legitimacy in (6.5.5). Second, we care that the legal directives are *reliable* – that is, that they are likely to make true claims about what reasons apply to persons and that the advised actions will promote those reasons. The consideration of reliability is central to epistemic authority. Epistemic authority, unlike robust practical authority, is not conceived to present a logical relation between a legal directive and a reason for compliance. It only presents a probabilistic relation: depending on how reliable the authority is, it is likely to be the case that a legal directive actually points out a reason or a decisive reason. We do not wrong the epistemic authority when we do not comply with directives; however, it *is* likely that we do act wrongly. Also, because the relation is probabilistic, the reliability of the epistemic authority of the government can always be improved. Section 3 is devoted to the presentation of the state as an epistemic authority and the corresponding view of legal directives. Section 4 attempts a view from above of the main argument thus far.

In sum, this chapter has two goals. The first is to complete the defence of the philosophical anarchist *Unified Argument*. The commands of states that claim to have robust authority are unacceptable as reasons themselves. The second goal is to argue that governments can aspire to another species of authority, the directives of which are acceptable. Epistemic authority is the only kind of authority worth achieving.

§ 5.2. The A Posteriori Conclusion

5.2.1. Recall that in order to defend the *a posteriori* conclusion, it must be shown that for any condition posited to establish the robust practical authority of one person (be they fictive or natural) over another that it does not satisfy both the *justification* and *fulfilment* criteria. The justification criterion, again, stipulates that the condition, if met, must be one that actually generates the duty to obey in the strict sense. The fulfilment criterion then adds that the condition must be satisfied by the actions of those who thereby incur the duty to obey (or other relevant satisfying criteria). The thought is that if these criteria are met, then the duty to obey obtains as does, by correlativity, the state's claim right to obedience. However, there is no condition that satisfies the criteria.[2]

It might be thought that considerations of *benefit* ground the duty to obey in the strict sense. The state does, after all, provide enormous benefits: security, the possibility of markets, regulation that precludes assurance problems, courts by which disputes are arbitrated, and on, and on. One suggestion is that by our acceptance of these benefits we thereby incur duties of fairness or gratitude that, in order to be discharged, require that we incur the further the duty to obey in the strict sense. There are two ways to argue that conditions of benefit do not ground the duty to obey. The first is to attack principles of fair-play or gratitude head on. This is Nozick's strategy,

[2] This is a way to understand the argumentative strategy of A. John Simmons in his *Moral Principles and Political Obligations*. Simmons (1979). David Copp presents a concise summary of Simmons arguments at Copp (1999), pp. 11-13. See also, Edmundson (2004).

for example.[3] It is not a strategy I prefer because I do believe that a principle of fair-play establishes a duty to contribute, so long as certain conditions are met: that the acceptance of benefit is voluntary, that the benefit is 'presumptively good,'[4] that the cost of contribution (including the opportunity cost of contribution) is less than the benefit received, and that the benefits and costs are proportional in ways that satisfy norms of fairness.[5] Hence, it is plausible to think that the principle of fairness does generate a duty to contribute under certain conditions. Note that this is not to say that the same principle of fairness grounds the permissibility of the enforcement of those duties. What I fail to see, however, is that the contribution required by the principle of fairness should take the form of incurring a duty to obey in the strict sense the commands of those who provide the benefit. That move is entirely unfounded. To point out as much amounts to the second way the *a posteriori* anarchist responds to considerations of benefit. In short, they do not meet the justification criterion.

There is a similar move with respect to the '*natural duty* to support just institutions.' Rawls believes that we have such a natural duty; it is not problematic to believe as much.[6] However, why should the discharge of this duty require that we incur a further duty to strictly obey the commands of those persons who embody those

---

[3] Nozick (1974), pp. 90-95

[4] Klosko (1987)

[5] The argumentative strategy here is to fill out the requirements of what might be a defensible principle of fairness. Even Nozick admits the possibility of such a principle. 'Perhaps a modified principle of fairness can be stated which would be free from these and similar difficulties. What seems certain is that any such principle, if possible, would be so complex and involuted that one could not combine it with a special principle legitimating *enforcement* within a state of nature of the obligations that have arisen under it.' Nozick (1974), p. 95

[6] Rawls (1999), p. 99

institutional roles? That belief is, again, unfounded. Nor is it what Rawls had in mind. A concern for the stability of just institutions might count in favour of compliance with its directives, that is, as a consideration distinct from what justice requires. Acknowledging that, it then seems a step too far to suggest that the stability of justice institutions, much less *justice*, requires that we take the illocutionary acts of commands to be reasons that obligate us toward those that issued the commands. The 'natural duty' also fails to meet the justification criterion.

It is common for a philosophical anarchist like Simmons to argue that whereas considerations of benefit or natural duty fail to meet the justification criterion, express *consent* nevertheless does satisfy the criterion. If B were to voluntarily commit himself to A – say, by *promising* A – to take A's illocutionary acts of commanding as obligatory reasons to perform certain actions, then Simmons believes that B's voluntary action would ground A's right to strict obedience. If B understands the import of this action as grounding A's authority over him, then his action would, in fact, ground A's authority. It would satisfy the justification criterion; however, as Simmons points out, very few citizens have voluntarily undertaken this action, either explicitly or, as we might surmise, tacitly.[7] Naturalized citizens who take oaths of allegiance *may* be an exception, but it depends on what exactly they intend when they take the oath. Do they *really* intend that by their action they incur a duty, owed to the state, to take the state's commands as reasons to execute certain actions? As with Murphy's use of Tyler's empirical data (4.2.2), the intentions standing behind such

[7] See Simmons (1979), pp. 57-100 and Simmons (1993), pp. 197-269. Also, because duress is a condition that nullifies the normative force of consent, it is unlikely that in general states can attempt to ground their authority on consent. For given that the earth is covered in states, what reasonable option would a citizen have other than to consent *to some state*?

oaths are indeterminate. Perhaps oath takers only intend to comply with laws so long as they are reasonably just, but not necessarily because the laws are state commands. As it stands, consent does not meet the fulfillment criterion, and hence it grounds neither the duty to obey *sensu stricto* the law nor the robust, practical authority of the state.

This argument is good enough for the *a posteriori* conclusion. However, there is perhaps a further reason to doubt that the condition of consent does not establish robust authority because, *pace* Simmons, it does not meet the justification criterion. I think we should be suspicious of the claim that the acts of consent, promising, or other voluntary commitments justify the claim that the illocutionary acts of the commands, issued by the recipient of the voluntary commitment, are themselves reasons that obligate those subjects who have undertaken such a voluntary commitment to act in certain ways. The view that consent grounds robust authority is relatively straightforward. It begins with a claim about promissory obligations.

(1) If A promises B to Φ, then A has a promissory obligation, owed to B, to Φ.

With that premise in place, we only need to specify the content of Φ in the requisite ways to achieve robust authority.

(2) If A promises B to apprehend B's acts of commanding as reasons in themselves to execute the content of those commands, then A has a promissory obligation, owed to B, to apprehend B's acts of commanding as reasons in themselves to execute the content of those commands.

(2) is a particular instance of the general claim, (1), so if (1) is true, then (2) is true. Moreover, the consequent of (2) stipulates B's robust practical authority over A. Hence, if (1) is true, then it is possible to ground robust authority by voluntary commitment. Here we have Simmons' view. The justification of authority depends on the factual contingency of whether or not such voluntary commitments have been made. We may only conclude that the state has or does not have robust authority *a posteriori*.

There are two reservations about this approach to justifying authority. The first is specific to voluntary commitments. The second is a more general worry, and we will address it in the next subsection. The *a priori* anarchist, like Wolff, contends that the deep problem with robust authority is the notion that the illocutionary acts of commanding can themselves be sufficient considerations that count in favour of executing the content of the commands. The commands of others are not, *simpliciter*, reasons. Only an erroneous voluntaristic view about the source of normativity would suggest otherwise. That worry, however, may extend beyond commands to cover a broader range of illocutionary actions, including promises. If one presumes that commands are not reasons – that is, if one is impressed by the presumption against authority – then why should one not also presume that promises, in and of themselves, irrespective of their content, cannot be sufficient reasons to act? If the initial problem with authority is that the illocutionary acts of commanding are content-independent and, hence, are not reasons *simpliciter*, then why should we think that the illocutionary acts of promising, which are equally content-independent, are reasons that obligate? Moreover, why think any illocutionary act could establish practical

authority? The worry is that we have a problem of *regress*. The problem seems to be that the normativity (or, obligatory force) of one content-independent illocutionary act cannot be grounded by another content-independent illocutionary act.[8] Call this 'Godwin's worry.'[9] In contemporary parlance, Godwin did not believe that promises obligate because he did not believe that content-independent illocutionary acts, of which promises are one example, can generate moral obligations.

Whether or not Godwin's worry *is* a regress problem depends on how we respond to the deeper question of what *makes* a consideration a reason that obligates. If you have a problem with voluntarism on any variation – that is, if you think that reasons cannot originate with the will – then you, with Godwin, are likely to see a regress problem here. However, if you are a particular species of voluntarist, you might only have a problem with simple voluntarism – that is, the view that the commands of another are reasons for the commanded subjects *simpliciter* – and thus you might not see a problem. Kantians, for instance, reject simple voluntarism, but they are voluntarists nevertheless. They hold that reasons originate with the will, but only with one's own 'good will,' tempered by the constraints of the categorical imperative. For Kantians, reasons originate with the will, but it depends both on the content of the will and whose will the will is.

To be sure, although they are both content-independent illocutionary actions, commands and promises are very different. Commands are illocutionary acts issued

---

[8] Scott Shapiro suggests this regress problem. He writes, 'One cannot show how a CIP [content-independent peremptory] reason is possible by producing another (alleged) CIP reason. One must first establish that my will can give me a reason to act against the balance of reasons.' Shapiro (2002), p. 393

[9] See Godwin (1971 [1798]), pp. 102-103.

by one person with the intent to obligate another. Promises are illocutionary acts issued by a person with the intent to bind herself. The reflexivity makes all of the difference. The difference is, of course, *whose* will is meant to do the binding, your own or another's. The more we emphasize this difference, the less worry Godwin's worry causes for the possibility of grounding robust authority by voluntary commitment. There are still major worries with the move from consent to practical authority, however. There are the fulfillment worries that I detailed above, and there is another kind of justificatory worry to which we now turn.

5.2.2. We may hold another reservation about the claim that acts of voluntary commitment can ground robust authority. This reservation, however, applies not only to voluntary commitment, but also to any condition posited to meet both the justification and fulfillment criteria set out by the *a posteriori* anarchist. The suspicion is that such a condition could not ground robust authority and to believe otherwise would be to commit an error of moral reasoning. Specifically, to believe that some conditions can establish robust authority *a posteriori* is to participate in the error of 'double-counting.'[10]

To view the error of double-counting, consider some suppositions. Suppose that for B some consideration, *C*, – say, a consideration pertaining to benefit or voluntary commitment – counts in favour of Φ-ing. Suppose also that some person, A, who claims to have robust authority over B, commands 'Let B Φ.' Suppose further that B is aware of the two previous suppositions; he is aware that *C* is a reason to Φ and that

[10] Robert Paul Wolff and Joseph Raz both discuss the double-counting problem, and both regard it as a problem to be confronted in the justification of authority. See Wolff (1976), pp. 105-110; Raz (1986), pp. 57-58.

A commands him to Φ. Now, either *C* grounds the relation of robust, practical authority, or it does not. If *C* does not ground A's robust authority, then, for B, A's command *might* count in favour of Φ. It depends if some other consideration grounds the relationship of robust authority; however, *C,* certainly does counts in favour of Φ, *ex hypothesi*. When B considers whether or not to Φ, he will, at the least, consider *C* and he will consider whether or not A's command is a reason as well. This is the normal case.

Now, suppose that *C* does ground A's robust authority. Here, when B considers whether or not to Φ, if he counts A's command as a reason, then he will, in effect, count *C* twice in his deliberation. First, he will consider *C* as a straightforward reason to Φ. Second, if he counts the command as a reason, he seems thereby to count *C* again, given that *C* grounds the fact that the command *is* a reason. The problem of double-counting is that B's reasoning commits some error of moral mathematics. Reasons count in favour of certain actions; however, in any deliberative situation, they only count once, either on their own or embedded in the support of some practical rule.

The problem of double-counting complicates the rationality of obeying *sensu stricto* the commands of robust authority. If the considerations that ground the authority relation themselves count in favour of the actions that the authorities command, then the commands cannot themselves be reasons. As Raz notes, 'directives and rules derive their force from the considerations which justify

them.…they do not add further weight to their justifying considerations.'[11] In those cases, commands have no purchase.

The problem of double-counting does not, however, completely eviscerate the reason-giving-force of the commands of authority. It only does so when the consideration that grounds robust authority also counts in favour of the commanded action. If that consideration does not count in favour of the commanded action, then we should not conclude that commands cannot be reasons *because* of the double-counting problem. However, this makes authority *weirder* than its advocates expect: the commands of authority are reasons only if and when the reasons that ground authority are not also reasons to act as commanded.

The problem for the justification of robust practical authority is that most considerations that are likely to meet the *justification* and *fulfillment* criteria are likely also to count, in and of themselves, in favour of certain actions. For instance, this seems to be the case with respect to voluntary commitment, which is the only condition many *a posteriori* anarchists believe *could* actually ground robust authority. Of any command 'Let B Φ' B may always ask, 'should I Φ because A commanded or should I Φ because I promised A that I would do as he says because he says.' To the extent that the latter is a reason, the former is not (on pains of double-counting). However, to believe in practical authority is to believe that the former is a reason. On the consent approach, authority curiously appears then disappears.

5.2.3. Joseph Raz has devoted significant philosophical labour to advance two conditions that together satisfy the *justification criterion* set by the *a posteriori*

[11] Raz (1986), p. 59

anarchist. Whether they also satisfy the *fulfillment criterion* depends on the comparative epistemic positions of those who claim practical authority and those who are subject to those who claim it. It is a contingent matter, but unlike with consent, whether or not the fulfillment criterion is satisfied does not depend on any voluntary action of those subject to authority. There are problems with the attempt to ascertain whether or not the Razian conditions meet the *fulfillment criterion*. In general, Raz believes that with respect to some persons in some epistemic domains, the state does have authority; however, Raz also believes that no state has all of the authority it claims – that is, robust authority with respect to all citizens over all domains of action. In some, but not all, cases, Raz believes the *fulfillment criterion* may be satisfied,[12] but its satisfaction is only 'partial and patchy.'[13] To ascertain if and when the *fulfillment criterion* is met is a further epistemic problem. Below, in (5.2.4), we will see how these epistemic problems also infect the view that the Razian conditions meet the *justification criterion*. Moreover, excluding consideration of the fulfillment criterion, Raz's conditions face a straightforward problem in meeting the *justification criterion*. I will portray the argument to that conclusion in (5.2.5). Before we consider the critical arguments, let's review Raz's approach to practical authority.

---

[12] 'We are forced to conclude that while the main argument [that is, Raz's argument toward the *justification criterion*] does confer qualified and partial authority on just governments it invariably fails to justify the claims to authority which these governments make for themselves.' Raz (1986), p. 78

[13] Green (2005a), p. 509

Raz's 'service conception' is likely the most discussed analysis of practical authority.[14] Here, I review what it entails. Raz prefers to present the concept of authority as an already justified concept. For Raz, 'legitimate authority' is pleonastic; when he refers to the concept of authority, he normally means legitimate, or justified, authority.[15] Nevertheless, when presenting Raz's conception, it is helpful to divide his analysis of authority into justificatory conditions – that is, those conditions that if satisfied would justify some agent's authority over others – and conceptual conditions – that is, conditions that spell out *what* is meant to be justified, what the concept of authority *is*. In the set of justificatory conditions we may place what Raz calls 'the dependence thesis' and 'the normal justification thesis':

(1) *The dependence thesis*: All authoritative directives should be based, among other factors, on ('dependent') reasons which apply to the subjects of those directives and which bear on the circumstances covered by the directives.[16]

(2) *The normal justification thesis*: The normal and primary way to establish that a person should be acknowledged to have authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him if he accepts the directives of the alleged authority

[14] Raz's development of the service conception can be traced over the following works: Raz (1979a), Raz (1986), Raz (1994), Raz (2006). That Raz's analysis is privileged, consider Shapiro (2002).

[15] Raz (1994), p. 196; Raz (2006), pp. 1006, 1014

[16] Raz (1994), p. 198

> as binding, and tries to follow them, than if he tries to follow the reasons which apply to him directly.[17]

In the set of conceptual conditions, we may place the conditions of content-independence and the pre-emption thesis.

(3) *Content-independence*: The directives of authorities are themselves 'first-order' reasons for action and 'entail no direct connection between the reason and the action for which it is a reason.'[18]

(4) *The pre-emption thesis*: The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should replace some of them.[19]

To be clear, (3) and (4) stipulate what authority *is* – namely, a relation where the directives of one agent are themselves reasons for another to act, where those reasons are both content-independent and displace other reasons that applied to the agent prior to and independently of the directive. In Razian parlance, the commands of authority

[17] Raz (1994), p. 198; Raz (2006), p. 1014

[18] Raz (1986), p. 35

[19] Raz (1994), p. 198

create 'protected reasons.'[20] The supposed reason that is 'protected' is the fact that the authority commanded. That fact, in and of itself, counts in favour of executing the action in the content of the command, *and* it displaces whatever other reasons counted in favour of or against that action. By now, we are familiar with the centrality of (3) to the concept of authority.

Turn to the justificatory conditions. In the service conception, conditions (1) and (2) justify (3). If the normal justification thesis and the dependence thesis are true, then the service conception holds that the directives of authority are themselves reasons for those subject to authority. The general thought is that authority *serves* those subject to it; they better act on the reasons that apply to them if they take the commands of authority as reasons themselves than if they attempt to analyze the reasons themselves.

The service conception is tightly packed. The ultimate goal is to justify (3), the aspect of authority that most troubles philosophical anarchists. The normal justification thesis, (2), is the main engine that does the justificatory work; however, in order for (2) to be true and to ground (3), the dependence thesis, (1), must also be true. For how else will subjects better act on the reasons that apply to them by following the directives of authority if those directives were not informed by the reasons that independently apply to them? Focus on (1). The directives of authority must be based on reasons that *already* apply to the subjects of those directives – that is, in order for an authoritative command itself to be a reason to Φ, it must be based on reasons to Φ which apply to the subjects of the command independently of the

[20] For a lengthier discussion of protected reasons as they pertain the strength of authority's reasons, see subsection (1.4.2) of the present thesis.

command. This raises the spectre of the above double-counting problem. In order to head off the problem of double-counting, Raz ventures (4), the pre-emption thesis. Authoritative directives are not only content-independent reasons to perform the commanded acts, but also they displace the other reasons that count for or against the commanded action. After the authoritative directive, it is the only reason on the table; hence, there is no double-counting problem. In short, for (2) to be true and to ground (3), (1) must be true, but in order for (1) to be true *and* for (2) to ground (3), (4) must also be true. This reading of the service conception makes (4) seem rather *ad hoc* as a conceptual condition. It seems brought in to help with the justification of (3), which is at the root of the concept of authority. We will see in the argument to come that (4) is a weak link in the service conception.

5.2.4. There are two distinct arguments to the conclusion that the service conception does not ground the relation of practical authority. Each targets a fault in one of the two justificatory conditions. The argument that issues from the dependence thesis is the weaker and the more convoluted argument. We begin with it.

Raz is also an advocate of the domain thesis.[21] Recall from (4.3.1) that the domain thesis holds that in order for the illocutionary act of the command to be a

[21] Raz says, 'Governments may be acting within their authority when they act unjustly or immorally.' Hence, he does not buy the argument from moral error (4.3.1). He does 'not of course mean to deny that sometimes immoral or unjust laws are not authoritatively binding.' However, Raz also claims, 'But clearly some immoralities may be of a kind that no government has authority to commit. There may, in other words, be general limits to the authority of governments, limits restricting governmental powers over any of their subjects. The rest of this book is, in part, an exploration of one kind of such general limits. … individual liberty.' Given that Raz believes both that some claims to authority are justifiable and also that there are

reason for another to enact its content, the commanded action cannot be *too* morally erroneous or irrational for the subject to execute. To acknowledge this additional condition, we might temper the content-independence requirement, (3), by the domain thesis, producing (3'):

(3') *Domain restricted content-independence*: The directives of authorities are themselves reasons for action and 'entail no direct connection between the reason and the action for which it is a reason' but only when those actions fall within the morally and rationally proper domain. Directives that command actions that fall beyond that domain are not reasons at all.

For Raz, the modification in this conceptual condition of practical authority does not present a problem for its justification. The justificatory condition of the dependence thesis, (1), ought to secure (3'). The idea is that if the commands of authority are based on reasons that apply to the subjects, then the commanded actions will fall within the relevant domain. If the dependence thesis is met, in addition to the normal justification thesis, then together they ground not only (3), but also (3').

Heidi Hurd, however, points out that there is a pragmatic problem internal to the service conception's justification of (3').[22] The problem arises when we consider the question of how one could know if the dependence thesis is satisfied. Hurd believes, not implausibly, that the answer to this epistemic question must make, at the least,

---

general limits to authority, he is an advocate of the domain thesis. Raz (1986), pp. 78-80

[22] Hurd (1999), pp. 62-94

some appeal to the subject's beliefs about the reasons that apply to them. In order to know if the dependence thesis is met, and thus if the commanded actions do not fall beyond the relevant domain, the point of view of the commanded subjects must be, at the least, taken into account. In short, Hurd commits to the following epistemic claim concerning how one would know if the dependence thesis were *fulfilled*.

(E) When a subject is commanded to Φ, in order to *know* whether or not a commanded action is beyond the domain stipulated in (3'), the commanded subject must, at the least, consider her point of view concerning what reasons apply to her.

Hurd's view is that in order for the justificatory conditions of service conception to also satisfy the fulfillment criterion, (E) is necessary. That is, in order to endorse the claim that the service conception meets the *fulfillment criterion*, we must commit to (E). However, (E) contradicts the pre-emption thesis, (4), which stipulates that is a conceptual condition of authority that, once commands are given, the commanded subject is barred from considering other reasons that count in favour of or against the commanded action. The emphasis on this contradiction is at the crux of Hurd's argument against the service conception. In order to believe that (1) and (2) are fulfilled and, hence, do actually ground (3'), then we must endorse (E); however, in so doing, we thereby reject (4). In the terminology of the *a posteriori* anarchist, the service conception cannot both satisfy the *fulfillment criterion* and include (4) as ingredient to what is to be justified. This is a clear way to explain Hurd's charge that the idea of a protected reason is 'incoherent.' Her charge is meant to indict the

service conception whose purpose is to ground authoritative directives as protected reasons.

The contradiction that Hurd clarifies is even more problematic for the service conception than she notes. Recall that (4) is the dam that prevents the double-counting problem from spilling onto the service conception's grounds for practical authority. Once we reject (4), as Hurd believes that we must, (1) and (2) succumb the double-counting problem. That is bad news for the service conception's ability to ground (3').

If the double-counting problem strikes you (as it strikes Wolff and Raz) as a real problem, then Hurd's contradiction puts the service conception in the following bind: (4) is necessary for the justificatory conditions of the service conception, (1) and (2), to ground (3'); however, (4) precludes a reliable judgment about whether or not the justificatory conditions (1) and (2) have been met. In short, the service conception cannot satisfy both the *justification criterion* and the *fulfillment criterion*. One must give way, yet both must be met to satisfy the philosophical anarchist.

5.2.5. The above critique of the ability of the service conception to ground practical authority largely focuses upon problems that issue from the dependence thesis in conjunction with the conceptual theses. When we also bring into focus the other justificatory thesis, the normal justification thesis, a more straightforward critique comes into view. In short, it is unreasonable to believe that the justificatory theses – (1) and (2), above – grounds (3) or (3'). Why should we believe *that*, given (1) and (2) also ground a less committed conceptual thesis concerning the reasons of authority? A principle of parsimony suggests that if (1) and (2) ground some other

less complex conceptual thesis, then we should not believe, without further justification, that those conditions *also* ground (3). Occam's razor cuts deeply into the service conception.

Compare two alternative conceptual theses about authority.[23] The former incorporates, *ex hypothesi*, (3) or (3') whereas the latter does not necessarily incorporate (3) or (3'):

> *The Practical Authority Thesis*: If A performs the illocutionary act, 'Let B Φ', then that act, in and of itself, is, at the least, a *pro tanto* reason for B to Φ, so long as Φ falls within the relevant domain.

> *The Compliance Thesis*: If A performs the illocutionary act, 'Let B Φ,' then there is a reason or, more strongly, a decisive reason for B to Φ.

The practical authority thesis is more committed than the compliance thesis; it stipulates more. Whereas the compliance thesis is silent with respect to the origin of the reason, the practical authority thesis makes the further claim that, against the presumption against authority, the illocutionary act of the directive constitutes a *pro tanto* reason for the directed subject to act in a certain way. The difference between these two theses about authority is that the former takes (3) – the requirement of content-independence – as ingredient, whereas the latter does not. Given that (3) is a conceptual thesis of the service conception, the main claim of the service conception

[23] Mark C. Murphy presents analogous theses about divine authority. Murphy also provides a detailed argument for the compliance thesis as it pertains to divine authority. See Murphy (2002), pp. 16-45.

is that (1) and (2) ground not only the compliance thesis but also the practical authority thesis. Of course, if the practical authority thesis is true, then so is the compliance thesis; however the justificatory *goal* of the service conception is the former, not the latter.

Focus on the compliance thesis. What would justify it? Here is an argument for which the compliance thesis is the conclusion.

(i) If A directs B to Φ, then A believes that there is a reason or, more strongly, a decisive reason for B to Φ.

(ii) If A believes that there is a reason or, more strongly, a decisive reason for B to Φ, then (most likely) there is a reason for B to Φ.

.:

(iii) *The compliance thesis*: if A directs B to Φ, then there is a reason or, more strongly, a decisive reason for B to Φ. [(i) and (ii)]

The conclusion validly follows from the premises, yet would we endorse (i) and (ii) as sound? I suggest that, if we believe that the dependence thesis, (1) above, is true of A, then we would regard these two premises as sound. In fact, it seems that the truth of (i) and (ii) explain the truth of the dependence thesis. The dependence thesis states that authoritative directives should be based on reasons that apply to the subjects of the directive, independent of the directive. Perhaps (i) and (ii) usefully explain the relation, 'based on,' in the dependence thesis. If that is so, then the dependence thesis grounds the compliance thesis. This is perhaps a boring conclusion. The dependence thesis states that directives should be 'based on' reasons that apply to the subjects of

the directive. The compliance thesis holds that if a directive is issued, then the subject to the directive has a reason to execute the directed action. The relation is analytic. If the dependence thesis is true, then the compliance thesis is true.

The justificatory conditions of the service conception ground the compliance thesis. If (1) and (2) are true, then whenever an authority issues a directive, the directed subject has a reason to act as directed. The fact that the justificatory conditions ground the compliance thesis creates a special burden to show that they *also* ground the practical authority thesis. The special burden is due to a principle of parsimony, or Occam's razor. We should not make our theories unnecessarily complex. This methodological principle applies not only to the theories of natural science, but also to normative theories and, hence, to normative theories about, for instance, why we should execute those actions that authorities direct us to enact. Without a special justification, it would be unnecessarily complex to hold that whenever an authority issues a directive, the directed subject has a reason to act *and* the reason is to be identified with the illocutionary act of the directive itself. If we do not have a special reason to believe the last clause, which is simply (3) above, then its addition to the compliance thesis – which we *do* have grounds to hold if (1) and (2) are true – makes for an unnecessarily complex account of authority. In short, once the compliance thesis is justified, Occam's razor demands a further argument to show the practical authority thesis is also justified.

Does either of the justificatory theses of the service conception ground the additional belief? The dependence thesis does not. It justifies the compliance thesis, but it does not warrant the practical authority thesis over and above the compliance thesis. That is clear from its very meaning. It stipulates that directives are to be based

on dependent reasons, not that directives are based on reasons because they are themselves content-independent reasons. If the service conception is to justify the practical authority thesis, then the work must be done by the normal justification thesis, (2).

Does (2) provide the extra grounding for (3) or (3')? The normal justification thesis states that authority is justified if the subject better complies when he accepts the directives as *binding*. Much rides on what is meant by 'binding.' We might admit that subjects to authoritative directives might better comply with the reasons that apply to them if they took those directives seriously – that is, if they took them as binding in a very broad sense. Taking the directives seriously is what matters. However, why should we especially believe that, in order to better comply, subjects must take the directives seriously *as* undefeated *pro tanto* reasons or even as *pro tanto* obligations owed to the authority? Suppose subjects took the directives seriously as highly reliable signals regarding what reasons they have. If subjects took directives seriously *in that way* would they comply less well? Why must better compliance be a function of taking directives as undefeated *pro tanto* reasons, or even as *pro tanto* obligations, as opposed to highly reliable signals regarding what reasons they have? What grounds do we have to believe that it is necessarily the case that subjects better comply with the reasons that apply to them if they take the concept of an authoritative directive to entail (3) and not (5), where (3) and (5) are as follows:

(3) *Content-independence*: The directives of authorities are themselves 'first-order' reasons for action and 'entail no direct connection between the reason and the action for which it is a reason.'

(5) *Epistemic signals*: The directives of authority are epistemic claims or signals that the directed subject has a reason or, more strongly, a decisive reason to execute a particular action.

The normal justification thesis is silent on these questions. Unless we have a clear answer to that query, Occam's razor cuts. Without a further story of why authorities and subjects must take authoritative directives to be themselves constitutive of reasons, the normal justification thesis, (2), does not meet the burden of proof demanded by a methodological principle of parsimony. We should stick with the simpler theory. The service conception provides the justificatory grounds for the compliance thesis, but it is not clear that it also grounds the practical authority thesis. As such, the service conception fails to meet the justification requirement set down by the *a posteriori* anarchist. It is not only the case that governments fail to fulfill the conditions of the service conception – according to Raz, *that* is why they do not garner all the authority they claim – but also the service conception does not necessarily meet the justificatory criterion in the first instance.

In the above argument against the capacity of (1) and (2) to meet the justificatory criterion, the suppressed premise is that the view that authoritative directives are epistemically reliable signals is theoretically less complex than the view that authoritative directives are themselves *pro tanto* reasons or, more strongly, *pro tanto* duties. Here is a ground for the suppressed premise. For (1) and (2) to *also* ground the practical authority thesis the correct account of the normativity of at least some reasons must be some variant of voluntarism. However, for (1) and (2) to

ground the compliance thesis *any* candidate account of the normativity of reasons, including voluntarism, is compatible. To take a directive as a reliable signal is not necessarily to commit to any further view of what *makes* the directive reliable. For instance, when I take as reliable the climate scientist's signal that further carbon emissions are likely to lead to climate change, I do not commit to a specific position about why, over time, the scientific method produces true justified beliefs, nor do I commit to any position on the correspondence or coherence theory of truth. The general point applies to both scientific claims about the empirically observable world and to epistemic claims about what we should do or what we owe to one another. Hence, to believe that (1) and (2) *also* ground the practical authority thesis in addition to the compliance thesis is to believe something much more precise and theoretically committed – hence, the suppressed premise.

5.2.6. This concludes the discussion of the *a posteriori* position. It seems to hold. Of the conditions that are advanced to justify the relation of robust authority, none meet both the justificatory and the fulfillment criteria. I have offered two arguments for why this conclusion is also true of the Raz's justificatory theses. With the *a posteriori* conclusion in place, the presumption against authority remains undefeated, and the philosophical anarchist conclusion follows. The state does not have robust practical authority over those persons over whom it is claimed to have authority.[24]

[24] If consent justifications can be salvaged from the double-counting problem, the precise philosophical anarchist conclusion would be that the state does not have robust practical authority over the vast majority of those persons over whom it is claimed to have authority. I say 'vast majority' given that the vast majority have not given express consent to a state on any understanding of consent where that action produces moral obligations, much less with the requisite understanding of the precise

§ 5.3. Epistemic Authority and Legal Directives

5.3.1. The attribution of robust practical authority to the state is indefensible; however, we may in principle justifiably attribute another species of authority to the state. This species of authority is epistemic. Recall from (1.2.2.) that epistemic authority is the following relation between the directives of one agent and reasons for belief of another.

> For two agents, A and B, A is an epistemic authority for B if and only if, as a result of A's directives, B has a reason to believe that there is a reason to Φ or, more strongly, a decisive reason to Φ.

Epistemic authority may successfully be attributed to the directives of the state. By that claim, I do not mean that particular, extant states are justified to claim epistemic authority. I mean the more modest idea that the claim to epistemic authority is justifiable. Here I will not offer an argument for why particular states are justified to claim epistemic authority. Rather, I hope to begin the more preliminary task of clarifying what the claim to epistemic authority consists in and what criteria must be satisfied in order for the attribution of epistemic authority to be successful.

To begin, note that the state issues legal directives. Among other actions that they undertake, states enact legal directives. We may understand those directives as

---

philosophical formulations of command, obedience, and obligation with which we are working. For one's consent to be morally binding, they must be cognizant of what they are doing. It is highly unlikely that people voluntarily commit to the authority of the state on our *robust* formulation of authority.

signals or epistemic claims. Of course, legal directives are also commonly understood as coercive proposals. I will discuss the law's relation to coercion in the next chapter; however, for the present, the notion of laws as signals or epistemic claims allows us to view the kind of authority that one might defensibly attribute to the state – namely, epistemic authority.

If we are to conceive of legal directives as, at least in part, signals, then we must have an idea of what they signal. We might think that the law signals the likely action of others, including both the actions of others that are likely to come in the form of compliance with legal dictates and the actions of others that are likely to come as sanctions in response to noncompliance.[25] Legal directives do signal likely action, but that is not all that they signal. Legal directives not only signal what actions are likely. They also refer to – even if not always explicitly – the existence of *reasons* that persons have to act in specific ways. Legal directives may not explicitly point out the specific reasons persons have to act in certain ways. The legal injunction itself may only explicitly refer to an action and not a reason (e.g. 'Keep Left'); however, we might understand the legal directive implicitly to refer to the existence of a reason to perform the directed action.

Given that the fact that others are likely to act in a particular way sometimes counts in favour of acting in that way – say, when confronted with a classic coordination problem – these comments about the signalling of actions and reasons

[25] This is the position Laurence Claus adopts in his 'The Empty Idea of Authority.' Claus states, 'This article argues that law's true genesis is evolutionary and that its guidance of behavior is purely a function of its success in signaling the likely action of others.' Claus (2008), p. 15. It is also reminiscent of Oliver Wendell Holmes' view: 'The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.' Holmes (1997 [1897]), p. 994

are perhaps minor. Claims about likely action can be claims about reasons to act in certain ways. A legal directive points out that others are likely to drive on the left, and this fact counts in favour of my also doing so. However, to put the primary focus on likely action is to miss the purposive nature of law. Laws are often made and made with a purpose – broadly, to get people to do things.[26] One way we may get people to do things is to facilitate their apprehension of reasons to do things. The purported reason might be immoral or faulty. Nevertheless, when we attempt to get people to do things we, at bottom, try to make them believe that some consideration counts in favour of performing a certain action. Regardless of whether we are sincere or manipulative in our attempts to get other people to act, we purport to offer reasons. One might object that force or physical compulsion are ways of getting people to do things that do not fit this model; they do not involve appeals to reasons. However, if we were to use physical compulsion or force, then we are not getting *them* to *do* anything. There is no appeal to their agency, only the use of their bodies. We get persons to do things by communicating reasons. This is always the case, legal directives included.[27] If laws inform of us what action is likely that is because laws inform us of reasons there are to act.

---

[26] The emphasis on the purposive nature of law – that is, the point that laws are often things that are made with a purpose – echoes a claim Ross Harrison makes: 'I still think that we may gain some insight into the nature of law by appreciating that it is a purposive activity and that it is states that in the first instance have these purposes.' Harrison (2007), p. 163

[27] Hence, I feel tension with Leslie Green's claim that 'Law is … not essentially a motivational device, it is essentially an informational device.' Green (2005b), p. 573. I do believe that the law is an informational device about what reasons there are; but given what it is an informational device *about* (*i.e.* reasons), it is also a motivational device, even if it is not always successful as such.

To conceive of the state as an epistemic authority we must first conceive of its legal directives as epistemic claims or signals that the directed subject has a reason or, more strongly, a decisive reason to execute a particular action. Legal directives signal both (i) that we have reasons to act and (ii) what particular actions those reasons require. This view of legal directives is in direct contrast to the view denied by philosophical anarchism – namely, that legal directives are themselves content-independent duties that are owed to the lawgiver. The view that legal directives signal reasons or duties already seems to be a position staked out in the debate concerning the nature of legal authority.[28] At least part of what it is to be a legal directive is to be a claim, which is truth-apt, about the existence of some reasons to act or, as Heidi Hurd puts it, about the truth of some deontic proposition.[29] In this case, I prefer to speak of reasons instead of duties. The law may refer to reasons that are not, strictly speaking, duties that reside in the realm of what we owe to each other. For instance, the law's directives may signal teleological reasons to promote some good state of affairs, but not necessarily because we owe it to others.

Taking the view that legal directives are epistemic claims or signals as a conceptual condition of the state's epistemic authority allows us to grasp some of its other features. First, epistemic authority obtains to the degree that its claims are reliable – that is, to the degree that its claims are likely to be true. Epistemic authorities are reliable, not infallible, with respect to the truth of their claims. If the state, through the enactment of its legal directives, is to be an epistemic authority,

[28] Both Heidi Hurd and Philip Soper adopt this view of legal directives. See Hurd (1999), pp. 153-183 and Soper (1996), pp. 215-248.

[29] Hurd (1999), p. 154

then it must be the case that the claims about the existence of reasons are reliable. The signals of epistemic authority are likely to be true.[30]

To conceive of the state as an epistemic authority commits to a view about the nature of law. The concept of the epistemic authority of the state does not entail a necessary relation between a directive and a reason for compliance, as does the concept of practical authority. Epistemic authority only entails a probabilistic relation between legal directives and reasons for compliance. If the state sincerely enacts a legal directive that persons Φ, then it is likely true that persons within its jurisdiction have a reason or, more strongly, a decisive reason to Φ. It is not integral to the idea of the state's epistemic authority, as it is to the idea of the state's practical authority that legal directives themselves constitute obligations to obey, which are owed to the agent who issues the directive. The only necessary condition of the directives of epistemic authority is that they have a tendency to correctly reflect what reasons there are.

To conceive of the authority of the state as epistemic and not practical is consistent with the position that there is no necessary relation between the existence of a legal directive and the existence of a moral duty. That position is often attributed to legal positivists, but it is not essential to the contemporary position.[31] Rather, legal positivists (qua legal positivists) are primarily interested in the question of what

[30] Just how likely does likely have to be in order for epistemic authority to obtain is an inquiry that I will not take up here, but for two wildly contrasting positions compare the position of David Estlund with one that we might attribute to Raz. The Razian position is that for epistemic authority to obtain, legal directives must be more reliable than the beliefs of those purportedly under the authority's jurisdiction. Estlund's much weaker position is that for legal directives to be reliable, they must avoid a set of 'primary bads.' See Raz (1986), p. 53 and Estlund (2007), p. 163.

[31] Cf. Soper (1996) and Green (2008).

makes something a law. An answer that unites their position is that what makes something a law necessarily lies with the genesis or source of that thing and not that the thing necessarily constitutes or reflects a moral duty.[32]

Legal positivists can admit the epistemic authority of the state. To regard the state as an epistemic authority is to believe that its legal directives signal the existence of reasons or duties. On this view, the legal directives of the state do not necessarily constitute moral claims themselves, nor do they necessarily reflect or signal moral duties. At most, the relation between the legal directives issued by an epistemic authority and moral duties is evidentiary and probabilistic. Of course, the directive may claim that some reason is decisive when, in fact, it is not, or it may claim that there is a reason when there is not. In short, the directive may signal incorrectly. For legal positivists, these possibilities would not indict its status as a legal directive. A legal directive is a legal directive because it issues from the wellspring that makes some utterances law.[33]

---

[32] Within the context of legal positivism, Hobbes is a curious case. The roots of legal positivism lie with Hobbes's identification with law as the command of the state. Laws have their source in state commands. However, there is a tension among (i) Hobbes's view of state authority, whereby state commands constitute moral duties, (ii) his standing as a legal positivist, and (iii) the contemporary legal positivist position that there is no necessary relation between the existence of a legal directive and the existence of a moral duty. There is a trilemma among these positions that is probably avoided by classing Hobbes in the contemporary category of 'inclusive legal positivism,' which allows for a greater familiarity between law and morality, so long as morality enters at the source of the law.

[33] Also, to close the back door, I am not claiming that a reliable signal about reasons is a sufficient or even necessary condition of law. There might be laws that cannot be construed to signal the existence of reasons – for example, some laws that confer Hohfeldian powers on certain persons. With respect to legal positivism, all that I am claiming here is that legal positivists may believe that the state might be an epistemic authority, may conceive of at least some authoritative legal directives as signals about reasons, and still maintain their positivism. Claims about the nature of state authority

5.3.2. To conceive of legal directives as signals or epistemic claims about reasons may invite an objection to authority that we considered above – namely, the error of double-counting. The double-counting problem seems to re-emerge when we note that the signals of epistemic authority are themselves reasons. For it is true that a directive of an epistemic authority purports to *count in favour of* something – namely, the belief that there is a reason or, more strongly, a decisive reason. The directives of epistemic authority also purport to be reasons.

With this on board, the error of double-counting seems to return. Here is why. Suppose an agent, B, is deliberating about whether or not to Φ. B counts consideration *C* as a reason to Φ, and B has received a directive from an epistemic authority which signals that *C* is a reason to Φ. Now, to invoke the double-counting thesis here is to claim that if, in addition to *C*, B *also* takes the directive as a reason to Φ, B has committed an error of double-counting. The objection is that B has effectively counted *C* twice. Hence, if *C* is a reason to Φ, then the legal directive cannot be a reason to Φ, or vice versa.

When confronted with the double-counting objection to practical authority, Raz's move is to take the legal directive as the reason to Φ and to claim that it pre-empts all other reasons to Φ. For practical authority, the double-counting problem bites. As we considered above, this is because the legal directive of a practical authority purports to be a reason to perform some action that other reasons, which count in favour of practical authority, *also* count in favour of performing. However,

---

(and, hence, the authority of its directives) might not exhaust claims about the nature of the law.

for epistemic authority, the invocation of the double-counting problem misfires. This is because the directives of epistemic authority, although they are reasons, are not themselves reasons to Φ. Rather, they are reasons *to believe* that there are reasons or, more strongly, decisive reasons to Φ. The directives of epistemic authority are not themselves reasons to Φ.

That claims holds whether or not we understand beliefs as actions or as mental states. If we take beliefs to be actions then the directives of epistemic authority are not reasons to Φ – say, to pay taxes – but rather to take some other action, ψ, where ψ is to believe that there are reasons to pay taxes. If we do not take beliefs as actions, but rather the much more common view that beliefs are mental states, then the directives of epistemic authority are not reasons to Φ – say, to pay taxes – but rather to have a certain mental state, the content of which is that there are reasons to pay taxes. In nether case is the directive of an epistemic authority a reason to pay taxes. It is a reason that counts in favour of the belief that there are reasons to pay taxes.

To claim that the double-counting problem does not apply to the directives of epistemic authority is to commit to a rather precise and significant distinction about particular kinds of reasons that exist underneath the larger concept of a reason – that is, a consideration that counts in favour of. Reasons for action are distinct from reasons for belief. That distinction holds true of the slightly more complex case between reasons for action and reasons for the belief that there are reasons for action. A reason to Φ is distinct from a reason for the belief that there is a reason to Φ. That may sound like philosophical hocus-pocus, but as John Gardner and Timothy

Macklem point out this distinction is quite familiar as it undergirds the distinction between a justification and an excuse.[34]

Above, in (1.4.1), I referred to this distinction between reasons for action and reasons for the belief that there are reasons for action as the distinction between *pro tanto* reasons and *prima facie* reasons. There, we noted that *pro tanto* reasons can conflict. They retain their reason-giving force even if the action they favour is not performed. They are still reasons that count in favour of acting in that way. *Prima facie* reasons do not have such residual force. If we know more about a deliberative situation, some considerations that were previously *prima facie* reasons may disappear as reasons.[35] Only *pro tanto* reasons are candidates for being decisive reasons; only they can obligate and explain the wrongfulness of certain actions.

Whereas practical authority purports to offer a *pro tanto* reason to act, epistemic authority purports to offer *prima facie* reasons. To defend the state as an epistemic authority is to construe its legal directives as providing *prima facie* reasons to believe that there are *pro tanto* reasons to act in certain ways. That idea entails a certain idea about the wrongfulness of noncompliance with legal directives. We do not wrong an epistemic authority when we do not comply with its directives. For those directives only purport to be *prima facie* reasons, reasons which do not explain the wrongfulness of certain actions. However, depending on how reliable the epistemic authority is, it

---

[34] 'The contrast here is between having reasons for action and having reasons to believe that one has reasons for action. It corresponds to the distinction, well known to all lawyers, between justifications and excuses. One *justifies* one's actions by reference to the reasons one had for acting. One's actions are excused in terms of the reasons one had for believing that one had reasons for action.' Gardner and Macklem (2002), p. 444

[35] Hurley (1989), p. 133; Gardner and Macklem (2002), pp. 442-447

is likely that we do act wrongly or that we act in ways that are not favoured by the reason which is decisive for us. Hence, the distinguishing features of practical authority – content-independence and the wronging criterion – do not obtain for epistemic authority. The directives of epistemic authority do not themselves purport to be *pro tanto* reasons to act, nor does noncompliance with those directives wrong the authority. So long as the epistemic authority is not infallible, noncompliance is not even *necessarily* morally wrong.

5.3.3. Epistemic authorities supply reasons to believe that there are reasons to act. Must they *intend* to do so? Are intentions in any way necessary to epistemic authority? It is certainly normal to attribute to epistemic authorities the intention to advise, to signal what reasons there are. Moreover, it is a conceptual condition of practical authority that there is an intention, which lies behind a command, that the command is a reason.[36] However, the existence of such an intention to supply *prima facie* reasons is not necessary to the concept of epistemic authority.

An essential condition of epistemic authorities is that their directives reliably supply *prima facie* reasons, not that they necessarily intend to do so. Of course, the presence of an intention to supply a *prima facie* reason does not disqualify a person as an epistemic authority. Counsellors can obviously be epistemic authorities (in fact, that is what they aim to be!) The present claim is only that such an intention is not a necessary condition of their being an epistemic authority. Whether or not an agent or group of agents is an epistemic authority depends on the reliability of their directives

[36] See section (1.2.2.) of the present thesis as well as Marmor (1995).

alone, not on their good intention to be reliable.[37] That is a conceptual point. We might wonder whether there are examples of epistemic authorities concerning *prima facie* reasons that lack the intention to supply them.

I believe one example is democratic legislatures – for example, Congress or Parliament. To be sure, legislatures are comprised of legislators who are actual agents with specific intentions when they draft, revise, and vote on bills that become statutes. A particular statute, however, is not itself the product of a single intention. Rather, it is likely the product of, *inter alia*, logrolling, compromise, political expediency, procedural rules on the passing of bills, and perhaps the occasional attempt to get people to do what justice requires. (Recall the populist adage of laws and sausages.) We cannot plausibly ascribe a single intention to a statute enacted by a democratic legislature.[38] There is no single mind or person behind its enactment, and thus rarely, if ever, a shared, single intention. To return briefly to Hobbes, this point raises doubts that a constitutional democracy can be made intelligible by his conception of the state as a single person that bears practical authority or by any conception of the state that makes an implicit reference to the state's single, unified will.

Nevertheless, such legislation can and does often signal what reasons there are to act and what particular actions those reasons require. Moreover, to argue that democratic legislatures are epistemic authorities is to argue that democratic legislation can *reliably* signal what reasons there are. The point about reliability is a comparative one. To justify the epistemic authority of a democratic legislature or any group of

---

[37] Hurd emphasizes this point about epistemic authority. Hurd (1999), p. 154

[38] Jeremy Waldron points out that 'under the conditions of modern legislation it is often implausible to describe legislative acts as intentional acts, even though they take place in an intentionally-organized context.' Waldron (1999), pp. 121-122

agents is to argue that, with respect to what reasons there are and what actions those reasons require, its directives are more reliable than the judgments of individual citizens – including citizens who are party to the legislation – absent its directives. Of course, at times, in some areas of enquiry, the judgments of individual citizens or smaller, less representative groups of citizens will be more reliable. In those cases, the directives of the epistemic authority will not be epistemically authoritative *for those particular persons*. Hence, epistemic authority will also be 'partial and patchy.'[39] However, that consideration does not preclude the possibility of an argument that shows that the directives of a democratic legislature or some other group from being epistemically authoritative for most citizens, most of the time.[40]

The intention of members of a group, such as a democratic legislature, to produce reliable judgments about what reasons we have and what actions those reasons require is not necessary to epistemic authority; however, it is plausible (but not essential) that the presence of such an intention in the minds of those who issue directives contributes to the epistemic authority of that group. This has been a thesis

---

[39] Green (2005a), p. 509. The qualifications Raz notes about his view of practical authority apply to the attribution of epistemic authority to certain agents or groups of agents.

[40] How this can be the case with respect to democracy – that is, how democratic legislation can produce signals of greater comparative reliability than the individual judgments of citizens without the shared, overriding intention to do so – is a fascinating line of research in social epistemology. There are several contemporary attempts to explain that fact and, hence, justify the epistemic authority of democratic legislatures. See Landemore (2008), Waldron (1999), although Waldron is not sufficiently clear on what species of authority is supported by the epistemic merits of democratic legislature; however, epistemic authority is the most defensible candidate. On this point, see Marmor (1995), p. 346-7. My position is that the epistemic merits of decision makers, including democracies, support, at most, epistemic authority (and never practical authority).

integral to democratic theory since Rousseau's emphasis that citizens separately make private judgments about the content of the general will, and perhaps even since Aristotle's 'many minds' argument.[41] I do not claim that the presence of such intentions cannot contribute to the justification of epistemic authority; my claim is that it is not a necessary condition of such a justification.

Intentions matter. The intention to produce reliable judgments about what reasons we have and what actions those reasons require matters. It just does not matter as a necessary condition for the existence of *epistemic authority*. It does not matter as a necessary condition for the epistemic authority of legal directives. However, as we shall see in (6.5.5), the intention to produce reliable judgments about what reasons we have does matter as necessary condition of the *legitimacy* of those directives.

§ 5.4. Beyond Authority

5.4.1. As we noted in the beginning, there are many ways to get people to do things. One way to get people to do things is to command them to act and have them believe that your commanding them to act imposes a duty on them, owed to you, to act in the commanded way. The attempt is to claim that a certain relation holds between your commands and their reasons for action. Those that believe in the robust authority of the state believe that, if this claim is justified, then it is an acceptable way for the state

[41] For an epistemic reading of Rousseau's concept of the general will, see Grofman and Feld (2002). For one comment on Aristotle's 'many minds' argument see Waldron (1999), pp. 136-138.

to get people to act in certain ways. The philosophical anarchist disagrees. The state's claim to robust practical authority is indefensible, and thus to command under that pretence is an unacceptable way to get people to do things. However, the state's claim to possess robust practical authority is not only indefensible. As we shall see in the Conclusion, it is also *wrong*.

By contrast, when an epistemic authority issues directives, it is an acceptable way to get people to do things. Those directives are enacted to signal what reasons we have and what actions those reasons require. In some cases, legal directives allow persons to apprehend what reasons they have, and those persons will act in ways that those reasons require. However, people will not always do what the (decisive) reasons that apply to them require. This is the case even when they credibly believe that there are (decisive) reasons that require them to act in certain ways – that is, even when they are aware of the signals of epistemic authority. There is a gap between what we have (decisive) reason to do and what we can be motivated to do. The presence of this gap is not solely explained by ignorance of reasons or their demands. We are not angels.

The reliable signalling of reasons will not get people to do everything that they are morally required to do. Nor will it get people to do everything that would be good for them to do. There are limits to the efficacy of epistemic authority. States cannot rely on epistemic authority alone to prompt the action of persons. These are obvious truths. They explain why we must sometimes resort to other means to get people to do things. With respect to those other means, we care that they are rationally and morally defensible. (It is on these grounds that the philosophical anarchist blocks the state's appeal to practical authority.) However, epistemic signals and commands are

not the only ways that states may attempt to get persons to act. Authority, under both its practical and epistemic subheadings, is not the only appeal that states make. States also get people to act by other means, not least of which is coercion. Moreover, states appeal to the *legitimacy* to do so. Coercion is basic to political philosophy. So is the concept which warrants coercion, *viz*. legitimacy. It is to an analysis of that moral concept – which is quite different from authority – to which we now turn.

Chapter 6 – Legitimacy

§ 6.1. The Concept of Legitimacy

6.1.1. What does it mean to say that the state is legitimate? The philosophical anarchist argument supports a conclusion about what it does *not* mean. A government is *not* legitimate because it has robust practical authority over those whom it claims to have authority. This is a surprising claim. In many cases, when it is said that the state is legitimate what is implied is that the state has legitimate authority.[1] Philosophical anarchism contends that cannot be. If the legitimacy of a government does not mean that it is a robust practical authority over some persons, how then should we conceive of its legitimacy? The present chapter takes up this challenge.

My concern is to clarify what legitimacy is, what an account of legitimacy consists of. I want to explore what a principle of legitimacy is a principle *about*. This enquiry is distinct from the enquiry that seeks the grounds or the defensibility of the endorsement of one candidate principle of legitimacy over another. The history of liberal thought contains several examples of legitimacy principles: the harm principle, the samaritan principle, the Rawlsian 'liberal principle of legitimacy' (a reasonable acceptance principle), a reasonable rejectability principle, objective list principles,

[1] Here is one representative statement of the traditional view, with which the literature is rife. 'While there are, of course, many senses of *legitimate and illegitimate* that we employ in discussing states and governments, the view that probably deserves to be called the traditional view of state or governmental legitimacy holds that legitimacy consists in a certain, normally limited kind of authority or right to make binding law and state policy. State legitimacy or authority is viewed as the logical correlate of the obligation of citizens to obey the law… that is, to the obligation that is usually referred to as political obligation.' Simmons (2001), p. 106

benefit principles (including the principle of fair play), service principles, consent principles, and on, and on. Arguments that purport to establish or reject the grounds of these various standards are important. We want to know which candidate principle of legitimacy is the most defensible. That task is central to liberal political philosophy; however, it is not the concern of the present chapter. Rather, the arguments of the present chapter are merely prolegomena to that task. My project is not to argue which is the most defensible principle of legitimacy, but more basically to elucidate what a principle of legitimacy is a principle *about*. Seeing what legitimacy is about provides some insight into why we care about legitimacy as an ideal.

This chapter attempts to clarify the contours of the concept of the legitimacy of states. It unfolds as follows. In Section 2, I introduce the concept of the *site* of normative principles. I analyze recent disputes on the nature of justice as controversies over the *site* of justice and suggest how a particular stance in this dispute leads to the view that legitimacy, rather than justice, is the central evaluative concept in political philosophy. Section 3 then develops a positive account of the *site* of legitimacy. Philosophical anarchism aids that project; it allows us to see that the *site* of principles of legitimacy is not a relation between commands and reasons for action, but rather specific kinds of actions, namely, coercive actions (or, more precisely, actions that share certain features with coercive actions). Section 4 then introduces the distinct notion of the *scope* of normative principles and develops an account of the *scope* of legitimacy. The dominant subtext of Sections 2-4 is the sustained attempt to disentangle the concept of legitimacy from other evaluative concepts such as authority and justice, on both its deflationary and constructivist

understandings. The focus on the *site* and *scope* of normative principles allows for some degree of success in that enterprise. Section 5 then turns to the question of why we care about legitimacy as an ideal. First, this section explains the wrongfulness of coercive action. It then argues that we care that legal directives are legitimate because we care to avoid this kind of wrongfulness, and, when such wrongfulness cannot be avoided, we care to justify it.

§ 6.2. From Justice to Legitimacy

6.2.1. One way to approach the concept of legitimacy is by way of contrast against the most contested concept in political philosophy – justice. Contemporary debates over the nature of justice now turn on precise elements integral to the concept of justice. Prominent among these elements are the site, scope, and grounds of justice obligations. Consider Arash Abizadeh's following contribution from the recent global justice literature:

> 'When Rawlsians say that the basic structure is the primary *subject* of justice, what they normally mean is that the principles of justice appropriately regulate or apply to the institutions of the basic structure only, *i.e.*, that the basic structure is the primary *site* of justice… The site of justice is not the same as its scope: the site of justice refers to the *kinds of objects* (individuals' actions, individuals' character, rules, or institutions, and so on) appropriately governed

> by principles of justice, that is, to which the principles of justice rightly apply.'[2]

Generalizing from Abizadeh's definition, we may stipulate that the *site* of a normative principle refers to the *kinds of objects* appropriately governed by that normative principle, to which the normative principle applies. Abizadeh gives us some idea about what those objects might be: 'individuals' actions, individuals' character, rules, institutions, and so on.' If we wanted to fill out the 'so on,' then we might add the following to a list of *sites* of normative principles: particular states of affairs, distributions of morally relevant currencies such as various types of resources, capacities, welfare, and opportunities for welfare. The list might also include particular kinds of actions, such as coercion, or more basic components of actions, such as intentions. All of these objects, and undoubtedly more, could be the sites of different normative principles. They are the objects to which different rules concerning what ought to be pertain.

Further, what does it mean for an *object* to be governed by a normative principle or to be something to which a normative principle applies? To respond to this question, let's briefly consider what principles *are*. Normative principles reflect what reasons for action we generally have.[3] Principles are statements of our default reasons for what to do under certain circumstances; they are statements about our 'standing

---

[2] Abizadeh (2007), p. 323

[3] I follow Scanlon when he says, 'Principles, as I will understand them, are general conclusions about the status of various kinds of reasons for action.' Scanlon (1998), p. 199

reasons.'[4] Those reasons are defeasible; they can be outweighed. But unless we see competing considerations on the horizon, normative principles provide what reasons we have to act under certain circumstances. Because normative principles are statements about what reasons we have, to fully understand what a principle is we must again reflect on what a reason is.

All reasons are fundamentally the same. They are all facts that count in favour of certain actions. That the fact, F, counts in favour of Φ means that F is a reason to Φ. Yet we group reasons under different headings – that is, by the familiar binary normative predicates of right/wrong, just/unjust, good/bad. For example, that Φ is unjust counts against it; injustice counts against Φ. Injustice is a reason not to Φ. For a normative principle to apply to some object means that it stipulates some reason for or against that object. A normative principle stipulates what normative predicate counts in favour of (or against) some object. This is what it means for a normative principle to apply to an object, that is, its *site*. Hence, we might say that the *site* of a normative principle is what would bear or take on the specific normative predicate that a specific normative principle is a principle *about*.

So, for example, moral principles are rules that attempt to stipulate when certain objects are wrong or right (or, more precisely, not wrong). Morality is *about* right and wrong. It is about our standing moral reasons, or obligations. Right and wrong are the primary moral predicates. It seems that we can say this before we say something about the site of moral principles, that is, what moral principles point out as being

[4] The term belongs to Charles Larmore, who takes a similar line on principles and the primitivism of reasons. Larmore (2009)

right or wrong. If something is wrong, then that counts against it, irrespective of what more specifically it is. We have a primitive sense of what morality is about.

It would not be too controversial to say that, for the most part, the site of moral principles is the actions (*i.e.* the conduct, the behaviour) of individuals.[5] What makes actions right or wrong is more the topic of controversy in moral philosophy. Yet perhaps even this ranking of controversies is too hasty. Nietzsche disputes it, as does virtue ethics. Virtue ethics holds that the primary site of moral principles is the characters of persons. The virtue ethicist stipulates that actions are right or wrong depending on whether they would issue from a virtuous character; the primary subject or site of moral enquiry is the 'character' of a person. Aware of alternative views, let provisionally claim that moral philosophy is *about* the rightness and wrongness *of* actions (its site). It is an enquiry into the rightness and wrongness of human action. Some perhaps go further and propose that the proper site of moral philosophy is not the domain of all human actions, but rather the 'narrower domain' of those actions that fall within the scope of 'what we owe to each other.'[6]

For political philosophy, the site of the normative principles in its remit is more fiercely debated. This is especially the case with principles of distributive justice. Principles of justice are rules that attempt to stipulate when certain objects are either just or unjust, and there is a basic controversy over what those objects are. So, for Rawls, what is primarily just or unjust is the 'basic structure' of a society.[7] G.A.

---

[5] Indeed, Scanlon begins *What We Owe To Each Other* with 'We all believe that some actions are morally wrong.' Scanlon (1998), p. 1

[6] Scanlon (1998), p. 6

Cohen believes the Rawlsian position on the site of justice is flawed. For Cohen, what seems to be primarily just or unjust is the distribution of a particular currency of benefits and burdens across persons.[8]

The use of the modifier 'primarily' is relevant. If the site of a normative principle is what bears the normative predicate, then we must concede that there could be several different sites of a normative principle. This point pertains to principles of justice, for we can intelligibly speak of just and unjust institutions, actions, and distributions, even when only one of them is the site to which the normative principle *primarily* applies. For instance, Cohen thinks that justice is concerned with institutions and actions, just not primarily. 'Structure *and* individual choices' can be said to be just or unjust, but only because and insofar as they impact the *primary* site of justice, that is, a distribution of benefits and burdens. Rawls reverses this

---

[7] In the second section of *A Theory of Justice*, Rawls claims that 'the primary subject of justice is the basic structure of society.' It is a claim about the site of justice. 'Site' is perhaps a better term of art than 'subject' to refer to the kinds of objects to which principles of justice apply. The subject of principles of justice is, well – justice. Rawls (1999), p. 6

[8] Cohen notes, 'In further clarification of the polemical position, let me make a background point about the difference between Rawls and me with respect to the site or sites at which principles of justice apply. My own fundamental concern is neither the basic structure of society, in any sense, nor people's individual choices, but the pattern of benefits and burdens in society: that is neither a structure in which choice occurs nor a set of choices, but the upshot of structure and choices alike. My concern is *distributive justice*, by which I uneccentrically mean justice (and its lack) in the distribution of benefits and burdens to individuals. My root belief is that there is injustice in distribution when inequality of goods reflects not such things as differences in the arduousness of different people's labors, or people's different preferences and choices with respect to income and leisure, but myriad forms of lucky and unlucky circumstance. Such differences of advantage are a function of the structure *and* of people's choices within it, so I am concerned, secondarily, with *both* of those.' See Cohen (1997), p. 12. On the question of the 'currency' or the particular kind of the benefits and burdens that are the concern of distributive justice, see, *inter alia*, Cohen (1989).

relationship. Recall his emphasis on the purely procedural element of justice as fairness.[9] For Rawls, the principles of justice primarily apply to the institutions that comprise the basic structure. The operation of these institutions will generate distributions of benefits and burdens. Rawlsians may speak of those distributions of benefits and burdens as just or unjust, but only because and insofar as they are an effect of the operation of the basic structural institutions to which principles of justice primarily apply. For Rawlsians, principles of justice do not apply, in the first instance, either to the distribution of benefits and burdens or to those actions which do not comprise basic structural institutions. Principles of justice do not supply a general theory of morality.[10] With this in mind, let's call the *primary site* of a normative principle, such as a principle of justice, the object to which the normative principle confers its distinctive normative predicate. A *secondary site* of a normative principle is an object that can be intelligibly spoken of as bearing that normative predicate and therefore as being judged by the light of that normative principle, but only because it is causally connected to – that is, either affects or is affected by – the primary site. For Cohen and company, the primary site of justice is a distribution; actions and

[9] 'The basic structure is a public system of rules defining a scheme of activities that leads men to act together so as to produce a greater sum of benefits and assigns to each certain recognized claims to a share in the proceeds.… The distribution which results is arrived at by honoring the claims determined by what persons undertake to do in the light of these legitimate expectations. These considerations suggest the idea of treating the question of distributive shares as a matter of pure procedural justice. The intuitive idea is to design the social system so that the outcome is just whatever it happens to be, at least so long as it is within a certain range.' Rawls (1999), p. 74

[10] See Rawls (1996), pp. 260-261

institutions are secondary sites.[11] For Rawls and company, the primary site of justice is the basic structure; the secondary site is the resultant distribution produced by those institutions in operation.

6.2.2. Contemporary political philosophy is divided on the primary site of justice, and the division on this score reflects a further division on the relation between political philosophy, when conceived as an enquiry about justice, and moral philosophy. No matter how we construe the primary site of distributive justice, political philosophy is a branch of moral philosophy. Here is why: Moral philosophy attempts to evaluate human action, *inter alia*. Political philosophy – which, if it is about anything, is about distributive justice – offers ways to evaluate *some* actions no matter what we take the *primary site* of justice to be. Either political philosophy, in its emphasis on justice, is concerned with evaluating human action because a pattern of human action comprises the institutions of the basic structure of society (for what are institutions if not complex patterns of human action?)[12] or political philosophy is concerned with evaluating actions because a very large orbit of human action impacts the distribution

[11] Specifically on the question of secondary sites, Cohen says, 'If we care about social justice, we have to look at four things: the coercive structure, other structures, the social ethos, and the choices of individuals.' Cohen (2000), p. 143. Also, in an appendix to *Rescuing Justice and Equality*, Cohen clarifies the distinction between the questions of primary and secondary sites: 'For the site question is not "What causes a society to be just?" but "What makes a society qualify as just?"' The latter is a philosophical, not causal, question. I take the latter to be the philosophical question about the primary site of justice and the former to be a question of secondary sites of justice. See Cohen (2008), pp. 377-381.

[12] Institutions are just patterns of action taken by persons. Institutions are both the possible actions as expressed by some rules and the 'realization in the thought and conduct of certain persons at certain time and place of the actions specified by these rules.' Rawls (1999), pp. 48. See also Cohen (1997).

of benefits and burdens across persons. Either way, political philosophy provides further lenses to normatively evaluate human action. Very simply, that makes it a branch of moral philosophy.[13]

Given that political philosophy, at least when conceived as an enquiry into justice, must be a branch of moral philosophy, we may enquire into the relation between the two. The relation between political philosophy (or, at least, political philosophy as a concern *about* justice) and moral philosophy may be posed in terms of the extent to which the two overlap with respect to what they evaluate.[14] However, a concern about the relation between moral and political philosophy often intends something further. An interrogation into the relation between the two may be posed as a question of what, if anything, makes political philosophy a *distinct* form of enquiry.

Consider the ostensible question of overlap first. On the former, Rawlsian account of the site of justice the degree of overlap is constrained. There will be a

---

[13] John Simmons agrees with the typology that locates political philosophy as a branch of moral philosophy because it judges a certain domain of human action. 'Political philosophy can thus be aptly characterized as a branch or an application of *moral* philosophy. Not all evaluations are moral, of course; but the evaluations made in political philosophy are in fact distinctly moral. Where moral philosophy examines the more general questions of how we should act and be, political philosophy examines the more specific questions of how we should act and be in our political lives and (consequently) of what kinds of political societies we should (and should not) create or oppose.' Simmons (2008), p. 2

Also, to assuage methodological concerns, 'a branch of' does not mean 'less important than.' Nor does it mean 'has the exact same subject matter as.' I only mean – and I take it to be a very modest methodological point – that political philosophy evaluates some, but not all, of what moral philosophy evaluates, *viz*. human action.

[14] By 'overlap' I intend the following. Human action falls within the lens of moral evaluation. Overlap is determined by the extent to which human action is properly evaluated by the lens of political philosophy.

range of individual action which is not in the remit of political philosophy, namely, the range of individual actions which *does not* comprise the basic structure of society. We can make this claim even while we refrain from claims about the precise kind of action that comprises the basic structure. Political philosophy is distinct from moral philosophy at least because it is only concerned to evaluate those actions that comprise basic structural institutions, whereas moral philosophy is concerned to evaluate if not all, then a much more extensive range of human action. On the Rawlsian account, political philosophy concerns an autonomous region in moral philosophy; it evaluates the distinct realm of actions that comprise political institutions. Actions that fall beyond that realm are, strictly speaking, not political.

On the latter account of the primary site, the account endorsed by Cohen, a much larger range of individual action falls within the remit of political philosophy because seemingly all of our occupational, productive, and consumptive choices are actions that affect the relevant profile of benefits and burdens across persons and, hence, are assessable at the bar of justice. Those actions are also sites of justice, even if secondary. When we take the primary site of justice to be a distribution of benefits and burdens and not the main social and political institutions, then there is a much greater overlap on what is of concern between moral and political philosophy. This is simply because political philosophy, when conceived as a concern about justice, would have in its remit such a large range of individual action. This range is far more extensive than those actions that comprise political institutions. When the primary site of justice is taken to be a profile of benefits and burdens, justice counts in favour of acting in certain ways, namely, in those ways that lead to a more just distribution of benefits and burdens. We have obligations of justice to bring about (more) just

distributions. Those obligations can be discharged through actions that are said to comprise political institutions and through actions that do not comprise political institutions. In sum, on the latter account, justice is a standing reason or obligation, one among many kinds of reasons which moral philosophy is concerned with clarifying, by which we can judge a very broad swath of individual actions.

It is perhaps odd, if not inconsistent, to say that so many of our actions – including *all* occupational, productive, and consumptive actions – fall within the domain of the political and continue to retain *political* as a concept distinct from *moral*. There is a line of critique which claims that to regard such actions as under the analysis of political philosophy is to erroneously collapse the distinction between moral and political philosophy. This general line of critique, internal to political philosophy, holds that political philosophy is not 'applied ethics.' The position that political philosophy is not 'applied ethics' – a position that we may loosely refer to as 'realism' – is endorsed by Bernard Williams and Raymond Geuss.[15] What these two share is the conviction that it is not the purpose of political philosophy to clarify some normative standard – for example, what a just distribution would entail – and then to evaluate our individual actions and political institutions by the lights of whether or not

[15] As Geuss puts it, 'The view I am rejecting assumes that one can complete the world of ethics first, attaining an ideal theory of how we should act, and then in a second step, one can apply that ideal theory to the action of political agents… Proponents of the view I am rejecting then often go on to make the final claim that a "good" political actor should guide his or her behavior by applying the ideal theory.' Geuss (2008), p. 8

Williams also denies that political philosophy must reflect a basic relation between morality and politics where politics is to be either the instrument of, or constrained by, prior and independently derived moral principles. Williams uses the term 'political moralism' to refer to the view that political action is to be judged by moral principles, where the normative force of those principles exists independently of the political action to be evaluated. His positive project is to develop as a rival account, 'political realism.' See Williams (2005).

they promote or achieve that ideal. Rather, the project of political philosophy is something else. (However, these two 'realists' differ substantially on what that enterprise is, if not to evaluate human action by some ulterior normative standard of distributive justice.) In short, the enterprise of political philosophy is not applied moral philosophy; it is about something else. Political philosophers should *get real*.

I do not follow the 'realist' critique that it is not for political philosophy to evaluate our actions, even a very wide domain of individual actions, by the lights of justice as an ideal normative standard. Of course, it is not the *single* enterprise of political philosophy to evaluate, by the lights of distributive justice, the very wide range of human action and political institutions that affect the profile of benefits and burdens across persons. However, to conduct (or attempt to conduct) this evaluation is not to render political philosophy indistinct from moral philosophy. Moral philosophy seeks to evaluate a larger domain of action, which is not coextensive with what falls within the remit of political philosophy. There are some actions that do not affect the relevant distribution (for justice) of benefits and burdens across persons, and we may sensibly ask whether those actions are right or wrong. There are ways of acting and of treating others that are wrong even when the wrongness of those actions is not explained by their effecting a less just distribution *and* even when such actions do not affect such a distribution at all. Rather, they are wrong for other reasons that moral philosophy clarifies and that are not the concern of political philosophy, even on the wider account of the site of justice. Moreover, it is not improper to refer to actions that may affect distributions of benefits and burdens as political. To refer to such actions as 'political' might simply mean that we are evaluating them by the lights of political philosophy – that is, we believe that they are germane to the

achievement of distributive justice. Also, there are many who do not think such an ascription of 'political' to the wide domain of action that affects the distribution of benefits and burdens across persons is odd in the least. The feminist (and recently, the egalitarian) slogan 'the personal is political' is testament to the fact. Referring to such a large class of actions as political is neither terribly odd nor does it blur relevant distinctions between political and moral philosophy.

If the realist critique is that it is not for political philosophy to evaluate individual actions and institutions by the lights of distributive justice, then the critique is misguided. Distributive justice, on one very persuasive interpretation of that concept, refers to the distribution where normatively significant benefits and burdens (on some currency) redound to the persons to whom the benefits and burdens are due. We can intelligibly seek to clarify what that distribution is (in both its structure and currency), what grounds we have to promote such a distribution, and whether or not our actions and institutions are, in fact, promoting it. This overarching project obviously seems to be *a* topic of political philosophy. If, however, the realist critique is that it is not the *only* or even the *predominant* project of political philosophy to evaluate individual actions and institutions by the lights of distributive justice, then it is sound. There are two important reasons why. The second issues from the core of the realist critique. The first depends on how we conceive of the value of distributive justice.

Distributive justice can be conceived as one value among many values. On this view our reason to promote a just distribution of benefits and burdens is defeasible; other reasons may outweigh it. This view seems to flow from an account of distributive justice that not only takes the primary site of justice to be a profile of

benefits in burdens, but also understands that this profile is just if it adheres closely to equality while admitting those inequalities which are not morally arbitrary, that is, for which we are unambiguously responsible. In that case, justice does count in favour of certain actions, namely, those that promote a just distribution; however, on this view, it is only a *pro tanto* reason. Other reasons may count more heavily, or even decisively, in favour of actions which do not promote a just distribution, or, as it is normally meant on this view of justice, which contribute to an (responsibility insensitive) inequality of benefits and burdens.

One kind of reason to not promote justice is that it would be unfeasible to achieve a just distribution. Another is that it would be too demanding of ourselves. Another is that our friends and family should reap at least some of the benefits of our actions, even while this contributes to inequality. Another is the reason to promote a variety of forms of human excellence, even when these actions in no way promote equality. Yet another, different kind of reason is that reasonable people can reasonably differ about what would constitute a just distribution, and this fact perhaps counts in favour of not performing some actions, namely certain coercive actions, so as to promote a just distribution. On the first view of distributive justice, all of these reasons are distinct from the reason that justice provides, which is again *pro tanto*, defeasible, and possibly outweighed by other reasons.[16] In a sense, this first view of

[16] This view of distributive justice is endorsed by G.A. Cohen. Justice is distinct from other reasons, either reasons that issue from other values or reasons that issue from the difficulty or feasibility to achieve justice. He writes, 'an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto*, unjust, and that nothing can remove that particular injustice. It does not follow, and I do not say, that such unjust inequality cannot be part of a package of policy that is, all things considered, superior to any other (because values other than justice weigh its

justice asks us to think of justice as competing with other reasons, some of which we have just listed, in our 'space of reasons' to act in certain ways.

We may, however, conceive of justice in another way. Instead of justice providing one reason among many, we may conceive of justice as a value that reflects the outcome of a procedure that somehow takes on board all of our reasons, or at least, all of the reasons that count in favour of actions that affect others. Such a procedure is sure to take on board the following considerations (at the least) as counting in favour of acting in various ways: equality, partiality, demandingness, feasibility, utility, human excellence, and the fact of reasonable disagreement. Justice reflects the reasons – or, a perhaps some lexical ordering of reasons – that count most heavily in favour of certain actions. We find out which reasons count most heavily by the light of some deliberative procedure. On this view distributive justice is conceived to count, not in a *pro tanto* way, but rather decisively in favour of certain actions. Justice is what we should do, all things considered; it is not a value that is defeasible. I think Rawls conceives of justice in this way. Consider the famous analogy at the beginning of *A Theory of Justice*: 'Justice is the first virtue of social institutions, as truth is to systems of thought.'[17] Truth is not a defeasible value of theories; justice is not a defeasible value of those actions which comprise social institutions. This view of distributive justice seems to flow more naturally from a

---

favour)'…'[J]ustice is justice, whether or not it is possible to achieve it, and that to conform our conception of justice to what is achievable creates distortions in our thought and also in our practice.' Cohen (2008), pp. 7, 155

[17] Rawls (1999), p. 3. We value explanatory power and elegance as attributes of theories, but these values are defeasible with respect to the value we ascribe to the truth of a theory. Among two competing theories, an elegant one and a true (but less elegant) one, the true theory is always the one we should endorse.

view that takes the primary site of justice to be an action or a set of actions that comprise social institutions. Justice is *giving* each person their due, and we might think what each person is due cannot be determined until we take into account various considerations that count in favour of different actions. The action that best reflects those various considerations – not only the strongest consideration, but rather the strongest *combination* of considerations as revealed by some method or procedure – is what others are due; in short, it is what justice requires.

Either way we conceive of distributive justice – that is, either as defeasible, deflated value or 'constructed,' indefeasible value – the question looms: which among a set of reasons is decisive for us? We might consider this a question of justice (following Rawls) or not (following Cohen). I do not wish to enter the debate about which camp is correct concerning the concept of justice. However, if we follow Cohen's critique of Rawls on the concept of justice[18] and thus hold that the question 'What is our decisive reason?' is not equivalent to the question 'What is justice?,' then I think we should nevertheless view the former question as both *more important than* and *more politically relevant than* the latter question. The former question is straightforwardly the question of what we should do, given our manifold reasons to promote a distributively just situation, to respect the demands of partiality, and to respect our personal prerogative that gives a shape to our own lives. All these reasons, and many more, compete for our allegiance.

We might like a normative principle that offers insight into which value provides a decisive reason for action in specific contexts, but some philosophers, including Cohen and Thomas Hurka, believe that such a principle is not forthcoming.

[18] Cohen (2008), pp. 229-343

'Philosophers, and, for that matter, non-philosophers, do not know how to compute, in general terms, the comparative weights of the values all of which deserve consideration: no one knows how to draw an indifference curve map of those values.'[19] At most, philosophers can tell us which values are ingredient to a decision and can clarify what those values are and what they would require, but they cannot (nor could anyone else) supply a method or a set of lexicographically ordered priority rules that we could apply in order to determine in any given context which action is supported by our decisive reason. For Cohen, we are fated with 'discursively indefensible tradeoffs.' Indeed, to accept as much is to be a 'radical pluralist' and an 'Oxford type.'[20] Cohen adheres to this view because he believes the primary

---

[19] Cohen (2008b), pp. 3-4. See also Hurka (2004).

[20] Cohen (2008), p. 4. I suppose the stamp of the 'Oxford type' is cut from Berlin's thesis on the plurality of value. Berlin made famous the idea that values are heterogonous, that they compete for our action, that they conflict, and that there is no ultimate solution or procedure by which to resolve these conflicts. As Berlin writes, 'The simple point which I am concerned to make is that where ultimate values are irreconcilable, clear-cut solutions cannot, in principle, be found.' See Berlin (1969), p. xlix-l.

However, it is important to note that 'Oxford-type' scepticism about the possibility of articulating a defensible 'all things considered' normative principle does not follow from the meta-ethical premise that ultimate values are irreconcilable. Value pluralism as such does not entail any conclusion about the possibility of such a principle. Rather, value pluralism could be consistent with a principle that points out what we have the most decisive reason to do, as long as we recognize that the nondecisive obligations and the underpromoted values do not, therefore, disappear from the moral radar. The meta-ethical belief in value pluralism holds that, in cases of moral conflict, we have a reason to *regret* a failure to discharge a moral obligation, *even when* it is not decisive and is outweighed by another moral obligation. That view, however, says nothing about the possibility of offering some method or principle that points out decisive reasons in a world that is not obviously well-ordered with respect to value. Value pluralism is a thesis which offers a reason to believe in regret and moral loss, not a reason to disbelieve in the possibility of articulating a general statement of what we have the most reason to do. It does not prove, *pace* Cohen, that 'discursively indefensible trade-offs are our fate.'

enterprise of political philosophy is to clarify our deepest normative convictions, not to recommend social practice or what we ought – in the vernacular sense and not the philosopher's *pro tanto* sense of that term – to do.

Yet to venture that beyond the clarification of our convictions is where we should expect to remain silent amounts to something of a capitulation for *political philosophy*.[21] It amounts to saying, 'Those are your normative convictions, those are their normative convictions, do what you think is best, and when your action engenders conflicts (given scarce social resources such conflicts are inescapable) and the coercion that is likely to come in tow, the best we political philosophers can hope to offer you is this – Fight it out.' Perhaps political philosophy should continue in good faith to try for something more. Indeed, this is how Thomas Nagel sees the primary problem of political philosophy. By Nagel's lights, the central problem is to

---

Moreover, Cohen must think that we can give a kind of outline of an answer. He clearly does not believe that reasons of distributive justice are always decisive. Rather, they are constrained and trumped by the reasons that issue from our personal prerogative, among other reasons. But on the question of where the demands of justice leave off and where the obligations to live our own lives begin, Cohen offers no precise guidance. In the light of Cohen's work, this silence is odd as the demands of personal prerogative at times enter into his formulation of what distributive justice *is*, that is, what distribution of benefits and burdens *is* just: 'Egalitarians like me think that justice is fully served only if people's access to desirable conditions of life is equal, within the constraints of a reasonable personal prerogative, *deference to which informs the whole of the following discussion*.' Cohen's quietude with respect to the location of the line between justice and personal prerogative is a problem for his theory of justice. The silence leaves the theory woefully incomplete. Cohen (2008), p. 181

[21] Cohen does think that the enquiry into principles of social regulation – that is, principles that address the question 'What ought we to do, all things considered?' – is worthwhile. I do not claim that he or anyone thinks that this enquiry is not of value. It is important to see that one can maintain the worth of that enquiry even while doubting that it has a solution that can be discovered through the enterprise of political philosophy. There is often worth in pursuing what we cannot reasonably hope to achieve.

reconcile, by a principle that can be generally endorsed, the conflict of values that arises from the juxtaposition of the two standpoints we may adopt when evaluating our place in the world: the impersonal standpoint, which gives rise to claims of impartiality and equality, and the personal standpoint, which gives rise to claims of partiality, of special, unequal treatment of ourselves and those we especially cherish. For Nagel and many others besides, political philosophy is not only about the clarification of our normative convictions. It also concerns how we might agree to conduct our lives, given that we are all pulled in different directions by the claims of impartiality and partiality.[22]

The realist critique is that political philosophy not only concerns what justice is. No one thinks that it does. Political philosophy also concerns *what we should do, all things considered* (that is, if and when we take that concern to be distinct from the concern about justice). This is a general question of morality, but it also concerns politics. The question is relevant to politics because it helps us respond to another very similar question, that is, the question of *what we should attempt to ensure that others do*. This question is distinct both from the question 'what is justice (as a *pro tanto* value)' and the question 'what do we have most reason to do?' It is also the question that lies closest to the concern of the realist.

---

[22] Nagel aspires to what Cohen believes is impossible. '[I]f an ethical or political theory is to tell people how they should live, it must work with this juxtaposition of standpoints, and it must try to give an answer which is *generally* valid, and which everyone can acknowledge to be so…. But it will not be a solution to the ethical problem if the two standpoints are simply left to fight it out or reach some kind of individual accommodation within the each person. Instead, this situation of conflict must itself be regarded as presenting a further problem for ethical and political theory – a new set of data for which a theory must be constructed.' Nagel (1991), p. 14, 15

6.2.3. The realist critique locates the question 'what may we ensure that others do?' at the heart of political philosophy. Here is why: it is inescapably the case that we act in ways that lead others to act in certain ways, and it is also inescapably the case that we act *so that* others will likely act in certain ways. It is common to refer to a subset of those actions as coercion.[23] Coercion is inevitably the result of our attempt to commandeer scarce resources for our ends. It is also inevitably the result of an attempt to prevent wanton violence and disorder. As Hobbes understood, we have ultimate reason to act in ways to ensure that others do not harm us, even if it means forgoing all of our privileges and advantages to a centralized power. The Hobbesian foundational covenant is an action intended to ensure that others act in certain ways. The heart of the realist critique is that the primary fact of political philosophy is the inescapability of coercion. This is where *real* political philosophy begins.[24]

Given the facts of our lives here together – that is, *inter alia*, facts about scarcity, about the 'circumstances of justice,' about human psychology – coercion is necessarily inescapable. I take that to be non-controversial and any moral or political theory that would deny it is *unrealistically utopian*.[25] The inescapability of coercion

[23] Although, as we will see, this terminology is imprecise; however, in the interest of clarity of presentation, I will not now reveal the distinction which shows it to be imprecise. In Section 5, I will complicate our concern with coercion.

[24] As Bernard Williams points out, 'It is a human universal that some people coerce or try to coerce others, and nearly a universal that people live under an order in which some of the coercion is intelligible and acceptable.'… Coercion is 'a quite basic human phenomenon, and that phenomenon already points in the direction of politics.' Williams (2005a), p. 10 and Williams (2005b), p. 82

[25] Nagel defines an ideal as utopian if reasonable individuals cannot be motivated to live by it. Nagel (1991), p. 21. Hobbes's central insight in political philosophy is that reasonable individuals cannot be motivated to live together absent coercion because

is the force behind Rawls's claim that the domain of the political is not voluntary.[26] To be sure, persons may and do voluntarily emigrate from particular states, but one does not emigrate from coercion as such or the particular patterns of coercive action deployed to keep other coercion (and action which is even more morally repugnant) at bay. The point applies not only to those who manifestly experience coercion, such as residents of prisons, but also to the 'unencumbered' population who is subject to the coercive biconditional propositions established by those who wield political power.[27]

Coercion is necessarily inescapable; however, it is not necessarily acceptable. For realists, the primary project of political theory is to provide an account of when coercion is acceptable. There are two ways to approach that project. The first is to try to understand why people *believe* that highly sophisticated and centralized forms of coercion are acceptable. A standing hypothesis is that the belief that coercion is acceptable is itself a product of that very coercion. This is the hypothesis of critical theory.[28] One approach to political theory is to develop and test that hypothesis.

A second approach is to clarify the normative grounds that make coercion permissible. The second approach addresses the question 'under what conditions is it not morally wrong to coerce and why is it not morally wrong?' This question is not equivalent to the question 'why do people believe that coercion is acceptable?' The latter is a complex question, and the response is not even necessarily best provided by

---

the coercion provides a necessary assurance that others will likely do what they ought to do.

[26] Rawls (1996), pp. 136-137

[27] Buchanan (2004), p. 236

[28] This is the approach advocated by some 'realists.' Raymond Geuss is exemplary. See Geuss (1981).

philosophy. The former question is a philosophical question. We want to know what *makes* coercion permissible and not only why people might happen to believe that it is, either then or now. It is a question of political philosophy. Given that political philosophy is a branch of moral philosophy conceived as that large project to evaluate human action, it is a question of moral philosophy.

The question of 'what makes coercion permissible' is distinct from the question 'what is justice?' on either of the above accounts of the latter question. On the one hand, if we take justice to be a defeasible value, as Cohen does, then it is quite clear that the set of actions that justice requires is not coextensive with the set of actions that it is permissible to ensure will occur by means of coercion. Why should we coerce people to achieve a perfectly just distribution of benefits and burdens even while we recognize, long before we achieve such a distribution, that obligations of partiality or teleological reasons (for instance, old growth forests or moon shots) will appear as our strongest reasons to utilize scarce resources in certain ways? Coercion deployed to *achieve* justice would be impermissible, all things considered.[29]

On the other hand, if we take justice to be what we should do, all things considered, then it also seems to be the case that this set of actions is not coextensive with the set of actions that it is permissible to ensure will occur by coercion. Here are two possible reasons why. The first is that there might be reasonable disagreement over what we should do, all things considered, and this fact may block the

[29] The non-identity between what justice requires and what is permissible to coerce is a point Cohen is keen to press. 'One may think that whatever justice is, it may have to be enforced, if necessary, but we don't learn what justice fundamentally is by focusing on what it is permissible to coerce[.]' Cohen (2008), p. 148. However, I cannot fathom why anyone would believe that 'whatever justice is, we should enforce it' if and when justice is taken to provide merely *pro tanto* reasons to bring about a responsibility-sensitive equal distribution of benefits and burdens.

permissibility of coercion, even when that coercion may ensure the action people really should perform, all things considered. The second is that the belief that it is necessarily permissible to enforce what one has most reason to do in every situation seems to be false. There are occasions when I have most reason to hold the door for old ladies, but to believe that it is permissible to coerce me to do so, on those occasions, is unpalatable.[30] In sum, if we are going to 'get real' about *political* philosophy, the primary question of that enquiry is not the question of justice. It is the question of *legitimacy*.

§ 6.3. The Site of Legitimacy

6.3.1. In ordinary language, the term 'legitimacy' is used to predicate a very wide range of objects. For example, we commonly speak of 'legitimate interests,' 'legitimate children,' and 'legitimate belief.' The use of the term in these everyday contexts seems roughly to connote a meaning akin to 'having a good reason to recognize a claim of' or 'being supported by good reasons.' We have a primitive, rough and ready understanding of the concept of legitimacy.

In political philosophy, legitimacy is an important evaluative concept, if not the most important evaluative concept; however, our rough and ready understanding supplied by ordinary language does not help us evaluate political action or political

[30] Even though I speak of enforcement and coercion in the same breath here, we should keep in mind that force and coercion are not equivalent. Coercive acts make appeals to the will of the coerced parties in ways that acts of force do not. Roughly hewn, the positive (as opposed to evaluative) description of coercion is that it is a conditional threat to force.

actors, at least not in the detail to which philosophy aspires. In order to be useful, we must attempt to say something more precise about the concept of legitimacy in political philosophy and about legitimacy principles – that is, principles which stipulate the conditions by which legitimacy is conferred. The tradition of modern political philosophy has supplied a number of principles that attempt to stipulate when legitimacy is conferred. A brief survey would refer to the Rawlsian liberal principle of legitimacy, the Millian 'harm principle,' principles that make reference to a teleological ordering or 'an objective list,' principles of fair play, of consent, of gratitude; even the Razian service conception has been taken to be a complex principle that confers legitimacy. These are different principles, which stipulate very different conditions (supported by very different grounds) by which legitimacy is conferred. A reader familiar with the tradition of modern political philosophy will notice, in addition to differences among the conditions and the grounds for *those* conditions, that these principles might differ along another, more fundamental axis. Namely, it might be noticed that these principles have been posited to confer legitimacy upon different *objects*.

There is a lurking central question in political philosophy: what is the *primary site* of principles of legitimacy? This question enables us to unpack, in a more clear and precise way, the general question, 'what does it mean to say that the state is legitimate?' That question is very general, and it requires that we think about the various dimensions of legitimacy principles. The question of *site* – in the sense that the term has been taken up in contemporary debates on distributive justice – is a good place to begin that project. Just as we may interrogate the primary site of principles of justice, we may conduct a similar analysis with respect to principles of legitimacy.

What is the primary *object* that a defensible legitimacy principle provides guidance to evaluate as either legitimate or illegitimate?

6.3.2. John Simmons addresses this question in 'Justification and Legitimacy.'[31] Simmons wants to parse two ways to morally evaluate states. According to his schema, one justifies a state by showing that it is rational to prefer it to all feasible non-state alternatives and by showing that its existence, or the sum of its actions, is, 'on balance,' morally permissible.[32] This is the approach to the justification of the state that Robert Nozick deploys in the first part of *Anarchy, State, and Utopia*.[33] Whereas justification tracks the good reasons for a state's existence, as well as the permissibility of that existence, Simmons conceives of legitimacy as tracking a distinctly different evaluation of states. He writes:

> 'A state's legitimacy on this account, then, is its exclusive right to impose new duties on subjects by initiating legally binding directives, to have those

[31] Simmons (1999)

[32] *Ibid*., p. 742

[33] Nozick (1974), pp. 3-119. However, 'justification of the state' in the sense that we can attribute to Nozick's argument is not the only method of evaluation by which Nozick considers the state. Nozick is also concerned with evaluating the 'pedigree' or the historical relations of current distributions. His entitlement theory of justice is exemplary of this method of moral evaluation of distributions by 'historical principles'. Perhaps we can extrapolate this method of evaluation to include distributions not only of property but also of political power. Also, with respect to the state, Nozick is concerned with addressing how a state could come to have the *exclusive* right to coerce and punish persons in some territory. Nozick refers to this concern as an inquiry into 'legitimacy.' This concern is of what I call the *scope* of legitimacy. See Nozick (1974), p. 134 and (6.4.2) below.

> directives obeyed, and to coerce non-compliers. This right and its correlative obligations constitute a special moral relationship between that particular state and each particular (consenting) subject.'[34]

Hence, for Simmons, the *site* of legitimacy – that is, primarily which object we say is either legitimate or illegitimate – is a 'moral relationship' between state and subject. That relation is comprised of the right of the state to impose new duties by issuing directives and the correlative obligation of some persons to obey those directives. We have already seen the relation between the right to rule and the obligation to obey. It is by this relation that we understand the conception of *robust* authority that is commonly attributed to the state. In short, Simmons understands the site of legitimacy to be the *relation* between the directives or commands of the state and the correlative duties of obedience of those to whom the directives are addressed. For Simmons, the *primary site* of legitimacy is the relation of *robust* practical authority, developed above in Chapters 1 and 2.[35]

This is not an uncommon account of the *site* of legitimacy. It reflects the commonly purported kinship between legitimacy, authority, and political obligation (when the latter means the duty to meet commands with strict obedience).[36] Simmons

---

[34] Simmons (1999), p. 752

[35] I say 'primary site' because Simmons obviously believes that legitimacy also addresses the moral permissibility of coercion, perhaps as a 'site'; however, I think Simmons believes that an account of legitimacy addresses the permissibility of coercion non-independently of its concern for the standing of the relation of robust authority between state and subject. He seems to think coercion is permissible if executed by someone who possesses robust authority. *Ibid.*

acknowledges that this account of state legitimacy follows the account found in Robert Paul Wolff's *In Defense of Anarchism*, a text which crystallizes the connection between authority, legitimacy, and political obligation.[37] There Wolff refers to 'legitimate' or '*de jure*' authority to indicate that the moral relation between commands and strict obedience, which the state claims to hold, actually holds.[38] In this sense, Wolff uses 'legitimate' in the ordinary language sense of 'having a good reason to recognize a claim of' or 'being supported by good reasons.' A state's claim to have authority – that is, to enter into the relation of robust authority with some persons – is *legitimate* (or *de jure*) if it is supportable by a sufficient reason that warrants the belief that the relation actually obtains. Again, for political philosophy, the ascription of legitimacy does not depend on either party's belief that the relation holds, but rather on the existence of good and sufficient reasons to warrant that belief.[39] This account of legitimacy as a normative predicate which is ascribable to the authority relation is not uncommon in political philosophy, even though Simmons

---

[36] In his encyclopaedic article 'Legitimacy,' Richard Flathman refers to legitimacy, authority, and political obligation as 'kissing cousins.' I take that to mean he thinks they are closely related. Flathman (1995), p. 527

[37] Simmons (1999), p. 746 fn 19; Wolff (1970)

[38] Wolff (1970), p. 9

[39] Thus, I do not follow Leslie Green when he writes, 'The best solution here is a perspectival one. As a social relation, authority is to be identified from the point of view of those who participate in it and for whom the relation has a special meaning. Someone *claims* authority when he makes requirements on another which he intends to be taken as binding, content-independent reasons for action; his authority is *recognized* when another so treats the requirements; and, in the standard case, the authority *exists* when its claims are generally recognized. From either point of view the authority is regarded as legitimate, and this is a privileged point of view in its identification. In this sense only is "legitimate authority" primary.' See Green (1988), p. 60. Simmons also confronts this 'perspectival' understanding of legitimacy. See Simmons (1999), pp. 747-751

seeks to save it from conflation with other conceptions of the justification of political power.

There is a rival account of the primary site of legitimacy. Some political philosophers think that what is primarily legitimate or illegitimate is coercion. The function of a normative principle of legitimacy is to explain the conditions under which exercises of coercion are justified (*i.e.* supported by a decisive reason). Transposing the idea into the register of Hohfeldian incidents, we might say that legitimacy – or, the justification of coercion – refers to the permission or privilege to coerce. Here we should take care. To refer to the justification of coercion by way of invoking a privilege to coerce may equivocate between two ideas. First, we may think that instances of coercion are justified because they are issued by someone with a *standing* permission to coerce. If coercion issues from any agent with a standing privilege to coerce, then the coercion is justified. Or, second, we may think that some instances of coercion are justified when they are exercised by those who do not have a standing permission to coerce, but some special circumstances render the coercion permissible, so that these persons might be said to have a temporary or ephemeral right to coerce. I will interrogate this distinction below, but either way the major point is the following. If a principle of legitimacy concerns the justification of coercion by reference to a permission to coerce, then the principle of legitimacy concerns neither authority nor political obligation in the first instance.[40]

[40] Several political philosophers retain the view that coercion is the primary site of legitimacy and are explicit that legitimacy does not primarily address authority or political obligation *pace* the traditional interpretation of Simmons and Wolff. These include Allen Buchanan, Christopher Wellman, and Christopher Morris. As Christopher Wellman puts it, 'An account of political legitimacy explains why this coercion is permissible. In doing so, it explains why the state has a right to coerce its

To see the point, recall that a Hohfeldian permission of A to Φ with respect to B correlates with B's absence of a claim-right that A not-Φ and not a kind of duty which B owes A. (Rather it is claim-rights that correlate with directed duties.) Hence, if legitimacy primarily refers to the permission to coerce, then an instance of legitimate coercion does not logically entail anything about political obligation, that is, the duty to meet commands with strict obedience. Thus, if the primary *site* of legitimacy is coercion (a type of *action*), then necessarily principles of legitimacy do not primarily concern *relations* of robust authority between two agents. Which account of legitimacy should we endorse?

6.3.3. Enter philosophical anarchism. Philosophical anarchism provides a large argument to the conclusion that the authority relation purported to exist between the state and others does not, in fact, exist. The commands of the state do not constitute duties of strict obedience for those whom the state commands, and there is no good and sufficient reason to think that they do. There is no straightforward relation between the state's commands and the duties of obedience of those commanded. Simmons avows this thesis; he is a philosophical anarchist. He believes that only actual voluntary acts of consent could ground this relation and where those actions are

---

citizens and, correlatively, why its citizens have not right to be free from this coercion. It is crucial to notice that political legitimacy is distinct from political obligation; the former is about what the state is permitted to do, and the latter concerns what a citizen is obligated to do.' Wellman (1996), pp. 211-212. For further, direct support of this position, see Buchanan (2004), p. 235; Morris (2005), pp. 314-329. I also think that Nagel, Rawls, and Williams regard the primary site of legitimacy to be coercion, not relations of robust authority or political obligation. See Nagel (1991), Rawls (1996), Williams (2005). David Copp's analysis of the site of legitimacy is ambiguous between the two views presented. See Copp, (1999) and (1.3.3) of the present thesis.

nonexistent, which is predominantly the case in modern state-citizen interactions, the claim that there is a relation of robust authority between the commands of states and the duties of subjects is indefensible. The oddity of Simmons' work on legitimacy, however, is that he delineates justification and legitimacy so that he may reserve legitimacy to be the normative predicate that is properly ascribable to what he does not think exists (or exists only very rarely) – namely, a robust authority relation between commands of the state and the duties of its subjects. As he remarks, 'I also believe that no existing states are legitimate (simpliciter)… no existing states are legitimate with respect to even a majority of their subjects.'[41] In sum, Simmons (i) takes the site of legitimacy to be the purported authority relation between a state and persons, (ii) labours the philosophical anarchist conclusion that the relation does not anywhere obtain, and (iii) concludes that existing states are illegitimate.

There is nothing flawed with Simmons's analysis, except that philosophical anarchism is more *interesting* than it appears in his conclusion. Philosophical anarchism has a more interesting import for political philosophy than the conclusion that existing states are illegitimate. Consider the following suggestion. Instead of seeing philosophical anarchism as a way to cast doubt on the legitimacy of states, we might understand the position to suggest that, in political philosophy, the central evaluative concept of legitimacy refers to something other than the authority relation. That is, we might (i) labour the philosophical anarchist conclusion that the purported authority relation between a state and persons does not hold, (ii) conclude that existing states do not have authority, and (iii) reconsider the *site* of legitimacy principles to be not the authority relation, but rather something else. Of course, the

[41] Simmons (1999), pp. 769-770

claim is not that it logically follows from the philosophical anarchist conclusion that since states lack robust authority the site of principles of legitimacy is therefore not the relation of practical authority commonly posited to exist between states and subjects. Rather, I am suggesting that given the strength of the philosophical anarchist conclusion, it is more *interesting* to think that the primary site of legitimacy denotes something else. In this sense, the claim that philosophical anarchism supports the view that the *site* that legitimacy principles evaluate is not the authority relation, but rather something else, is *rhetorical*. (It is a suggestion that we think about the site of legitimacy in a different way, not the conclusion of argument that proves we must.) One could agree with Simmons and the philosophical anarchists in their conclusion that the state lacks robust authority but believe that an enquiry into legitimacy – the concept central to political philosophy – is still open.

The enquiry is still open because of an equivocation lodged into contemporary thought about legitimacy. The equivocation concerns the *site* of legitimacy. The normative predicate, legitimacy, in the hands of some philosophers who write about it has been understood as ascribable to both the purported *relation* of robust authority as well as coercive *action*. Or, to couch the concept in terms of rights, legitimacy is treated as though it vindicates both the *claim* right to have commands met with strict obedience and the *privilege* right to coerce. In his above statement on state legitimacy, Simmons incorporates both objects within what we refer to as legitimate when we refer to the legitimacy of the state. Ronald Dworkin, in *Law's Empire*, makes the same equivocation with respect to the site of legitimacy.[42] Dworkin refers to 'the classical problem of the legitimacy of coercive power.' He also suggests that

[42] Dworkin (1986), pp. 190-192

the answer to this problem depends on the answer to the problem of political obligation – that is, the problem of what could ground a person's duty of strict obedience when confronted with the fact that the state has issued a legal directive. Therefore, 'A state is legitimate if its constitutional structure and practices are such that its citizens have a general obligation to obey political decisions that purport to impose duties on them.' In sum, Dworkin thinks the solution to the 'puzzle of legitimacy' is to 'explain why law is legitimate authority for coercion.'

This seems confused. At least two different sites are in need of explanation as legitimate. 'Legitimate' robust, practical authority amounts to the claim right to have commands met with strict obedience (in addition to other elements of normative powers), whereas the legitimacy of coercion amounts to a defensible privilege right to coerce. Dworkin admits these concerns are not identical, but he does think they are related. He says, 'No state should enforce all of a citizen's obligations. But though obligation is not a sufficient condition for coercion, it is close to a necessary one.' The claim is ambiguous. On the one hand, Dworkin might mean any obligation is not a sufficient condition for coercion, but that would be an obvious point: I have an obligation to hold the door for old ladies, but this does not ground the permission of others to coerce me to hold the door. On the other hand, Dworkin may intend the necessary obligation to be the correlate duty that is created when a robust, practical authority issues a command. This is the reading I believe Dworkin intends, for he explains, 'no general policy of upholding the law with steel could be justified if the law were not, in general, a *source* of genuine obligations [my italics].' Here, the permissibility of coercion depends on a real authority relation. In the absence of a

person's duty to Φ, a duty which is correlate to the command of a robust, practical authority, the act of coercing that person to Φ is impermissible.

Why that? It *might* be the case that the existence of *an* obligation of a person to Φ is a necessary condition to permissibly coerce that person to Φ if the person will not otherwise Φ.[43] But why should it be the case that the obligation that is necessary for coercion to be permissible be the duty that is created when a robust, practical authority issues a command? This claim is not only ungrounded, it also seems to be incorrect. For two persons, A and B, it does not seem to be the case that A's coercing B is permissible if and only if there is a pre-existent relation of robust authority between A's commands and B's duties. For instance, David Howell Evans does not have robust practical authority over me. But, if Evans's mother were very badly injured, and I were unwilling to assist even without great cost to myself (say, by lending my car so that Evans could drive her to hospital), then it is far from certain that it would be impermissible, all things considered, for Evans to ensure my assistance through coercion.[44] Moreover, it is even farther from certain that such coercive action on his part would be impermissible, all things considered, *because* he

---

[43] Although Thomas Nagel disputes that claim directly and William Edmundson disputes it on the grounds that it wouldn't be coercive to ensure that the person Φs (if and when it is the case that the person already has an obligation to Φ). Nagel writes, 'Admittedly, there are cases in which a person should do something, although it would not be right to force him to do it. But here I believe the reverse is true. *Sometimes it is proper to force people to do something even though it is not true that they should do it without being forced* [my italics].' Nagel (1995), p. 146. See also Edmundson (1998), pp. 73-124.

[44] The duty that I have to Evans's mother is what Wellman calls a 'samaritan duty' which results from (i) her peril and (ii) my ability to assist her without unreasonable cost to myself. See Wellman (1996), p. 215. It is, of course, a further question if the existence of samaritan duties, or some set therein, decisively grounds the coercion that would likely ensure that those duties would be discharged. However, I believe we reasonably think that some samaritan duties ground coercion.

lacks robust practical authority over me. Not only is the question of what justifies the authority relation distinct from the question of what justifies coercive power, as Dworkin acknowledges, but also a justified authority relation does not seem to be necessary for the justification of the permissibility of coercion.

As it is for Evans, so it is for the state. The philosophical anarchist believes that the fact that the state commands does not create duties of strict obedience for those to whom the commands are purportedly addressed; however, this conclusion does not entail that it would be impermissible, in some cases, to coerce those persons. The permissibility of *acts* of coercion and the existence of *relations* of authority are separate questions that require separate analyses. As we have seen, accounts of legitimacy have been understood to vindicate both. Some, including Simmons, believe that authority is primarily the site of principles of legitimacy; others believe that coercion is. The philosophical anarchist conclusion suggests that we understand the primary site of legitimacy to be coercion.[45] Legitimacy is about the permissibility of coercion, not our duties to meet commands with strict obedience. This is one upshot that philosophical anarchism offers to the wider body of political philosophy.

§ 6.4. The Scope of Legitimacy

6.4.1. So far the analysis of legitimacy has laboured to keep various evaluative ideals separate. The questions that political philosophy interrogates – those of justice,

[45] Again, this formulation is imprecise; the site of legitimacy, as we will see in (6.5.1.-6.5.4) is not exactly or necessarily coercion. Coercion is a good enough approximation of the site at this stage of the argument.

political obligation, and legitimacy – are separate. Legitimacy is a distinct normative concept in part because of its *site*; it specifically concerns the justification of coercion. As such, the question of legitimacy is distinct from the question of political obligation, that is, the duty to meet commands with strict obedience as required by the relation of robust practical authority. Both questions are themselves separate from the question of what justice as a *pro tanto* value requires of us. And the question of what justice as a *pro tanto* value requires is distinct from the question of what justice as a constructed value – that is, what we ought to do all things considered – requires of us. Intellectual tidiness helps us to focus on which problem we are working and thus what would count as a satisfactory response.

Let's return to the difference between the question of legitimacy – *i.e.* what justifies coercion – and the question of justice as a constructed value – *i.e.* what we ought to do, all things considered. Are these distinct concerns? We might think not. Perhaps the problems are isomorphic, amendable to the same type of analysis, and admit of the same solution. There is a strand of Kantian political philosophy that subjects both problems to the same kind of normative analysis – namely, constructivism. In its most general description constructivism is the position that a principle gains its normative credentials through being the outcome of a privileged selection procedure.[46] One possible constructivist procedure takes as ingredient the *pro tanto* requirements of impartiality and partiality to which we are subject, as well as the factual constraints of feasibility and demandingness, and attempts to identify the duty which we are decisively required to discharge. Call the duties that are recommended by the normative principle which would be the outcome of such a

[46] Cohen (2008), p. 274

procedure our 'constructively decisive duties.' Now, the following conjecture, if true, would render the problem of legitimacy and the problem of justice as a constructed value isomorphic: when we identify the action that is required by our constructively decisive duty, we thereby identify the action that it would be permissible to coerce others to perform.

Thomas Nagel seems to conceive of the problems as isomorphic in this way. In *Equality and Partiality*, Nagel describes the theoretical ambition for political theory to provide 'a reason we can present to anyone over whom the coercive power of the state is exercised.' This reason should be such that any person who is subject to coercion could not reasonably reject. In this way, 'the search for legitimacy is a search for unanimity.'[47] Concerning legitimacy, Nagel is clear on two points. First, he conceives of the *site* of legitimacy as coercion. A principle of legitimacy attempts to provide conditions by which coercion is justified. 'Coercion is… a feature that is warranted only in virtue of the legitimacy of the system which contains it.'[48] Second, we can only arrive at such a principle of legitimacy through the operation of a constructivist procedure which takes two main considerations as ingredient. The first is the duties of impartiality which are owed to every person given the egalitarian conviction that no one person's life or well-being is intrinsically more valuable than anyone else's and which, for Nagel, manifest themselves in a very exigent prioritarian concern for the least well-off.[49] The second consideration is that persons are to consider how reasons of partiality, feasibility, and demandingness provide constraints

[47] Nagel (1991), pp. 23, 33

[48] Nagel (1991), p. 37

[49] Nagel (1979), pp. 106-127

on what may be reasonably required of persons given that, one, each person has their own life to lead, and, two, the prioritarian duties which we confront are seemingly insatiable. Pulling the two considerations together, Nagel contends that 'Legitimacy is the result of a convergence of different perspectives on a single arrangement as satisfying the conditions of non-rejectability of each of them.'[50] On the one hand, if a principle leaves some too badly off, if it does not show appropriate concern for the needs and interests of equal persons, then it is reasonably rejectable. On the other hand, if a principle demands too much by way of the sacrifice of one's personal projects in comparison to any other feasible alternative, then it is also reasonably rejectable. Defensible principles of legitimacy, if there be any, successfully navigate these requirements. They are the outcomes of a certain procedure that first attempts to identify what impartiality requires and then selects as our 'constructively decisive duties' only those duties that are not unreasonably exigent. In sum, a defensible principle of legitimacy would show an impartial egalitarian concern by requiring that advantages be directed to the least well-off, yet while not being overly demanding by way of sacrifice of our own lives and distinctly personal commitments.

Nagel's suggestion is, in effect, that *coercion* is permissible if it is in accordance with a principle that is non-rejectable by the lights of both requirements. However, if we turn our attention to *The View from Nowhere*, Nagel believes the same problem – that is, 'the clash between the personal standpoint of each individual and the more objective, detached standpoint with which…morality is naturally connected' – 'presents *moral theory* with a fundamental task.'[51] That task is, of course, to stipulate

[50] Nagel (1991), p. 38

what we have decisive reason to do. Nagel holds that the way in which we would respond to that question is the same if our question were 'under what conditions is coercion justified?' His suggestion is that we reason according to a constructivist procedure, the engine of which is a standard of reasonably rejectability. Nagel hopes there is a strong connection between what is morally required and what is rationally required, that is, what is decisive. He hopes the principles that are the outcome of the constructivist procedure will provide reasons which are decisive and thus capable of motivating persons as rational agents who respond to the force of the stronger reason.[52] Nagel's approach to these problems leads us to expect a high degree of overlap between (i) what we are morally required to do, (ii) what we have strongest reason to do (*i.e*. what is rational for us to do), and (iii) what actions one might permissibly coerce another to do. It would be unsurprising; the method he adopts toward each seems to be the same.

I do not think that these three sets are necessarily coextensive. Nor do I think that Nagel does.[53] In certain situations, it would not be permissible to coerce what we have the strongest moral reason to do. This is certainly the case with respect to many of our interactions with our family members as well as in relatively innocuous interactions when tacit rules of etiquette require that we act in certain ways. This consideration, however, does not suggest that the overlap between the above three sets is not great. Nor does it suggest that we doubt that the best way to approach the problem of the permissibility of coercion is through a constructivist procedure with a

---

[51] Nagel (1986), p. 193 [my italics]

[52] Nagel (1986), p. 200

[53] See footnote 43 above.

standard of reasonable rejectability at its heart. (For perhaps (iii) is best approached by way of such a procedure, but not (i).) For the moment, suppose that such a procedure is the correct way to approach coercion. Moreover, suppose that we were able to stipulate by reasoning from the requirements of the impersonal, impartial standpoint and the constraints of personal, partial standpoint which duties one may permissibly attempt to ensure are discharged by means of coercion. This is admittedly a very high theoretical conceit. Such an account may very well be beyond political philosophy. Yet, for the present purpose, this conceit allows us to entertain the following question: Would such an account exhaust the concept of legitimacy? If we had a principle – supposing a procedure of reasonable rejectability across standpoints has at least one principle as a determinate outcome – that identified which duties which one may permissibly attempt to ensure are discharged by coercive means, then would this principle be the last word on the permissibility of coercion?

6.4.2. I think not. Such an account would stipulate which actions are permissible to coerce, but nothing about *who* is permitted to coerce. If we care about the permissibility of coercion, then we not only care about *what* is permissible to coerce (*i.e. what* actions, *which* duties) but also *who* is permitted to coerce the performance of the actions that may be permissibly coerced. The concept of legitimacy responds to both concerns.

Call the second concern – the concern of *who* is permitted to coerce – the *scope* of legitimacy. 'Scope' like 'site' is a term that I borrow from Arash Abizadeh. He deploys the term, 'scope,' to refer to a precise idea in the global justice debate, namely, 'the *range of persons* who have claims upon and responsibilities to each other

arising from considerations of justice.' Abizadeh is insistent to contrast scope with site, which refers to the '*kinds of objects* appropriately governed by principles.'[54] My co-opting of 'scope' departs somewhat from Abizadeh's use. A person's permission to coerce is just that, a Hohfeldian permission or privilege. It is neither a claim nor a duty held by a person, as Abizadeh's use of 'scope' entails. Yet, I do want to preserve the italicized nugget in Abizadeh's idea: a *range of persons*. The *scope* of legitimacy is the *range of persons* who have permission to coerce.

The exercise of this permission is also evaluated at the bar of legitimacy. Those persons who fall under the *scope* of legitimacy – that is, those who have the permission to coerce – cannot just commit *any* coercive action. For example, they cannot present others with the bi-conditional threat, 'Buy me a sandwich or suffer such and such punishment.' Rather, they are only permitted to commit coercive action that is warranted by some defensible principle of legitimacy. If we agree with Nagel, then we believe that a defensible principle of legitimacy is both identified and rendered defensible by being the outcome of a deliberative procedure that attends to both (i) the actions required by the impartial duties that we owe to others and (ii) the other reasons of partiality and facts of feasibility that would constrain the permissibility of coercing the performance of such actions. Of course, we might not agree with Nagel and prefer some alternative approach to the problem of which actions and duties may be permissibly coerced. In either case, my present point remains. Legitimacy, or the permissibility of coercion, addresses two main queries, the answers to which are ingredient to the concept. First, *what reasons* make coercion permissible? Second, *who* is permitted to coerce *for and as consistent with those*

[54] Abizadeh (2007), p. 323

reasons? The second query is the question of the *scope* of legitimacy. The first query is a question of the *content* of legitimacy – that is, which actions may be permissibly coerced and why. Below I will call the first problem, 'Kant's problem' and the second problem, 'Locke's problem.'

Another way to approach the question of the *scope* of legitimacy is to consider the question of the presumptive wrongness of vigilante action. Sometimes persons are aware of the considerations that heavily count in favour of coercing or forcing another person. They understand the reasons which would justify the exercise of 'bending the will' of another, either by coercion or force. Is the cognitive access to such reasons sufficient to permit those persons to exercise coercion? Is justified vigilante coercion unproblematic? It is far from clear that it is unproblematic. Concerning those who exercise coercion, we not only think that their coercive actions should be justified by sufficient reason, but it is also common to believe that they who coerce require the special permission-right to do so. Otherwise, they would be mere vigilantes who may be glorified in comic books, but who, in the real world, are morally suspect.

6.4.3. Some liberal philosophers in their analysis of legitimacy have not emphasized the question of scope. For instance, the Millian (and Humboldtian) harm principle appears to be a principle that strictly concerns the *content* of legitimacy. It stipulates when actions that limit the freedom of others, such as force or coercion, are justified. It does not stipulate who, if anyone, is specially permitted to perform such actions. As such, it doesn't provide a complete account of legitimacy. To point out the limits

of state coercion does not thereby explain why some persons have the exclusive right to coerce within those limits.

By contrast, other liberal philosophers have understood this question of *scope* as the central element in an account of legitimacy. For example, Nozick views the concept of legitimacy through the lens of its scope.[55] In addition, by focusing on the question of the scope of legitimacy we can make sense of how Rawls understands the difference between the ideals of justice and legitimacy. For Rawlsians, this interpretative question is interesting, if not mildly problematic. Rawls believes not only that principles of justice are identified and grounded by being the outcome of some constructive procedure (as does Nagel with respect to the content of legitimacy) but also that justice applies to the basic structure as its primary *site*. If the basic structure is identifiable as a *site* by the coercion contained therein, then the primary sites of justice and legitimacy overlap. This might lead students of Rawls to wonder whether the principles Rawls defends are principles of justice or legitimacy and what, after all, is the difference?

In his 'Reply to Habermas' Rawls attempts to clarify the distinction between justice and legitimacy as he understands those ideals. He thinks they are not equivalent. The first and major difference to which Rawls alludes is that the legitimacy of coercive action says 'something about [its] pedigree,' whereas the justice of coercive action (*i.e.* the basic structure) does not.[56] Focus on *pedigree*. Whether or not a coercive action is legitimate depends on the pedigree of that action. Its legitimacy depends on considerations regarding from whence the action came.

---

[55] Nozick (1974), p. 134

[56] Rawls (1996), p. 427

Rawls's emphasis on pedigree highlights the levels of proceduralism in his account of legitimacy. Consider his liberal principle of legitimacy:

> '[O]ur exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason…To this it adds that all questions arising in the legislature that concern or border on constitutional essentials, or basic questions of justice, should also be settled, so far as possible, by principles and ideals that can be similarly endorsed.'[57]

This complex principle has two tiers of proceduralism. A particular coercive act, an 'exercise of political power,' is legitimate if and only if it issues from a legitimate rule-based procedure – that is, the constitution and the legal system which develops from it. This macro-scale rule-based procedure endows certain persons with the special permission to commit coercive action. The legal system identifies the *scope* of legitimacy, that is, specifically which persons in which circumstances – *e.g.*, voters, representative legislators, judges, regulators, and policemen – have the special permission to coerce others. In turn, the macro, constitutional rule-based procedure is itself legitimate if and only if it is the outcome of a privileged selection procedure – namely, the overlapping consensus of people's reasonably comprehensive doctrines. Hence, the *pedigree* of a legitimate coercive act stretches back through a legitimate

[57] *Ibid*., p. 137

legal system into the ur-procedure of the overlapping consensus.[58] Further, Rawls suggests that this norm of the overlapping consensus *itself* has, at the last, its origin in the ultimate, idealized constructivist procedure of the original position.[59]

Rawls's emphasis on scope and procedure allows him to draw the distinction between legitimacy and justice. If a coercive action is exercised by a person on which a legitimate legal system confers the permission to coerce, then, for Rawls, the action is necessarily legitimate; however, it may not necessarily be required by or consistent with the requirements of the Rawlsian principles of justice (or any other principles of justice). Hence, 'legitimacy is a weaker idea than justice and imposes weaker constraints on what can be done.' However, Rawls also recognizes that legitimate actions must be 'sufficiently just.'[60] That is, the legitimacy of an action is not merely that it is performed by a person who has been conferred the privilege to coerce by a legitimate legal system. Rawls's proceduralism about legitimacy emphasizes the *scope* of legitimacy, but he also recognizes that the permissibility of coercion must refer to both to the coercer's special privilege to coerce as well as to the non-procedural, independent reasons for the coercion that purport to justify it. For Rawls, legitimacy reflects the nested concerns of *who* is permitted to coerce and *what* they are permitted to coerce.

---

[58] In the 'Reply to Habermas' Rawls is clear on the two-tried proceduralism of legitimacy. He notes, 'A legitimate procedure gives rise to legitimate laws and policies made in accordance with it… A legitimate procedure is one that all may reasonably accept as free and equal when collective decisions must be made and agreement is normally lacking [i.e. that is what *makes* a procedure legitimate.]' *Ibid*., p. 428

[59] Rawls (1996), p. 225

[60] *Ibid*., p. 428

§ 6.5. Why We Care (About Coercion)

6.5.1. So far we have reviewed some of the contours of the concept of legitimacy. What has not been addressed is why we care. That is, why should we hold legitimacy to be an ideal? The answer is supplied by an account of the presumptive wrongfulness of coercion. This section will endeavour to argue such an account. Coercion is wrong, and we want to avoid it. If we cannot avoid it, then we hope its wrongfulness is outweighed by some moral end for which it is necessary. The reason we care is that we want our actions not to be coercive or, if they are nevertheless coercive, then we want them to be justifiable.

Above, I couched legitimacy as the permissibility of coercion. That formulation is rough and imprecise. It is imprecise because an action can be legitimate by not being coercive, instead of being permissibly coercive. Our concern is coercion (and worse forms of wrongful action, such as brute physical force); however, the primitive idea is that of the *action-directing action*.[61] An action-directing action is an action, Φ, that an agent, A, performs with the intention of leading of another agent, B, to perform some other action, ψ. There are many examples of action-direction actions, some of which might be permissible and others not: advice, coercion, exploitation, force, playing on the emotions of others, intimidation, deception, and framing, which includes most market-action.

Legal directives are also action-directing actions. They are actions that voters, legislators, judges, and regulatory administrators conduct in order to direct the actions of others. On various accounts of coercion, which I will develop below, legal

[61] The term is borrowed from A.J. Julius. See Julius (2008).

directives may be coercive, but they may not be.[62] This fact complicates an account of legitimacy. If a legal-directive is not coercive (or some morally worse form of an action-directing action, such as brute force), then it is, to that extent, legitimate. However, if a legal directive is coercive, it may nevertheless be legitimate if the coercion is justified because it is necessary to achieve some morally superior outcome or, alternatively, to prevent some morally worse outcome. If an action-directing action avoids being coercive it may be legitimate, but if it is nevertheless coercive, it still may be legitimate if the coercion is justified. This argument complicates the *site* of legitimacy. It is not only coercive action. Rather, legitimacy primarily refers to a specific set of action-directing actions, which are performed by those with the privilege to do so (those persons who fall within the *scope* of legitimacy). These actions might or might not be coercive.

6.5.2. What is coercion? If it is anything, then coercion is an *action-directing action*. Coercion is an action that is taken to get people to do things. If A's Φ-ing thereby coerces B to ψ, then at least the following is true:

(1) A believes that Φ-ing will lead B to ψ.

(2) A takes this belief as a reason to Φ.

These two conditions are common to all action-directing actions. However, coercion is not only a distinct form of action-directing action; it is also wrong. How

[62] That the law is not necessarily coercive is forcefully argued by William Edmundson. See Edmundson (1998), pp. 73-124.

then to account for the wrongfulness of coercion? Recall that we want to know *why* we care to either avoid or justify coercion. There are two primary ways to account for the wrongfulness of coercion. First, we can focus on A's intentions. Second, we can focus on B's choice situation after A Φ-s, namely by comparing the alternative state of affairs that B might encounter, depending on his response, with some other privileged state of affairs. The latter is the *baseline* approach to the concept of coercion, which has been the dominant form of analysis since Robert Nozick published 'Coercion.'[63]

Coercion admits of a positive description and a normative description. The positive description is one agent, A, offering B a bi-conditional proposal of the following form: 'If B ψ-s, then A will bring about some state of affairs, *S1*, and if B does not ψ, then A will bring about some other state of affairs, *S2*.' Both threats and offers are instances of such bi-conditional proposals. Coercion is normally understood as a threat, where B has no reasonable option but to ψ, given that B believes A's threat to be credible and that *S2* is worse for B than *S1* is. Proposals with these features are classic cases of coercion. Coercion, unlike force or violence, appeals to the decision of the coercee. Proposals allow for the engagement of the will, even if one or more of the prongs of the proposal is completely unreasonable.[64] These are the marks of a positive description of coercion, but any complete account of coercion must also explain why such bi-conditional proposals are wrong. An account

---

[63] Nozick (1969)

[64] I do not follow Harry Frankfurt's description of coercion, which is concerns the disengagement of the will of the coercee – and, hence, responsibility – in cases of coercion. Coercion may *excuse* responsibility, but that is not its defining feature. See Frankfurt (1988).

of coercion also requires a normative description that explains why coercion is *ipso facto* wrong.

When we enquire into the wrongfulness of coercive action, we might be looking to explain one of three things: (i) that coercive action is *prima facie* wrong, (ii) that coercive action is *pro tanto* wrong, or (iii) that coercive action is decisively wrong. Here I explain why coercive action is *pro tanto* wrong. It is not merely *prima facie* wrong: that would mean that a coercive action seems to be wrong, but we need to inspect more closely to see if it is actually wrong. It is not the case that coercion might be wrong; rather, coercion is *ipso facto* wrong. If an action is coercive, then, in some sense, it is wrong. However, its wrongfulness might not be decisive against its enactment. Rather, the wrongfulness that counts against coercion is *defeasible*; a coercive action might be trumped by stronger reasons that count in its favour. Coercive actions are *pro tanto* wrong. What features of the action, then, explain this species of wrongfulness?

Let's begin with the baseline approaches. Call *S3* the state of affairs that we would reasonably predict B to be in if A never Φs, given normal sociological facts about characters like A and B. *S3* is B's *predictive baseline*. We might think that the wrongfulness of coercion is accounted for by the thought that *S3* is better, from B's vantage, than either *S1* or *S2*. In that case, coercion entails that:

(1) A believes that Φ-ing will lead B to ψ.

(2) A takes this belief as a reason to Φ.

(3) For B, *S3* > *S2* and *S1*.

We might think that coercion is wrong because after A's action, B is worse off than we would predict he would otherwise have been if A had not acted. However, this thought is too quick. It does not necessarily account for the wrongfulness of coercion, for perhaps B has no right, entitlement, or valid claim to be in *S3*, even if it is normally where we would predict he would be if A never came along. If we are to account for the wrongfulness of coercion, we need a more directly moral account.

Alan Wertheimer provides such an account.[65] Call *S4* the state of affairs that B would find himself in if the total set of B's moral rights and entitlements were satisfied *and* the set of his currently decisive moral duties were discharged. *S4* is B's *moralized baseline*. *S4* is the state of affairs that B is morally entitled to be in. On Wertheimer's account, the following case is coercion:

(1) A believes that Φ-ing will lead B to ψ.

(2) A takes this belief as a reason to Φ.

(4) For B, *S4* > *S2* and *S1*.

Wertheimer's idea is that coercion not only deprives B of enjoying a state of affairs to which he is morally entitled, but also that the states of affairs that B faces after A's action are both worse than the one to which he is entitled.

In the majority of our evaluations of coercion, evaluations that depart from the predictive baseline will converge with those that depart from the moralized baseline. This is because, in most cases, the moralized and predictive baselines represent the same state of affairs. For example, consider:

[65] Wertheimer (1987)

> *Rescue*: A, while hiking in the desert, discovers B lost and wounded. A offers to rescue B, which he is fully capable of doing, but only if B pays him a huge sum of money.

This is obviously coercion. B has a claim-right to be saved, and his moralized baseline refers to that outcome. Also, (I hope) we would predict that A will save B without the repugnant threat and thus, the predictive baseline also refers to the same outcome. Here, *S3* is equivalent to *S4*. Both *S3* and *S4* are better for B than *S1*, where A saves B, but only at a huge cost to B, and *S2*, where A does not save B. In this case, both the predictive and moralized accounts issue the same report. In some cases, however, the moral and predictive baselines will not be the same. Consider an example:

> *Nozick's Slave*.[66] A owns slaves, including B. A follows a system of plantation management whereby he flogs B every morning and has done so for years. One morning, A proposes not to flog B, but only if B ψ-s, where ψ is some trivial, non-morally repugnant action.

Here *S3*, the predictive baseline, is that A will flog B. *S4*, the moral baseline, is that B will not be flogged because, on his moral baseline, B is not a slave. *S1* is the outcome where B is not flogged, because B ψ-s, and *S2*, where B does not ψ, is the outcome where A flogs B. So, in *Nozick's Slave*, *S4* > *S1* > *S2*=*S3*. Given this

[66] Derived from Nozick (1969), p. 450

ordering, the moralized account judges this case to be coercion, but the predictive account does not. If we intuitively believe this is a clear example of coercion, then perhaps we should endorse the moralized account and reject the predictive account. Nozick resists that conclusion. To see his reasoning, consider another case:

> *Nozick's Addict*.[67] A regularly supplies crack cocaine to B. One day, A sadistically informs B that he will discontinue the supply of crack cocaine unless B attacks B's friend, C.

In this case, *S3*, the predictive baseline, is that B receives crack from A, *per* usual. *S4*, the moral baseline, is that B does not receive crack cocaine. B does not have a claim-right to crack, nor is A entitled to supply such a drug to B. *S1* is the outcome where B attacks his friend and receives the drugs. *S2* is the outcome where B does not attack his friend and consequently does not receive any crack cocaine. From the standpoint of B, who is addicted to crack cocaine, the following preference ordering obtains: *S3* > *S1* > *S2*=*S4*. Given this ranking, the predictive baseline judges this to be a case of coercion, but the moralized account does not. Nevertheless, it very much seems to be coercion.

To capture the results of both the slave and addict examples, Nozick forwards another account of coercion. His account rotates on the preference of the coercee. In the slave case, the slave would prefer the moralized baseline, whereas the addict prefers the predictive baseline. Nozick holds that where the moralized and predictive baselines diverge, a case is coercive depending on the preference of the coercee. If B

[67] Derived from Nozick (1969), p. 447

would prefer either baseline – either *S3* or *S4* – to *S1* or *S2*, then it is a case of coercion. So, on Nozick's account, the following is definitive of coercion:

(1) A believes that Φ-ing will lead B to ψ.

(2) A takes this belief as a reason to Φ.

(5) For B, either *S3* or *S4* > *S1* and *S2*.

We now have two accounts of the wrongfulness of coercion. One issues from Wertheimer's moralized baseline approach and the other from Nozick's preference approach. For Wertheimer, the wrongfulness of coercion lies with the fact that the coercee finds himself facing a set of outcomes that are worse than the outcome to which he is morally entitled, after accounting for all of his claims, privileges, and duties. For Nozick, the wrongfulness of coercion seems to lie with the fact that the coercee finds himself facing a set of outcomes that he disprefers to an outcome to which he is either accustomed or entitled.

The two analyses differ with respect to *who* is presumed to make the comparison between states of affairs. For Nozick, the relevant standpoint of comparison is the coercee, with all of his biases and preferences (addictions included), from which the relevant comparison can be made. Only the one coerced is in a position to say whether coercion is at hand. For Wertheimer, the relevant standpoint seems to be with a morally omnicompetent agent who is not only able to foresee what state of affairs, *S3*, obtains when all moral claims have been satisfied and decisive duties discharged, but is also able to objectively compare this state of affairs against those which would result from A's execution of his proposal, that is, *S1* and *S2*. On

Wertheimer's analysis, judgments about whether or not coercion is at hand presuppose some background, complete moral theory that produces judgments about what states of affairs in which we are morally entitled to be and to which we can look to determine the hard cases.

What the analyses share is their basic approach to how instances of coercion are established and what makes them wrong. Both accounts make coercion dependent on comparisons of states of affairs to which the coercee is subjected. Coercion is wrong because the outcomes that the coercer proposes to bring about are worse, in some sense, for the coercee than other states of affairs that he would either prefer or be entitled to. Both Nozick's and Wertheimer's analyses of coercion are *consequentialist*. Both accounts look to comparisons of those states of affairs relevant to the coercee. Both accounts focus on the outcomes of an action to determine whether or not it is coercion and thus wrongful because those outcomes are worse for the person coerced.

Does either of these accounts of coercion isolate its particular wrongfulness? I think that they do not. Consider the following case:

> *Mafioso on the Run*. A, a Mafioso under investigation, needs to liquidate his dirty assets. A communicates to a random stranger (random to better hide the dirty money), B, that if B does not accept a gift of £10,000, A will ensure that B has his kneecaps and skull broken. B believes A's threat to be credible, because A has the briefcase on hand and looks very much like a mafioso.

In this case, *S1* is the state of affairs where B accepts the £10,000, and *S2* is the state of affairs where B refuses the money and has his skull and kneecaps broken. Here, B *must* accept the money in order to avoid *S2*. A acts so that B has no reasonable choice but to act in a certain way. Now consider the baselines. *S3*, the predictive baseline, is that A will not interact with B (recall that they are perfect strangers before A's action). *S4*, B's moralized baseline, is to receive neither the £10,000, to which he is not especially morally entitled, nor to have his body broken, which he certainly has a claim-right against. From the standpoint of B, we might suppose the following preference ranking to hold: *S1* > *S3*=*S4* > *S2*. Given this preference ordering, on either the predictive or moralized baseline accounts A's action is not coercive. This is a surprising result. A's action seems not only to be a clear case of coercion, but it also seems to be obviously wrong for A to commit it. The case of *Mafioso on the run* suggests that the wrongfulness of coercion is not to be grounded by the fact that the *outcomes* which the coercer credibly proposes to bring about are *worse*, in some sense, for the coercee than other states of affairs that he would either prefer or be entitled to. Here, the relevant outcome is not worse, but the action is nevertheless redolent of coercion and, more primitively, it is wrong. Hence, we need an account of coercion that better explains its wrongfulness.

6.5.3. We may approach the wrongfulness of coercive action other than by a comparison of the relevant consequences as identified by the various baseline accounts. Consider a few non-baseline accounts of coercion. One initial thought is that coercion is wrong because it would be wrong for the coercer, A, to make good on his threat. A *makes good on his threat* if when B does not ψ, then A acts so as to

bring about *S2*. If it were wrong for A to act so as to produce *S2*, then the thought is that it would be wrong for A to propose to B to produce *S2* unless B ψs. In short, if it is wrong to Φ, then it is wrong to threaten to Φ unless someone else ψs. Mitchell Berman uses this rule to explain the wrongfulness of coercion.[68] The wrongfulness of some action, Φ, infects the proposal to Φ. On first blush, we might endorse that as a general rule, but, upon analysis, it seems to overproduce judgments of wrongfulness. For example, it seems wrong to conduct a nuclear strike on the capital city of another state, but surely it is not wrong *in the same* way (if it is wrong *at all*) to propose to do so on the condition that this state launches a military attack first.[69]

Berman's strategy is still focused on the exercise of the particular actions that are threatened. I think the wrongfulness of coercive actions is more *immediate*. We do not need to analyze the particular consequences of a coercive proposal to locate its wrongfulness. We may instead look to the intentions of the coercer; the wrongfulness of coercion resides with A's intentions. The wrongfulness can be seen before B's choice situation and the consequences that follow from B's choice ever enter the picture. Focus on the kernel of coercion – the action-directing action. As we saw above, A's Φ-ing is an action-directing action if and only if:

(1) A believes that Φ-ing will lead B to ψ.

(2) A takes this belief as a reason to Φ.

---

[68] Berman (2002)

[69] Scott Anderson provides this counterexample to the rule supposed by Berman's analysis. See Anderson (2009).

Consider (2). In order for (2) to be true, A must believe that there is a reason for B to ψ. A must think that *something* counts in favour of B's ψ-ing, otherwise A wouldn't have a reason to Φ so that Φ will lead to B's ψ-ing. What that something is could be a consideration that counts in favour of B's ψ-ing that is either independent of A or that depends, in some way, on A's own advantages or preferences. An *independent* consideration could be that B's ψ-ing discharges a duty held by B, or that it secures something that is good for B, or, more simply, something that is good *simpliciter*. In this case, A counts it as a reason to Φ that Φ-ing would bring about B's ψ-ing, which would secure some good *for B*, or some good, *simpliciter*. What makes the consideration *independent* is that it is independent of A's actions; it would be a reason even if A did not make his proposal.

By contrast, a *dependent* – that is, dependent on A – consideration could be that A has a preference that B ψ-s or that it furthers some of A's interests that B ψ-s or that it secures some advantages for A if B ψ-s. In these cases, A counts it as a reason to Φ that Φ-ing would bring about B's ψ-ing, which would secure some advantage *for A* or would satisfy A's preferences. Of course, both kinds of considerations may obtain when A Φ-s; they are not mutually exclusive considerations. A may believe (i) that B has an independent reason to ψ, (ii) that B's ψ-ing helps to secure A's advantages, and thus (iii) that Φ is supported by both reasons. Here is one such example:

> *Decent Wage Offer*: A, who owns a furniture-making shop, offers to pay B, who is a carpenter, a decent salary to work in his shop. This employment allows B to make a good living, and it does not leave B very much worse off in comparison to A.

In *Decent Wage Offer*, A's action is clearly action-directing. If B works in A's shop then A will generate some profit from B's labour. However, B has some reason to work in A's shop, which is not the consideration of A's profit or advantage. Rather, B's enjoyment of carpentry and A's offer to pay a decent wage, by which B can make an honourable living, are also reasons to work in A's shop. Compare *Decent Wage Offer* with:

> *Indecent Wage Offer*: A, who owns a furniture-making shop, offers to pay B, who is an unemployed carpenter, an indecent salary to work in his shop. B can barely make a living and is left much worse off in comparison to A.

A theory of exploitation explains why the former case is permissible, whereas the latter case is not. Some might think, for instance, that there is *nothing* wrong with *Decent Wage Offer*. I disagree. Rather, I think *Decent Wage Offer* is *pro tanto* wrong and its wrongfulness stems from the fact that A's wage offer is an action-directing action that is not only intended, in part, to the advantage of A, but is also intended to produce an inequality, even if small, between A and B for which B is in no way responsible. However, the wrongfulness contained in *Decent Wage Offer* is defeasible. It seems to be justified, *inter alia*, by the considerations that pertain to B and by the amount of preference-satisfaction secured by a pattern of many actions that have the form of *Decent Wage Offer* – namely, capitalism in its best light, which, to be sure, is not the capitalism that we know. The capitalism we know also contains many instances of *Indecent Wage Offer*, and the wrongfulness contained in *Indecent*

Wage Offer does not seem to be defeasible. A theory of exploitation would explain why. It is well beyond the present purpose to venture such a theory, but I will make a claim about when action-directing actions are, in some sense, assuredly wrong. I am unsure if the following claim explains why the exploitation contained in *Indecent Wage Offer* is decisively wrong; however, I do think it explains why *coercion* is *pro tanto* wrong.

I suspect that a *truth* about action-directing actions is this: if A believes that B has no independent consideration that counts in favour of ψ-ing, or if A believes that B would never recognize an independent consideration that counts in favour of ψ-ing (assuming that B is generally capable of doing so), then A's Φ-ing is *pro tanto* wrong – that is, A's action demands further justification. When the following conditions hold, A commits a *pro tanto* wrongful action:

(1) A believes that Φ-ing will lead B to ψ.

(2) A takes this belief as a reason to Φ.

(6) A does not believe that Φ-ing will enable B to recognize some consideration that counts in favour of ψ-ing that holds independent of A's Φ-ing.

The last condition, (6), might hold as a condition because (i) A does not believe that there is any such reason or (ii) because A believes that B is dense, inept or hopelessly misguided and could not see that there is a Φ-independent reason to ψ even if it were correctly signalled. I believe that (1), (2), and (6) explain the *pro tanto* wrongfulness of some of the action-directing actions that we normally think to be wrong (at least presumptively) such as paternalism, coercion, force, and

manipulation.[70] What is particularly wrongful of actions that satisfy conditions (1), (2), and (6) is that, by those actions, A uses B as a *mere means*. A intends to direct B to ψ, but A does not believe that his action will enable B to apprehend a reason to ψ that exists independent of A's action. Hence, when A Φ-s, A uses B as an instrument to enact ψ and not as an autonomous agent who can recognize and act on antecedent reasons. When conditions (1), (2), and (6) hold and A nevertheless Φ-s, A compromises B's autonomy – that is, B's capacity to freely and responsibly respond to a space of reasons that is not completely in the control of another. A treats B not as a person but as a mere tool.[71] What A *uses* is B's capacity for prudence.

All of the above cases of coercion – *Rescue*, *Slave*, *Addict*, *Mafioso* – are wrong because (1), (2), and (6) are true of them. In each case, A *intends* to direct B's action without believing that his action will make B aware of reasons to act that are independent of A's action. *That* explains their wrongfulness, not comparisons between different sets of hypothetical states of affairs. Moreover, in these cases A intends to direct B's action without the belief that this action will make B aware of

[70] So does A.J. Julius. Julius defines a 'political wrong' as actions that violate the following principle that gathers the conditions (1), (2), and (6): 'You should not (do y, believe that your y'ing will lead me to x and that this fact is a reason to y, and fail to believe with justification that your y'ing will facilitate my coming to x on the basis of my recognition of reason to x that hold independently of your y'ing.)' Julius (2009), p. 1. My attempt is to take a further step and show why these conditions better reflect the wrongfulness of coercion as against other views.

[71] Joseph Raz also believes that what explains the wrongfulness of coercion is the attack on the coercee's autonomy; however, in his account of coercion's wrongfulness, he does not emphasize the coercer's intention to do so. Raz (1986), pp. 154-157

independent reasons to act and *also* without a concern or intention to make B aware of independent reasons to act.[72]

Ultimately, *why we care* is that actions that satisfy (1), (2) and (6) are *pro tanto* wrong. We want to avoid actions that satisfy (1), (2), and (6) or, when we must perform actions that satisfy those conditions, we want to ensure that such actions are justified.

Legal directives are also action-directing actions. Legal directives – enacted by voters, regulatory officials, legislators, and judges – are actions taken to direct the actions of others. Moreover, the belief that these actions will lead others to act in certain ways is one reason why they are taken.[73] Hence, legal directives satisfy conditions (1) and (2). One reason we care about legitimacy as a political ideal is that we care to ensure that (6) is not true of these directives or if it is, then the legal directives are nevertheless justified and therefore not decisively wrong.

---

[72] Here is an attempt to clarify this addition. The intent to enable the apprehension of independent reasons and the belief that we will be successful in that attempt are distinct. There are cases in which we may intend to direct the action of another, intend to enable them to apprehend independent reasons to act, but fail to believe that we will successfully enable this apprehension. If the belief is absent, then I believe that there is a *pro tanto* wrong and coercion obtains; however, if the intent to signal or enable an awareness of independent reasons is also absent, then this multiplies the wrongness of the coercive action.

[73] This point highlights the importance of what Rawls calls the basic structure. The basic structure is a large, loosely organized structure of action-directing action. We want to ensure that the action-directing actions contained therein are not *pro tanto* wrongful, or if they are, then that they are justified. See Rawls (1971).

6.5.4. Legal directives are not necessarily coercive. This claim is contrary to the predominant view or what William Edmundson calls the 'pre-reflective view.'[74] However, it is the upshot of any account of coercion that understands coercion, *ipso facto*, to be *pro tanto* wrongful. The point holds whether the account of coercion focuses on comparisons of consequences against a relevant baseline or on the intentions of the coercer. For instance, we come to this conclusion if we adopt Wertheimer's moralized account. Consider the following case:

> *Robbery Statute*.[75] A lawmaker, A, announces and enacts a statute that provides that anyone, B, convicted of armed robbery will be punished with a prison sentence of between five and twenty years.

Here, if B ψs – that is, if he refrains from armed robbery – then he will receive *S1*, which is the status quo. However, if B does not ψ and commits armed robbery, then he will receive *S2*, a prison sentence. In order for *Robbery Statute* to count as coercion on the moralized baseline, from B's vantage, *S4* – that is, B's moralized baseline – must be better than both *S1* and *S2*. What is important to note is that B's moralized baseline is variant with respect to whether or not he has committed armed robbery. If B has committed armed robbery, then his moralized baseline surely does not include the right not to be punished for that offence. That is, if B commits robbery then it is not clear that *S4* > *S2*. Rather, it might be the case that S4 ≈ S2.

---

[74] See Edmundson (1998), 73; however, for a considered reflection on the coerciveness of the law, see Lamond (2001).

[75] Derived from Edmundson (1998), p. 76

However, in order for *Robbery Statute* to be a case of coercion, it must clearly be the case that S4 > S2. With respect to those who commit armed robbery, Wertheimer's moralized baseline does not produce the judgment that *Robbery Statute* is coercive.

What about those who do not commit armed robbery? Is *Robbery Statute* coercive for them? Their moralized baseline does include the right not to be punished for the offence. This is precisely what A claims he will do – that is, not interfere with them so long as they do not commit armed robbery. If B ψs – and refrains from robbery – then A will bring about *S1*, the state of affairs where B is not punished. With respect to non-offenders, it seems strange, if not misleading, to say that *S4* is clearly preferable to *S1*. Rather it is the case that *S4* ≈ *S1*, or more precisely, *S1* is ingredient to *S4*. Whatever else is included in the state of affairs that is a person's moralized baseline it will, at the least, include the state of affairs of the person not being punished for a crime they did not commit. Hence, if we take the moralized baseline account as definitive of the wrongness of coercion, legal directives are not necessarily coercive. Judgments about their coerciveness ride on the back of moral judgments about the state of affairs they produce in comparison to a moralized baseline. The state of affairs that legal directives produce might help to realize our moral baseline. Therefore, they are not presumptively coercive.[76]

Given that the moralized baseline does not capture the root wrongfulness of coercive action, I do not think there is much at stake in the above argument. Yet, we arrive at the same conclusion – that the law is not necessarily coercive – if we begin with the account of the *pro tanto* wrongfulness of coercion argued above. Coercion is

[76] This, in a nutshell, is Edmundson's argument against the claim that law is necessarily coercive. See Edmundson (1998), pp. 73-124.

wrong because it is performed with the intention to direct the action of another and without the belief that the person will be made aware of any reasons, independent of the coercive action, that count in favour of acting in the directed way. Coercion is wrong because the coercer does not believe he will facilitate the coercee's awareness of independent considerations that count in favour of acting. Are legal directives wrong in this way? To be sure, legal directives are actions that are taken to direct the actions of others.[77] However, is it necessarily the case that legal directives do not facilitate an awareness of reasons for acting in the directed ways?

Suppose that a legislator, A, produces a legal directive, Φ, which leads a subject to that directive, B, to ψ. If this legal directive is not coercive, then two conditions must obtain. First, B must have some reason to ψ that holds independently of A's Φ-ing. Second, A must believe that Φ, *inter alia*, facilitates B's awareness of that independent reason. Is it necessarily the case that laws do not meet these two conditions? I doubt it. The law is not necessarily a singular tool whereby the lawmakers attempt to use people as means to secure some advantages. To return to a point made above, the 'basic legitimation demand,' suggested by Bernard Williams, is the requirement to avoid precisely this view of the law as predominant.

For instance, it is not necessarily the case that when legislators enact *Robbery Statute* that they only intend to direct the actions of others in ways that redound to their advantage. *Robbery Statute* could also be enacted with the intention to signal that armed robbery is morally impermissible, that everyone subject to the statute has a good reason to recognize this, *and* with the belief that some people will apprehend

[77] Or at least many are. Not all legal directives are action-directing actions – for instance, laws that confer normative powers on some do not necessarily direct their actions or the actions of others.

this good reason. To the extent that laws are enacted with the belief that they will correctly signal (i) that citizens have reasons or decisive reasons to act in certain ways and (ii) that those actions are required by reasons that apply to citizens, the laws are not *pro tanto* wrongful in the way that coercion is *pro tanto* wrongful. In fact, to the extent that laws are enacted with this belief, they avoid being coercive. Above, I imprecisely suggested that the *site* of legitimacy is coercion. Now we are in a position to see why that claim is imprecise. The *primary site* of legitimacy is a legal directive, which may or may not be coercive.

6.5.5. Legal directives may be coercive. There are instances when legislators enact laws that they do not believe will facilitate an awareness in the subjects to those directives of directive-independent reasons to act. Perhaps the legislators have lost faith in the reasonableness of some of the subjects to legal directives. Or perhaps they have lost faith in the reasonableness of the directives themselves, *i.e.*, that the directives reliably signal what reasons there are. In these cases, the legal directives are coercive. They are coercive because they are committed with the belief that the legal directives will not enable at least some citizens to apprehend what reasons, independent of the legal directive, there are to act. Hence, they are committed with the belief that those citizens will not confront the law as an attempt to signal the reasons we share, but rather as a straightforward threat of sanction.

The presence of this belief effectively commits the law-maker to viewing the legal directive as a threat which is likely to bend the will of some of those citizens who are subject to it. As above, when the law-maker has this belief and nevertheless enacts the directive he commits to will-bending, *i.e.*, to using a person's capacity for

prudence as a means to getting them to do things. Thus his action is coercive and *pro tanto* wrongful; it demands justification. The law claims the justification to coerce – that is, those who make law claim that the law, when it commits to will-bending, is nevertheless justified. This is how Grant Lamond puts the case for the coercive nature of the law: the law claims the permission to bend wills when it must.[78]

If Lamond's is a thesis about the essential nature of legal directives, then I disagree. That the law claims – or, more precisely, that law-makers claim – legitimacy does not make the law coercive. Laws, including legitimate laws, do not necessarily bend wills. Each citizen *may* understand a particular law to signal independent reasons. If the makers of that law are justifiably aware of that contingent fact, then their awareness of this fact dispels the attribution of coercion to the law. With this fact in mind, law-makers do not intend to use others as mere means. However, when at least some citizens do not understand a law to signal independent reasons, the law-maker's apprehension of this fact renders the law coercive. For any law it could be the case that some citizens do not regard the law as signalling independent reasons. To be sure, it is likely the case with respect to most laws. It is here that the law's claim to legitimacy is significant. The law claims that the coerciveness of these legal directives does not necessarily impugn their legitimacy. Coercive legal directives may meet other conditions that justify their enactment.

What are those conditions? We have already discussed the *scope* and *content* of legitimacy. I will return to those conditions momentarily; however, there is another condition that must be satisfied if legal directives are to be legitimate. Those who enact legal directives, even though they may not have the *belief* that the directives will

[78] Lamond (2001)

successfully enable subject to apprehend independent reasons to act, must nevertheless *intend* to facilitate the subject's awareness of independent reasons to act in the directed ways. It might be objected that the presence of conditions (1), (2), and particularly (6) estops the intention to enable as subject to apprehend a directive-independent reason to act. If one believes that their directive will not enable a subject to apprehend independent reasons to act, then one cannot intend to do so. However, it is a commonplace that we often intend to do things that we believe will not be successful. With respect to the enactment of legal directives, the absence of the *belief* that they will facilitate apprehension of reasons makes them *coercive*; however, the *intention* to facilitate an awareness of reasons, in part, makes them *legitimate*, whether the directives are coercive or not.

We might refer to the problem of meeting this condition as 'Rawls's problem.' To intend to enact legislative directives that would facilitate the subject's awareness of reasons to act in the directed ways means that the legislator must be sensitive to how subjects are aware of reasons that apply to them. This is an insight of political liberalism. Political liberals are concerned with the intention to enact legal directives that are justifiable to all persons subject to those directives. Given that persons irrevocably differ about what reasons there ultimately are (and, moreover, what *makes* something a reason), political liberals argue that legal directives should be justified by reference to a set of reasons that are admissible by all persons who are motivated to justify their legal action-directing actions toward one another. Reasons within this set are called 'public reasons.'[79]

[79] For discussions of political liberalism and the role of public reason, see: Rawls (1996), pp. 212-254; Rawls (1999d); Larmore (2003), pp. 368-393.

The intention to justify a legal directive by reference to a public reason mirrors the intention with which we are presently concerned – that is, to facilitate an awareness of the reasons that apply to those subject to legal directives. If subjects to legal directives believe that those directives are enacted only if they are justifiable by public reasons – as would be the case in a Rawlsian 'well-ordered society' – then when a legal directive is enacted, its enactment should facilitate their awareness of the reasons that apply to them. They only need look for or request the public reason that justifies the directive, in the confidence that there is such a public reason. Moreover, the twin intentions are explained by the same normative principle – namely, that persons should not be treated as mere means, but rather respectfully as persons who are able to recognize and align their behaviour with reasons that apply to them.

The political liberal believes that in our capacities as lawmakers – that is, as legislators, judges, regulatory officials, or voters – we should intend to enact legal directives that are justifiable by appeal to public reasons. The political liberal believes that it is a condition of their legitimacy that legal directives are enacted with this intention. This intention mirrors the intention to facilitate the apprehension of reasons. In order for a legal directive to be legitimate, the intention to facilitate the apprehension of reasons need be present with its enactment. To tie in the claims of the previous chapter, we should aspire to epistemic authority with respect to public reasons. The political liberal holds that we should attempt to reliably convey what public reasons there are as well as what actions those reasons require of us.

'Rawls's problem' is not the only problem that a legal directive must answer in order to be legitimate. The legitimacy of legal directives that are coercive is a function of being admissible if the action-directing action passes two further tests.

The intention to enact a reliable legal directive that is supported by public reasons is not enough. Anyone could have this intention, but not just anyone can issue legal directives at any time. We may refer to a further query about legitimacy as 'Locke's problem' – namely, is the legal directive (and, hence, potentially coercive action) enacted by some person(s) with the privilege to do so? 'Locke's problem' is, of course, *who* has the privilege to do so. Above, we referred to this as the question of *scope*. Some political philosophers, including John Simmons, identify 'Locke's problem' as the main concern of legitimacy.[80] When they speak of the legitimacy of states, they are speaking about 'Locke's problem.' However, while it is true that, from the standpoint of legitimacy, we care to know about whether or not a legal directive responds to the question of scope, that is not all we care about. We also care about other characteristics of the directive, for instance, if it answers 'Rawls's problem.' The intention behind the enactment of a legal directive also matters.

However, there is more to the concept of legitimacy than its scope or the intentions that reside behind legal directives. An account of legitimacy that includes responses to 'Locke's problem' and 'Rawls's problem' would still be incomplete. Suppose that a legal directive was enacted by someone who (i) has the privilege to do so and (ii) has the intention to signal public reasons, independent of the directive, to act. Suppose also that it is coercive – that is, the law-makers *also* have the true belief that there will be some subjects to the directive that do not understand the law to signal what reasons they have, but rather only see it as a highly organized and credible threat. As the legal directive is coercive and thus *pro tanto* wrong, it requires justification. If the directive answered both 'Locke's problem' and 'Rawls's

[80] Simmons (1999)

problem,' would that justify the coercive act? I doubt it. For we not only care that the legal directive is enacted by the right person(s), with the right intentions, but we also care, primarily, that the legal directive 'gets it right.'

Even when 'Locke's problem' and 'Rawls's problem' are answered, coercion can obtain. In these cases, we care that the coerced persons are coerced because *they* (and not the law) are being unreasonable. If we care about the legitimacy of legal directives, then we care that it is the coerced (and *not* those who enact legal directives) who are incorrect with respect to what decisive reasons there are to act. The law 'gets it right' not only if it intends to signal what reasons there are to act but also if it is correct in its estimation concerning what reasons persons have. Some reasons are weighty enough to justify coercion. We care to know which ones.

Call this 'Kant's problem.' The problem through which Kant approaches political philosophy, is 'what may we get people to do?'[81] Kant thought that we may get people to do that which is required to achieve equal freedom. Look past the content of his view to see the conceptual point. If we are going to take actions that satisfy (1), (2) and (6) above to get people to do things, then we cannot just get them to do *anything*. Coercion may be justifiable, but it is not justifiable with respect to *any* action that we attempt to direct. 'Kant's problem' is to detail which actions may be justifiably coerced. Above, I called this the *content* of legitimacy.

Politics is about getting people to do things; coercion is elemental to that task. Legitimacy, although it concerns both *who* has the privilege to coerce and what their *intentions* are, also concerns the *justification* of coercion. Because we care about the wrongfulness of coercion, we care to know it is justified. An account of such

[81] Ripstein (2004), p. 32

justification requires more than an argument for the privilege to issue legal directives and the identification of the intention to facilitate awareness directive-independent reasons. More basically, it requires that we know which reasons persons should be made aware of, why those reasons outweigh the *pro tanto* wrongfulness of coercion, and what actions those reasons count in favour of. These are the moral and interpretative questions that states – that is, legislatures, judiciaries, regulators, and voters – aspire to answer when they enact legal directives. Correct answers to those questions contribute to the legitimacy of their legal directives, of the ways that they get each other to do things.

Conclusion

§ 7.1. The Wrongfulness of Practical Authority

The philosophical anarchist conclusion is that the state's claim to practical authority over its subjects is indefensible. That conclusion was visible by section (5.2.6). Now we are in a position to see a further conclusion about the species of practical authority commonly attributed to the state. The commands of practical authority are *pro tanto* wrong in the same way that coercion is *pro tanto* wrong. The commands of someone who claims practical authority satisfy conditions (1), (2), and (6) above in section (6.5.3).[1] Those conditions *also* explain the *pro tanto* wrongfulness of practical authority. This is not to say that commands are coercive. Rather, it is to say what makes coercion wrongful also makes the commands of a purported practical authority wrongful.

When the purported authority performs the illocutionary action of a command, she believes that the command will lead others to act, hence (1). That belief is in part a reason to issue the command, hence (2). Moreover, in issuing the command, the purported authority does not necessarily believe that the command will enable the commanded to recognize some independent consideration that counts in favour of acting in the commanded ways. Rather, the practical authority intends that the command constitutes a reason itself. She does not necessarily believe nor intend that

[1] To recall those conditions, they are:
(1) A believes that Φ-ing will lead B to ψ.
(2) A takes this belief as a reason to Φ.
(6) A does not believe that Φ-ing will enable B to recognize some consideration that counts in favour of ψ-ing that holds independently of A's Φ-ing.

her command signals an independent reason. If she did, then she would not be commanding as an authority. Therefore, the commands of supposed practical authorities satisfy (6).

One might invoke the Razian dependence thesis to stave off the last conclusion; however, that thesis will not do the requisite work. It may be true that the commands of practical authority are based or 'dependent' on independent reasons that apply to the commanded persons. However, this consideration does not amount to the commander's belief that her commands will facilitate the commanded to recognize those command-independent reasons. The purported practical authority does not believe that because she intends to communicate what she believes to be a content-independent reason – *viz.*, the command itself. If the purported subjects respond to that reason, even if the dependence thesis were satisfied, they may still be in the dark with respect to the command-independent reasons that actually apply to them. At this late point, the proponent of practical authority cannot then respond that the content-independent reason also applies (and perhaps even pre-empts other reasons). There is no such reason. The conclusion of the philosophical anarchist argument deployed above is that it is indefensible and unjustifiable to believe as much.

What is true of and explains the wrongfulness of coercion is also true of and explains the wrongfulness of commanding as a purported practical authority. To attempt to get people to do things by commanding them as if one were a practical authority over them is *pro tanto* wrongful. *Pro tanto* wrongful actions must be justified in order to not be decisively wrong. As was argued in Chapters 3-5, a justification for the practical authority of the state is not forthcoming. Hence, when

the state attempts to get people to do things by commanding as if it were a practical authority over them, it wrongs those whom it commands.

§ 7.2. The State

If the argument for philosophical anarchism is convincing, then a conclusion follows about the concept of the state. We should be suspicious of any conception of the state that includes the claim to practical authority. In section (2.5.1) I reviewed two prominent and related conceptions of the state that depend upon this claim: Hobbes's conception of the state and the *de facto* conception of the state. The philosophical anarchist jettisons both conceptions.

Hobbes cemented the relation between the state and practical authority. For Hobbes, the state is just that person by fiction that has practical authority over its subjects. However, the Hobbesian conception of the state is doubly indefensible. First, it is indefensible because the claim to practical authority is unjustified. The unified philosophical anarchist argument above supports this conclusion, and the specific argument against Hobbes was provided in (4.4.4). Second, Hobbes's conception of the state is indefensible because it is unintelligible. Hobbes required the state to be a person because he understood that the presence of a single will was required to generate the content-independent reason entailed by practical authority. What is necessary to the state's claim to authority is that we attribute a will to the fictive person of the state. Hobbes requires that we permanently suspend our disbelief in order to believe that there is a fictional person with a will that constitutes reasons

for us to act. That is nonsense. Just as Agamemnon cannot come down off the stage and affect our space of reasons by imposing duties upon us, *neither can the state*. We should give up the 'fancy' (another Hobbesian term) of the state and conduct our political philosophical arguments with material that is real and normatively significant.

We should also give up the *de facto* conception of the state – that is, the identification of the state with those natural persons who claim to have practical authority and who have that claim recognized. We should jettison this conception of the state either because those natural persons invoke the Hobbesian conception of the state when they claim authority – as I suggested in (2.5.1) – or because what they claim is both unjustifiable and wrongful. In either case, we should reject what those persons claim. If our conception of the state incorporates a normative claim – which it does, as the concept of state is not reducible to exercises of force – then the normative claim should be justifiable. The conceptual debate about what the state *is* should be responsive to the normative debate about the *justifiability* of what it claims.

If the specific normative claim essential to the concept of the state is necessarily a claim to possess practical authority over subjects, then there are no states.[2] Some have taken this to be a conclusion of philosophical anarchism; however, it is a frivolous conclusion.[3] The antecedent is ungrounded. The normative claim essential

[2] Or, at the least, there are no rationally or morally justifiable states. There might be those who erroneously claim to possess practical authority, but in that case the definition of a state depends on some persons making an error *and* committing a wrongful action.

[3] Wolff (1970), pp. 8-12 hints at the frivolous conclusion, as does Morris (1995), p. 223. There, Morris says, 'If my skepticism [about the state's claim to practical authority] is right, then the state may have "withered away."'

to the concept of the state does not necessarily concern practical authority. I suspect it concerns legitimacy, which has little, if anything, to do with practical authority. The moral and conceptual evaluation of states does not depend on claims to possess practical authority. This is a more sober philosophical anarchist conclusion.

In Chapter 6 I attempted an outline of the concept of legitimacy. However, to say something definite about the legitimacy *of states* is complicated. I am uncertain whether states can be evaluated as legitimate in the full sense of the concept. Here is why. Recall that in Chapter 6 I crafted a distinction between a *primary* site and a *secondary* site of a normative principle. Primary sites are those objects upon which a normative principle confers its distinctive normative predicate. Secondary sites are objects that also bear a normative predicate, but only because the object is causally connected to the primary site. In Chapter 6, I also suggested that the *primary* site of legitimacy is the legal directive, which is likely coercive.

If we are want to identify states with those natural persons who claim and exercise the privilege to issue legal directives and to coerce, then it seems that the state can only be a *secondary* site of legitimacy. In that case the state is causally connected to the legal directives it produces. To analyze the legitimacy of the state on this reading is only to analyze 'Locke's question' – *i.e.*, are those persons justified to claim the privilege of issuing legal directives and coercing? The answer to this question, of course, contributes to the analysis of legitimacy, but as we saw in Chapter 6, it does not exhaust it. If this is our approach to the state, then our attributions of legitimacy to the state are (only) attributions to a secondary site. States cannot be analyzed as legitimate in the full sense of the concept.

Suppose we then identify the state not only with those natural persons who claim and exercise the permission to issue legal directives and to coerce but also with those legal directives themselves. On this view, states are not only natural persons, but they are also 'what's on the books' – *i.e.*, the whole of the law itself. If this is our approach to the state, then I also doubt that we can think of the state as an object that could bear legitimacy in the full sense of the concept. I suggested that the primary site of legitimacy is a *specific* legal directive, and to analyze a legal directive for legitimacy requires a response to the questions of *what* may we get people to do, *how* we may get them to do it, and *who* may get them to do it. To think of the state in part as a collection of legal directives implies that the state can be *more or less* legitimate, depending on the extent to which the specific legal directives are legitimate. However, on this view, to think of the state itself as a special object that can be, in the primary sense, either legitimate or not is to commit a category mistake. To enquire if the state is legitimate or not is akin to asking if humanity as a whole is good or bad.

These are little more than preliminary remarks. To say something conclusive about the *legitimacy* of states requires that we say not only something about the relationship between states and legal systems but also something substantive about the legitimacy of legal systems and of particular legal directives. To *that* task, the arguments of this thesis are but prolegomena. Philosophical anarchism directs us away from the distraction of the practical authority of the state and toward the centrality of these questions about legitimacy. It adds that the state may not get people to do things by claiming to have practical authority over them. Beyond those modest but decisive contributions, philosophical anarchism has nothing more to offer. Other arguments must carry us onward.

Bibliography

Note: All and only works cited in the thesis appear below.

ABIZADEH, Arash. (2007). 'Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,' *Philosophy and Public Affairs*, 35:4, pp. 318-358.

ANDERSON, Scott. (2009). 'Coercion' *The Stanford Encyclopedia of Philosophy* (Summer 2009 Edition), Edward Zalta, ed., URL=<http://www.seop.leeds.ac.uk/entries/coercion>.

ANSCOMBE, G.E.M. (1981). 'On the Source of the Authority of the State,' *Collected Philosophical Papers, Volume III: Ethics, Religion, and Politics* (Minneapolis: University of Minnesota Press), pp. 130-155.

ARNESON, Richard. (2001). 'Luck and Equality,' *Proceedings of the Aristotelian Society*, supp. vol. 75, pp. 73-90.

BACH, Kurt. (1984). 'Default Reasoning: Jumping to Conclusions and Knowing When to Think Twice,' *Pacific Philosophical Quarterly*, 65, pp. 37-58.

BEITZ, Charles. (1979). *Political Theory and International Relations* (Princeton, NJ: Princeton University Press).

BERLIN, Isaiah. (1969). *Four Essays on Liberty* (Oxford: Oxford University Press).

BERMAN, Mitchell. (2002). 'The Normative Functions of Coercion Claims,' *Legal Theory*, 8, pp. 45-89.

BODIN, Jean. (1993 [1583]). *Les Six Livres de la République*, G. Mairet, ed., (Paris: Livres de Poche).

BUCHANAN, Allen. (2004). *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press).

CANNING, Joseph. (1996). *A History of Medieval Political Thought: 300-1450* (London: Routledge).

CLAUS, Laurence. (2008). 'The Empty Idea of Authority,' Social Science Research Network, URL=<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1201862#>.

CHARTIER, Gary. (2009). 'In Defense of the Anarchist,' *Oxford Journal of Legal Studies*, 29:1, pp. 115-138.

CHRISTIANO, Thomas. (2009). 'Authority,' *The Stanford Encyclopedia of Philosophy* (Spring 2009 Edition), Edward N. Zalta (ed.), URL = <http://plato.standford.edu/entries/authority>.

---------- (2008). *The Constitution of Equality: Democratic Authority and its Limits* (Oxford: Oxford University Press).

CLARK, John P. (1977). *The Philosophical Anarchism of William Godwin* (Princeton, NJ: Princeton University Press)

COHEN, G.A. (1989). 'On the Currency of Egalitarian Justice,' *Ethics*, 99:4, pp. 906-944.

---------- (1997). 'Where the Action is: On the Site of Distributive Justice,' *Philosophy and Public Affairs*, 26:1, pp. 3-30.

---------- (2000). *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, MA: Harvard University Press)

---------- (2008a). *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press)

---------- (2008b). 'Rescuing Conservatism: A Defence of Existing Value,' unpublished manuscript.

COPP, David. (1999). 'The Idea of a Legitimate State,' *Philosophy and Public Affairs*, 28:1, pp. 3-45

DANIELS, Norman. (1979). 'Wide Reflective Equilibrium and Theory Acceptance in Ethics,' *Journal of Philosophy*, 76, pp. 256-282

DARWALL, Stephen. (1998). *Philosophical Ethics* (Oxford: Westview Press).

---------- (2006). *The Second-Person Standpoint* (Cambridge, MA: Harvard University Press).

DWORKIN, Ronald. (1986). *Law's Empire* (Oxford: Hart Publishing).

EDMUNDSON, William. (1998). *Three Anarchical Fallacies* (Cambridge: Cambridge University Press).

---------- (2004). 'State of the Art: The Duty to Obey the Law,' *Legal Theory*, 10, pp. 215-259.

ESTLUND, David. (2007). *Democratic Authority: a philosophical framework* (Princeton, NJ: Princeton University Press).

FLATHMAN, Richard. (1995). 'Legitimacy,' *A Companion to Contemporary Political Philosophy*, Robert Goodin and Phillip Pettit, eds., (Oxford: Blackwell Publishing Ltd.), pp. 527-533.

FRANKFURT, Harry. (1973). 'The Anarchism of Robert Paul Wolff,' *Political Theory*, 1:4, pp. 405-414.

---------- (1988). 'Coercion and Moral Responsibility,' *The Importance of What We Care About* (Princeton, NJ: Princeton University Press), pp. 26-46.

GANS, Chaim. (1992). *Philosophical Anarchism and Political Disobedience* (Cambridge: Cambridge University Press).

GARDNER, John and MACKLEM, Timothy. (2002). 'Reasons,' *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Jules Coleman and Scott Shapiro, eds., (Oxford: Oxford University Press), pp. 440-475.

GASKINS, Richard H. (1992). *Burdens of Proof in Modern Discourse* (New Haven: Yale University Press).

GAUTHIER, David. (1969). *The Logic of Leviathan* (Oxford: The Clarendon Press).

GIERKE, Otto. (1987). *Political Theories of the Middle Ages*, Frederic Maitland, trans., (Cambridge: Cambridge University Press).

GILLEY, Bruce. (2009). *The Right to Rule: how states win and lose legitimacy* (New York: Columbia University Press).

GEUSS, Raymond. (1981). *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge: Cambridge University Press).

---------- (2008). *Philosophy and Real Politics* (Princeton, NJ: Princeton University Press).

GODWIN, William. (1971 [1798]). *An Enquiry Concerning Political Justice*, K. Codell Carter, ed., (Oxford: Clarendon Press).

GREEN, Leslie. (1988). *The Authority of the State* (Oxford: Clarendon Press).

---------- (1999). 'Who Believes in Political Obligation?,' *The Duty to Obey the Law*, William Edmundson, ed., (Lanham: Rowman and Littlefield), pp. 301-317.

---------- (2005a). 'Three Themes from Raz,' *Oxford Journal of Legal Studies*, 25:3, pp. 503-523.

---------- (2005b). 'General Jurisprudence: A 25th Anniversary Essay,' *Oxford Journal of Legal Studies*, 25:4, pp. 565-580.

---------- (2008). 'Positivism and the Inseparability of Law and Morals,' *New York University Law Review*, 83, pp. 1035-1058.

---------- (2009). 'Legal Obligation and Authority,' *The Stanford Encyclopedia of Philosophy* (Spring 2009 Edition), Edward N. Zalta, ed., URL = < http://plato.stanford.edu/entries/legal-obligation/>.

GREENAWALT, Kent. (1989). *Conflicts of Law and Morality* (Oxford: Oxford University Press).

GROFMAN, Bernard and FELD, Scott. (2002). 'Rousseau's General Will: A Condorcetian Perspective,' *Democracy*, David Estlund, ed., (Oxford: Blackwell Publishers, Ltd.), pp. 308-319.

HARMAN, Gilbert. (1973). *Thought* (Princeton, NJ: Princeton University Press).

HART, H.L.A., (1982). 'Commands and Authoritative Legal Reasons,' *Essays on Bentham* (Oxford: Clarendon Press), pp. 243-268.

HARRISON, Ross. (2003). *Hobbes, Locke, and Confusion's Masterpiece* (Cambridge: Cambridge University Press).

---------- (2007). 'The Moral is: States Make Laws,' *Law and Philosophy: current legal issues 2007, vol. 10* (Oxford: Oxford University Press), pp.159-172.

HOBBES, Thomas. (1688). *Leviathan, sive D Materia, Forma, & Potestate Civitatis Ecclesiasticae et Civilis* in *Thomae Hobbes Malmesburiensis Opera Philosophical Quae Latine scripsit* (Amsterdam: Johannes Bleau)

---------- (1978a [1642]). *De Cive* in *Man and Citizen*, Bernard Gert, ed., (London: Harvester).

---------- (1978b [1658]). *De Homine* in *Man and Citizen*, Bernard Gert, ed., (London: Harvester).

---------- (1991 [1651]). *Leviathan*, Richard Tuck, ed., (Cambridge: Cambridge University Press).

HOHFELD, Wesley Newcomb. (1923). *Fundamental Legal Conceptions* (New Haven: Yale University Press).

HOLMES, Oliver Wendell. (1997 [1897]). 'The Path of the Law,' *Harvard Law Review*, 110:5, pp. 991-1009

HURD, Heidi. (1999). *Moral Combat* (Cambridge: Cambridge University Press).

HURLEY, Susan. (1989). *Natural Reasons* (Oxford: Oxford University Press, 1989).

---------- (2001). 'Egalitarianism and Luck,' *Proceedings of the Aristotelian Society*, supp. vol. 75, pp. 51-72.

HURKA, Thomas. (2004). 'Normative Ethics: Back to the Future,' *The Future for Philosophy*, Brian Leiter, ed., (Oxford: Oxford University Press), pp. 246-264.

JULIUS, A.J. (2008). 'A Lonelier Contractualism,' Unpublished manuscript. URL=< http://www.ajjulius.net/papers/julius_kadish.pdf>.

---------- (2009). 'Getting people to do things,' Unpublished manuscript (obtained through personal communication).

KADISH, Sanford and SCHULHOFER, Stephen. (1995). *Criminal Law and Its Processes: Cases and Materials*, 6th ed. (Boston: Little, Brown, and Company).

KAMM, F.M. (2002). 'Rights,' *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Jules Coleman and Scott Shapiro, eds., (Oxford: Oxford University Press), pp. 476-513.

KAGAN, Shelly. (1989). *The Limits of Morality* (Oxford: Oxford University Press).

---------- (1998). *Normative Ethics* (Oxford: Westview Press).

KLOSKO, George. (1987). 'Presumptive Benefit, Fairness, and Political Obligation,' *Philosophy and Public Affairs*, 16:3, pp. 241-259.

KNOWLES, Dudley. (2007). 'The Domain of Authority,' *Philosophy* 82, pp. 23-43.

KORSGAARD, Christine. (1996). *The Sources of Normativity* (Cambridge: Cambridge University Press).

KRAMER, Matthew. (2005). 'Moral and Legal Obligation,' *Blackwell Guide to the Philosophy of Law and Legal Theory*, Martin Golding and William Edmundson, eds., (Oxford: Blackwell Publishing), pp. 179-190.

LADENSON, Robert. (1980). 'In Defense of a Hobbesian Conception of Law,' *Philosophy and Public Affairs*, 9:2, pp. 134-159.

LAMOND, Grant. (2001). 'Coercion and the Nature of Law,' *Legal Theory*, 7, pp. 35-57.

LANDEMORE, Hélène. (2008). 'Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many.' Ph.D. Thesis. Harvard University.

LARMORE, Charles. (2003). 'Public Reason,' *The Cambridge Companion to Rawls*, Samuel

Freeman, ed., (Cambridge: Cambridge University Press), pp. 368-393.

---------- (2008). *The Autonomy of Morality* (Cambridge: Cambridge University Press).

---------- (2009). 'What Is Political Philosophy,' Unpublished Manuscript.

LEINIZ, Gottfried Wilhelm. (1887). *Philosophische Schriften, vol. 3*., C.I. Gerhardt, ed., (Berlin: Weidmannsche Buchhundlung).

LIPSET, Seymour. (1984). 'Social Conflict, Legitimacy, and Democracy,' *Legitimacy and the State*, William Connolly, ed., (New York: New York University Press), pp. 88-103.

LUCAS, John. (1966). *The Principles of Politics* (Oxford: Oxford University Press).

MCDERMOTT, Dan. (2009). 'Analytical Political Philosophy,' *Political Theory: Methods and Approaches*, David Leopold and Marc Stears, eds., (Oxford: Oxford University Press), pp. 11-28.

MCLAUGHLIN, Paul. (2007). *Anarchism and Authority* (Hampshire: Ashgate).

MARKWICK, P. (2000). 'Law and Content-Independent Reasons,' *Oxford Journal of Legal Studies*, 20:4, pp. 579-596

---------- (2003). 'Independent of Content' *Legal Theory*, 9, pp. 43-61

MARMOR, Andrei. (1995). 'Authorities and Persons: A Reply to Jeremy Waldron,' *Legal Theory*, 1:3, pp. 337-359

MARTIN, Rex. (1975). 'Two Models for Justifying Political Authority,' *Ethics*, 86:1, pp. 70-75.

MARTINICH, A.P. (1992). *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press).

MILGRAM, Stanley. (1974). *Obedience to Authority: an experimental view* (London: Tavistock).

MILLER, David. (1984). *Anarchism* (London: Dent)

MORRIS, Christopher. (1988). *An Essay on the Modern State* (Cambridge: Cambridge University Press).

---------- (2005). 'Natural Rights and Political Legitimacy,' *Social Philosophy and Policy*, 22, pp. 314-329.

MURPHY, Mark C. (2002). *An Essay on Divine Authority* (Ithaca, NY: Cornell University Press).

---------- (2007). 'Philosophical Anarchisms, Moral and Epistemological' *Canadian Journal of Law and Jurisprudence*, 20:1, pp. 95-111.

NAGEL, Thomas. (1979). *Mortal Questions* (Cambridge: Cambridge University Press).

---------- (1986). *The View from Nowhere* (Oxford: Oxford University Press).

---------- (1991). *Equality and Partiality* (Oxford: Oxford University Press).

---------- (1995). 'Nozick: Libertarianism Without Foundations,' *Other Minds: Critical Essays 1969-1994* (Oxford: Oxford University Press).

NOZICK, Robert. (1969). 'Coercion,' *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, Sidney Morgenbesser, Patrick Suppes, and Morton White, eds., (New York: St. Martin's Press), pp. 440-472.

---------- (1974). *Anarchy, State, and Utopia* (New York: Basic Books).

---------- (1981). *Philosophical Explanations* (Cambridge, MA: Harvard University Press).

PARFIT, Derek. (1984). *Reasons and Persons* (Oxford: Oxford University Press).

PETTIT, Philip. (1997). *Republicanism* (Oxford: Clarendon Press).

---------- (1999). 'Republican Freedom and Contestatory Democratization,' *Democracy's Values*, Ian Shapiro and Casiano Hacker-Cordon, eds., (Cambridge: Cambridge University Press), pp. 163-190.

---------- (2008). *Made with Words* (Princeton NJ, Princeton University Press).

PHILP, Mark. (2008). 'Political Theory and History,' *Political Theory: Methods and Approaches*, David Leopold and Marc Stears, eds., (Oxford: Oxford University Press), pp. 128-149.

---------- (2009). 'William Godwin,' *The Stanford Encyclopedia of Philosophy* (Summer 2009 Edition), Edward Zalta, ed., URL=<http://www.seop.leeds.ac.uk/entries/godwin>.

PITKIN, Hanna. (1967). *The Concept of Representation* (Berkeley, CA: University of California Press).

RAWLS, John. (1971). *A Theory of Justice* (Cambridge, MA: Belknap Press).

---------- (1996). *Political Liberalism* (New York: Columbia University Press).

---------- (1999a). *A Theory of Justice*, rev. ed. (Oxford: Oxford University Press).

---------- (1999b). 'The Independence of Moral Theory,' *Collected Papers*, Samuel Freeman, ed., (Cambridge, MA: Harvard University Press), pp. 286-302.

---------- (1999c). 'Kantian Constructivism in Moral Theory,' *Collected Papers*, Samuel Freeman, ed., (Cambridge, MA: Harvard University Press), pp. 303-358.

---------- (1999d). 'The Idea of Public Reason Revisited,' *Collected Papers*, Samuel Freeman, ed., (Cambridge, MA: Harvard University Press), pp. 573-615.

RAZ, Joseph. (1975). *Practical Reasons and Norms* (London: Hutchison & Co.)

---------- (1979a). 'Legitimate Authority,' *The Authority of Law* (Oxford: Clarendon Press), pp. 3-27.

---------- (1979b). 'The Obligation to Obey the Law,' *The Authority of Law* (Oxford: Clarendon Press), pp. 233-249.

---------- (1985). 'Authority and Justification,' *Philosophy and Public Affairs*, 14:1, pp. 3-29.

---------- (1986). *The Morality of Freedom* (Oxford: Clarendon Press).

---------- (1994). 'Authority, Law, and Morality,' *Ethics in the Public Domain* (Oxford: Clarendon Press), pp. 194-221.

---------- (2006). 'The Problem of Authority: Revisiting the Service Conception,' *Minnesota Law Review*, 90, pp. 1003-1044.

REGAN, Donald. (1990). 'Reasons, Authority, and the Meaning of 'Obey': Further Thoughts on Raz and Obedience to Law,' *Canadian Journal of Law and Jurisprudence*, 3, pp. 3-28.

RIPSTEIN, Arthur. (2004). 'Authority and Coercion,' *Philosophy and Public Affairs*, 32:1, pp. 2-35.

ROSS, W.D. (1930). *The Right and The Good* (Oxford: Oxford University Press).

RUNCIMAN, David. (1997). *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press).

---------- (2000). 'What Kind of Person is Hobbes's State? A Reply to Skinner,' *The Journal of Political Philosophy*, 8:2, pp. 268-278.

SCANLON, T.M. (1998). *What We Owe to Each Other* (Cambridge, MA: Belknap Press).

---------- (2003). 'Rawls on Justification,' *The Cambridge Companion to Rawls*, Samuel Freeman, ed., (Cambridge: Cambridge University Press), pp. 139-167.

SCHMITT, Carl. (1985 [1922]). *Political Theology*, G. Schwab, trans., (Cambridge, MA: MIT Press).

SEARLE, John. (1978). 'Prima facie obligations,' *Practical Reasoning*, Joseph Raz, ed., (Oxford: Oxford University Press), pp. 81-90.

SHAPIRO, Scott. (2002). 'Authority,' *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Jules Coleman and Scott Shapiro, eds., (Oxford: Oxford University Press), pp. 382-439.

SHENNAN, J. (1974). *The Origins of the Modern European State, 1450-1725* (London: Hutchison).

SMITH, M.B.E. (1973). 'Is There a *Prima Facie* Obligation to Obey the Law,' *Yale Law Journal*, 82, pp. 950-976.

SIMMONS, A. John. (1979). *Moral Principles and Political Obligations* (Princeton, NJ: Princeton University Press).

---------- (1987). 'The Anarchist Position: A Reply to Klosko and Senor,' *Philosophy and Public Affairs*, 16, pp. 269-279.

---------- (1993). *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton, NJ: Princeton University Press).

---------- (1999). 'Justification and Legitimacy,' *Ethics*, 109, pp. 739-771.

---------- (2001). 'Philosophical Anarchism,' *Justification and Legitimacy* (Cambridge: Cambridge University Press), pp. 102-121.

---------- (2008). *Political Philosophy* (Oxford: Oxford University Press).

SKINNER, Quentin. (1989). 'The State,' *Political Innovation and Conceptual Change*, T. Ball, J. Farr, and R. Hanson, eds., (Cambridge: Cambridge University Press), pp. 90-131.

---------- (1999). 'Hobbes and the Purely Artificial Person of the State,' *The Journal of Political Philosophy*, 7:1, pp. 1-29.

---------- (2002). *Visions of Politics, Volume 1: Regarding Method* (Cambridge: Cambridge University Press)

---------- (2007). 'Hobbes on Persons, Authors, and Representatives,' *The Cambridge Companion to Leviathan*, Patricia Springborg, ed., (Cambridge: Cambridge University Press), pp. 157-180.

SOPER, Philip. (1996). 'Law's Normative Claims,' The Autonomy of Law: essays on legal positivism, Robert P. George, ed., (Oxford: Clarendon Press), pp. 215-248.

THOMPSON, Michael. (2004). 'What is it to Wrong Someone? A Puzzle about Justice,' *Reason and Value*, Jay Wallace, Philip Pettit, Samuel Scheffler & Michael Smith, eds., (Oxford: Oxford University Press), pp. 333-384/

THOMSON, Judith Jarvis. (1990). *Realm of Rights* (Cambridge, MA: Harvard University Press).

TUCK, Richard. (1991). 'Introduction,' *Leviathan*, ed., Richard Tuck (Cambridge: Cambridge University Press) pp. ix-xlv.

TYLER, Tom. (1990). *Why People Obey the Law* (New Haven, CT: Yale University Press).

VINCENT, Andrew. (1987). *Theories of the State* (Oxford: Basil Blackwell).

WALDRON, Jeremy. (1999). 'Legislators' Intentions and Unintentional Legislation' *Law and Disagreement* (Oxford: Oxford University Press), pp. 119-146.

WEBER, Max. (1978). *Economy and Society*, Guenther Roth and Claus Wittich, eds., trans., (Berkeley, CA: University of California Press).

---------- (1994 [1919]). 'The Profession and Vocation of Politics' *Political Writings*, Peter Lassman and Ronald Spiers, eds., (Cambridge: Cambridge University Press), pp. 309-369.

WERTHEIMER, Alan. (1987). *Coercion* (Princeton, NJ: Princeton University Press).

WILLIAMS, Bernard. (1962). 'The Idea of Equality,' *Philosophy, Politics, and Society*, Laslett and Runciman, eds., (Oxford: Blackwell), pp. 110-131.

---------- (2005a). 'Realism and Moralism in Political Theory,' *In the Beginning Was the Deed* (Princeton, NJ: Princeton University Press), pp. 1-17.

---------- (2005b). 'From Freedom to Liberty: The Construction of a Political Value' *In the Beginning Was the Deed* (Princeton, NJ: Princeton University Press), pp. 75-96.

WELLMAN, Christopher. (1996). 'Liberalism, Samaritanism, and Political Legitimacy,' *Philosophy and Public Affairs*, 25:3, pp. 211-237.

WENAR, Leif. (2005). 'The Nature of Rights,' *Philosophy and Public Affairs*, 33:3, pp. 223-252.

WOLFF, Robert Paul. (1970). *In Defense of Anarchism* (New York: Harper & Row).

---------- (1976). *In Defense of Anarchism*, rev. ed., (New York: Harper & Row).

ZIMBARDO, Philip. (2007). The Lucifer Effect: how good people turn evil (London: Rider).