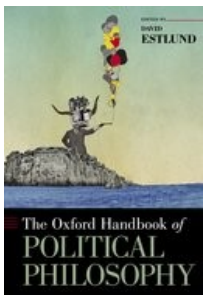

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CHAPTER

1 Authority

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Abstract

This article analyzes the concept of authority. It discusses Hobbes's and Locke's theories of practical authority. It briefly compares consent- and nonconsent-based accounts of political authority and then discusses the ways in which political authority might be thought to be potentially in conflict with individual freedom.

Keywords: political authority, practical authority, Hobbes, Locke, political philosophy, individual freedom

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1. The Concept of Authority

Thomas Hobbes, writing in the middle of the seventeenth century, offered this definition of authority: "the right of doing any action is called AUTHORITY" (Hobbes 1968, 218; xvi, para. 4). Hobbes was in this passage exploring the concept of authority at work in his account of the *political* authority of the sovereign person (or body) in a society. In another, slightly later work, Hobbes wrote, "I call authorities anyone in any subject whose precept or example is followed, because one hath been led thereto by a belief in their wisdom" (Hobbes 1972, 67; [*De Homine*, XIII, 7]). Here Hobbes was enumerating the six sources of "men's inclinations," one of which is our disposition to conform our conduct to the teachings of those we regard as wise. The two quite different notions of authority utilized by Hobbes in these two passages correspond to what contemporary theorists call *practical authority* and *theoretical* [or *epistemic*] authority.

Practical authorities are those whose commands or pronouncements give us distinctive kinds of reasons to act in accordance with them. Theoretical authorities are experts on their subjects. In both cases, our recognition of a pronouncement as issued from an authority provides us with reasons to act or to believe that are both *peremptory* and *content independent* (Hart 1982, 261). When accepted authorities tell us what to do or believe, we have reason to simply comply. Their status as authorities gives us reasons to do what they say even when we cannot ourselves discern, confirm, or appreciate the reasons they have for what they tell

us. Similarly, pronouncements by authorities give us reasons that are independent of the actual content of the pronouncement. We have reason to believe an expert even when what he or she has asserted turns out to be false. Again, it is the mere status of the pronouncement as authoritative that establishes its reason-giving force.

p. 24 The distinction between theoretical and practical authority is usually drawn in terms of the kinds of reasons given to us by exercises of those two kinds of authority: "Expert advice gives reason for belief, not action" (Green 1988, 27). It is only exercises of practical authority that give us reasons to act. Some theorists have tried to minimize this difference, characterizing practical authority as really just a complicated kind of theoretical authority (see the discussions in Green 1988, 27–28, and Raz 1986, 28–31). While that is mistaken (since practical authorities, such as political authorities, need not be experts on any subjects at all), the connection between theoretical and practical authority is actually stronger than it might at first seem. Most of us believe that those who have practical authority over us—our political or religious leaders, our military commanders, our judges or police officers—ought also to be experts or to possess genuine wisdom in their relevant domains, and reasons for belief regularly provide us with reasons for action, especially when they are reasons for believing that something is best done in a recommended fashion. What theoretical authority alone cannot give the expert, it seems, is a right that we act on those reasons. No expert has any special *right* that we act in one way or another merely in virtue of their expert pronouncements or could claim to be wronged by someone's utterly disregarding their expert "precepts or examples" (Green 1988, 27).

If practical authority—our primary concern here—does in fact consist of having a *special* right with respect to the actions of others, how should we understand that right? First, the right in question must indeed be some kind of special right, not a right shared by all or most people. While I, along with all of my fellow citizens, have a legal right to practice my preferred religion—and, in consequence, a right that others refrain from interfering with that practice—it would be deeply odd to say that this amounts to my possessing legal authority in that domain. But even when we focus on special, not generally shared rights, not all such rights seem to constitute authority. Suppose that I have made a promise to lend you my car on Friday. While we would then say that you have a special right to use my car on that day (and I have a special obligation to permit you to use it), we would be unlikely to say that you, as a result, "have authority over me (or over my car)" for the day. We might at most say that I had "authorized" your use of the car.

Suppose, by contrast, that I promise to spend the weekend helping you in whatever ways (within reason) you say would be most useful to you. While we might still simply say that you had a right to my help, it would in this case be more natural (than in the previous case) to say that you had acquired a kind of authority over me—particularly if the promise was not a friendly or gratuitous promise but rather was made (for example) in payment of a debt. While the "authority" in question is plainly severely limited in both duration and content, what makes it natural to call it authority in the first place is that it consists of a right to *specify* what the precise content of the promissory obligation will be (by specifying what kinds of help will be most useful). While the authority arises from or is grounded in the promise, the precise content of the promise is left open for specification by the one to whom that authority is granted. When I authorize my financial adviser to use her judgment in making investments for me, I make myself responsible for the
p. 25 financial consequences ↳ of her decisions. She acquires through my consent the authority to specify what the precise contents of my financial obligations will be.

While practical authority is often characterized as the right to create new obligations for others, it is better characterized as the right to specify the content of their already-created but unspecific obligations. The authority of a state or government to impose on me a specific (and likely changing) set of legal obligations would most naturally be said to be grounded in some fact about its relationship to me (e.g., that I consented to its authority or that it benefitted me in ways requiring reciprocation) or in some fact about its virtues (e.g., that it was just or democratic). My generic obligation to the state would have its source in such

performances or facts. The state's correlative authority would consist in its right to dictate (no doubt, within limits) what the precise content of my unspecific obligation—my generic obligation to obey the law or to support and comply with my government—shall be.

However, even agreement on this—on the concept of practical authority as a special right to specify the content of the unspecific or generic obligations of others—leaves ample room for substantive disagreement about the concept of authority, because the term "right" can be used in a variety of ways. Following Hohfeld (1964, 35–64)—whose well-known analysis of legal rights is applicable as well to the analysis of *moral* rights—"right" can refer either simply to the absence of an obligation or duty (on the rightholder) to refrain from doing something—a "privilege" or "liberty right" to act—or to a claim for the rightholder that correlates with the obligations of others not to interfere, called a "claim right." The right in question could also be what Hohfeld called a "power"—namely, a right to alter existing normative relations by changing others' (or one's own) rights or duties. So practical authority could simply be a liberty right to command and coerce others, which others are free to resist if able; or it might be a claim right to command, which others have a duty to permit the authority to exercise but with those commanded having no duty to comply with the commands; or, more plausibly, it might be a power to specify binding duties that also includes a right not to be interfered with (or competed with) in that task. Political authority, for instance, is most often thought of as the state's (or government's, or society's) moral power to specify citizens' legal and political duties (which citizens are morally bound to discharge), free from interfering or competing efforts by other nations (or their citizens) or by rival individuals or groups within the state. This moral power is commonly referred to as the state's or government's "right to rule."

We must draw one final distinction to identify precisely the concept of political authority with which we deal here. The term "authority" can refer either to de jure authority—where those with authority actually *possess* the rights of which we have said practical authority consists—or only de facto authority, where possessing authority consists merely in claiming, exercising, or being generally *believed* (by those subject to the authority or by suitable officials) to possess those rights. When we refer to "the authorities" (in speaking of "the [political and legal] powers that be"), we are usually referring to those who (or those bodies that)
p. 26 possess de facto practical authority, usually without our making any implicit commitment as to their de ↳ jure status. Indeed, "the authorities" may refer only to those assigned authority by the prevailing structure of institutional rules, even when few believe that the institutional structure itself is legitimate (or, worse, only to those who merely wield physical power while claiming to possess the authority to do so). De facto authority is nonetheless distinguishable from the mere exercise of physical power, in which a right to specify duties is neither claimed nor acknowledged.

It is not difficult to find treatments of political and legal authority that focus on de facto authority. For instance, Max Weber's famous discussion of "the three pure types of legitimate authority"—rational/legal authority, traditional authority, and charismatic authority (Weber 1947, 328)—is a discussion of the unmixed forms of de facto practical authority acknowledged in modern societies. The three types of authority are distinguished according to the kinds of claims to legitimacy each makes and by the kinds of beliefs of those who regard themselves as subject to the authority. "Authority" here is simply power accepted as legitimate by those subject to it (and "legitimacy" is correspondingly equated with a general belief in legitimacy).[1] If we are interested in issues of political stability, we will no doubt be interested in questions about de facto authority—that is, in understanding what kinds of claims to authority are regularly accepted by subjects.[2] But if we are interested in political *rights*—in the moral standing of states or governments and in the moral rights and duties of political life—then we will focus (as we do here) on the idea of de jure authority.

2. Varieties of Practical Authority: Hobbes and Locke

Instances of practical authority vary considerably in terms of duration, comprehensiveness, and inevitability. Employers, for instance, normally exercise practical authority over their employees, but the domains within which they have authority and the duration of that authority seem almost infinitely variable—compare, for example, servants, day-laborers, federal judges, and so on. Practical authority can be isolated or part of an elaborate and rigid hierarchical structure, as in the hierarchies of legal, military, or religious authority.[3] Our subjection to some kinds of authority is easy to avoid, while subjection to, for example, parental or political authority seems virtually inevitable (and subjection to God's authority would be absolutely inevitable). Some philosophers have tried to impose order on this apparent chaos by advancing unified accounts of practical authority—accounts that purport to explain the sources of all of these instances of authority in the same way. And because so many of these kinds of practical authority have been taken to flow from the *consent* of those subjected to them, a consent-based account of authority is a natural candidate for such unification.

Hobbes's theory of (practical) authority is a good example of such a unified, consent-based view. Hobbes
p. 27 writes that "by authority is always understood a right ↳ of doing any act; and *done by authority*, done by commission or license from him whose right it is" (Hobbes 1968, 218; xvi, para. 4, emphasis in original; see also Hobbes, 1972, 84; *De Homine*, XV, 2). When persons act "with authority," Hobbes suggests, they exercise rights that were originally held by others—rights conferred by those others on the person(s) they authorize to act on their behalf. Once authorities are thus created, their actions (in their authorized capacities) should be understood as in fact the actions of those who authorized them: The "words and actions [of authorities are] owned by those whom they represent" (Hobbes 1968, 218; xvi, para. 4). Authorization makes us the authors of others' actions, as if those other persons were our puppets or were performing parts we had written for them in a play. But in this case, unlike a real play or a puppet show, "authoring" another's actions instead amounts to our acting as if that other's acts were our own by taking responsibility for them in advance: "he is called the author, that hath declared himself responsible for the action done by another according to his will" (Hobbes 1972, 84; *De Homine* XV, 2). So we can hardly complain when our authorities act (or decline to act) within the terms of their "commissions"; their acts (or omissions) are "owned" by us. In the political case, for example, "every subject is … author of all the actions and judgments of the sovereign instituted," so that whatever the sovereign chooses to do "can be no injury to any of his subjects" (Hobbes 1968, 232; xviii, para. 6).

That authority is created by "license" or "commission," of course, suggests that all authority is grounded in the consent of those for whom authorities act. This "authorization" view of authority, however, surely seems an odd view to be embraced by Hobbes, the champion of absolute, unlimited monarchy and an apparent proponent of the view that "might makes right." This odd conjunction of views in Hobbes's philosophy is explained by another oddity—by his peculiar ideas about when consent may be "presumed" to have been given to the actions of an authority. Consent for Hobbes must, of course, be given freely. Otherwise, it is not an act by an agent at all but only behavior of that agent's body. So "unfree consent" is unintelligible. But freedom, for Hobbes, is the "absence of *external* … impediments of motion" (Hobbes 1968, 261; xxi, para. 1 [my emphasis]). *Internal* impediments—such as fear, even if caused by external agents—do not limit freedom. But this means, of course, that consent given to another's authority, even if given at sword-point and only out of fear for one's life, is nonetheless free, and hence binding, consent (Hobbes 1968, 262–63; xxi, paras. 2–4).

Further, Hobbes's (in)famous mechanistic materialism commits him, he thinks, to a broadly egoistic psychological theory according to which each person is motivated (either always or "predominantly") by his or her own perceived best interest (Kavka 1986, 50–51). For Hobbes, this implies especially that each person, unless confused by religious (or other) claptrap, seeks above all to stay alive. Finally, we are, Hobbes

thinks, entitled to infer that, because each always seeks his or her own continued existence, each may be *presumed* to consent to any arrangement that is necessary to staying alive. If others seek authority over us
p. 28 and are able to kill us, we may therefore be presumed to consent to their authority over us: "Every man is ↳ supposed to promise obedience to him in whose power it is to save or destroy him" (Hobbes 1968, 254; xx, para. 5). And such presumed consent to the authority of the powerful still counts as free and binding, because the only "impediment" to our will is the internal (even if supremely influential) impediment of our fear of death. Thus, Hobbes's reputation as a defender of the doctrine that "might makes right" turns out to be a half-truth. Another's might (i.e., his power to dispose of us at will) in fact "makes" our binding (even if only presumed) consent to his authority, and that authority, in turn, renders his actions toward us rightful. All political consent, Hobbes claims, "proceed[s] from fear of death," whether the society begins in a "free" contract (by "institution") or in conquest (by "acquisition"; Hobbes 1968, 252; xx, para. 2).

Hobbes applies this same authorization account of authority to all varieties of practical authority, not just political authority. But as a political philosopher, Hobbes is primarily interested in instances of practical authority that—like political authority—are quite comprehensive and largely inevitable. Thus, the central cases he considers (other than political authority) are the practical authority possessed by conquerors, parents, and God. The "despotical" authority (or "dominion") of the conqueror over the conquered derives from the conquered person's agreement to accept servitude "to avoid the present stroke of death": "It is not … the victory that giveth the right of dominion over the vanquished, but his own covenant" (Hobbes 1968, 255–56; xx, paras. 10–11; Hobbes 1972, 205–8; *De Cive*, VIII, 1–5). The parental authority of mother over child is based on the child's presumed promise "to obey her, rather than any other" in response to the fact that "the infant is first in the power of the mother, so as she may either nourish or expose it" (Hobbes 1968, 254; xx, para. 5; Hobbes 1972, 211–13; *De Cive*, IX, 1–3). Even the authority of God is derived by Hobbes from God's "irresistible power," to which "the dominion of all men adhereth naturally" (Hobbes 1968, 397; xxxi, para. 5; Hobbes 1972, 292; *De Cive*, XV, 5).

One of the principal aims of John Locke's *Two Treatises of Government* is precisely to distinguish these varieties of de jure practical authority[4] (or moral power) from one another, both in terms of their sources or grounds and in terms of their contents and limits. In doing so, Locke rejects Hobbes's unified authorization account of authority, accepting that legitimate practical authority can flow from sources other than an authorizer's explicit or presumed consent. He resists in the process the temptation—to which both Hobbes and Robert Filmer (1991) succumbed—to conflate the salient categories of practical authority. Hobbes and Filmer had, in Locke's view, confused both parental and political authority with despotical authority. Hobbes supposed that both parental and political authority must be absolute (like despotical authority), because both arise from a presumed choice of absolute subjection over death. Filmer likewise viewed both as absolute, with both deriving from God's grant to Adam of absolute (despotical) dominion over the earth (with all subsequent political authority, including that of the Stuart monarchs, understood as the inherited political and paternal authority of Adam's descendants). But in fact, Locke argues, parental authority "comes as far short of" political authority as despotical authority "exceeds it" (Locke 1960, 384: II, 174).

p. 29 For Locke, God's authority over humankind is perfectly *sui generis*, God being the only one with a creator's authority over (or property in) human beings. But the other important kinds of practical authority are different not only from God's but from each other. Parental authority is that of parents over their children "to govern over them for the children's good, till they come to the use of reason," and it is thus a nonabsolute, severely limited right. God entrusts children to their parents' care, giving parents only those rights over their children that they need to do the "duty which is incumbent on them to take care of their offspring during the imperfect state of childhood" (Locke 1960, 381, 306–7; II, 170, 58). Despotical authority, by contrast, actually is "an absolute, arbitrary power … over another," but it derives from neither superior power nor "from compact" with a powerful conqueror. Rather, "it is the effect only of forfeiture," whereby an aggressor who makes war on the innocent forfeits all moral standing and makes himself "liable

to be destroyed," like "any other wild beast or noxious brute" (Locke 1960, 383; II, 172). It is only political authority that "has its original only from compact and agreement, and the mutual consent of those who make up the community," and that consensual authority is limited (by the "voluntary agreement" that creates it) to use "by governors for the benefit of their subjects [and] to secure them in the possession and use of their properties" (Locke 1960, 381–84; II, 171, 173).

Locke's position on practical authority is in part a response to natural worries about the authorizing force of consent once one's account of practical authority is no longer conjoined with Hobbes's peculiar conception of freedom. Even if (with Hobbes) we presume consent to one-sided terms by those vanquished in war or by vulnerable children, when we more reasonably (with Locke) take coerced consent or consent by prerational beings to be unfree, and so not morally binding (or perhaps not even to be consent at all, properly understood), any plausible analysis of despotical or parental authority that we give will have to abandon the idea of authority as authorization. If all de jure practical authority derived from the consent of those subject to it, we would need to accept the conclusion that parents have no such authority over their minor children —a conclusion that Locke, with most of his audience, finds unacceptable. Only in the case of political authority does Locke preserve the authorization account favored by Hobbes.

3. Political Authority and Its Grounds

We should not exaggerate, however, the extent to which Locke abandoned Hobbes's authorization account of practical authority. While he offered nonconsensual accounts of divine, despotical, and parental authority, Locke was very much committed to the authorization view—as are most contemporary persons —with respect to the many more mundane instances of practical authority in our lives, such as the
p. 30 authority of employers over their employees, teachers over their students, or military superiors ↳ over those of inferior rank. Locke's foundational assertion of our "natural freedom," of our natural moral right to govern ourselves within the bounds of morality, implies that consent-based authority is the most "natural" sort. For while authority always in one way limits our freedom (by making the specification of our duties subject to the will of another), authority that has been authorized by those subject to it can be characterized as "freedom freely surrendered" and so as a use of freedom rather than simply an abridgement of it. Indeed, Locke's accounts of divine, despotical, and parental authority are in fact exceptions to this general rule that are similarly motivated by Locke's focus on individual freedom. Parental authority must be nonconsensual, because children are incapable of genuinely free (rational) choice and can only become capable of it by their subjection to parental rule (Locke 1960, 308–9; II, 61). Despotical authority is the consequence of persons freely abandoning the life of freedom and reason, and their personhood along with it, and the exercise of divine authority over us is what gives us our rights to freedom in the first place.

The consent-based accounts of political authority that drive much of the social contract tradition thus flow from a concern to reconcile a strong presumption in favor of individual freedom with a reasonably comprehensive and inevitable state authority. Consent to authority allows unfreedom to nonetheless flow from the exercise of freedom. The primary question for early-modern theorists of authority was not whether freely undertaken restrictions on freedom were binding (or adequately respected individual liberty) but rather just how much freedom could be legitimately surrendered by free consent: whether, for example, slavery or absolute political authority could be legitimated by free consent. But if we assume (with Locke) that there are limits to what free consent can legitimate, the ideal of a voluntary political association yields a natural and compelling account of political authority, along with a correlative account of the political obligations of citizens[5]—understood as obligations to accept the state's (government's, society's) specifications of the general, consensually (or contractually) undertaken moral obligation to support and comply with the state.

Many rival, nonconsent-based theories of political obligation have either attempted to extend the idea of "freely undertaken unfreedom" that motivates consent theories or to identify uncontroversial limits to individuals' rights to freely govern themselves—limits within whose range the state's authority might then be taken to fall. Thus, for instance, accounts of political obligation that base it on the principle of fairness (or fair play) originally did so by emphasizing that free cooperative activity, even without any consent or promises, can produce obligations to do one's fair share within the cooperative scheme. Reciprocation and associative theories of political obligation argue that individual liberty does not extend so far that it allows us (in the first case) to take the benefits that flow to us from the efforts of others without responding to this benefaction in kind or (in the second case) to ignore the moral requirements of relationships like those with family or friends. These kinds of theories have been discussed extensively, and I do not explore their relative strengths and weaknesses here.[6] Let us focus instead on another, different way in which political authority might be thought to be potentially in conflict with individual freedom

p. 31 Suppose we think of individual freedom as not only a right, which persons may retain or freely transfer (or lay down) as they please—thus creating freely undertaken unfreedom—but also as a responsibility belonging to all persons. Since "taking responsibility involves attempting to determine what one ought to do" (Wolff 1998, 12), the price of real freedom—or *autonomy*—is an obligation to ourselves examine and weigh the reasons that bear on our actions and to follow where the balance of reasons leads. This more robust idea of freedom appears to be suggested in Rousseau and utilized centrally in Kant. If we think we have an obligation to be autonomous, though, we may well think that the demands of practical authority—and, in particular, of political authority—are in direct conflict with this obligation of autonomy: "The defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled" (Wolff 1998, 18). The Lockean idea that political consent can "preserve and enlarge freedom"—by a free acceptance of general restrictions on freedom (Locke 1960, 305–6; II, 57)—appears suspect if by "freedom" we now mean "autonomy" of the Kantian sort. Political authorities require us to act as we are commanded and because we have been so commanded, which we cannot do while judging for ourselves how best to act.

The central question of political philosophy now becomes: Can the exercise of genuine political and legal authority be consistent with lives in which each citizen can still "obey only himself and remain as free as before"? (Rousseau 1997, 49–50; I, vi, para. 4). Wolff defends a negative answer to this question. There is no "viable form of political association which will harmonize the moral autonomy of the individual with the legitimate authority of the state." Given our primary obligation, we should "embrace philosophical anarchism and treat *all* governments as nonlegitimate bodies whose commands must be judged and evaluated in each instance before they are obeyed" (Wolff 1998, 69, 71, emphasis in original).

This conclusion, of course, rests on our being bound by an exceptionally strong moral obligation of autonomy. As even Wolff admits, an ideal of perfect autonomy might well seem a dubious goal, given that our ability to live our lives well would then be dependent on our acquiring a personal mastery of the myriad practical disciplines within whose domains we all now regularly rely on the testimony of experts. Worse, even making a simple promise in everyday life appears to violate such an obligation to remain perfectly autonomous, for it gives another the right to determine how we shall act, thus preempting our own judgment about how it is best to act. But neither Rousseau nor Kant, of course—nor the vast majority of moral or political philosophers—thinks that we breach a basic moral obligation by making a promise or contract. Indeed, neither Rousseau nor Kant thought that even mutual promises that create a political society (to which all in consequence owe obligations of support and compliance) necessarily involve any moral wrongdoing. This suggests that Wolff's conception of our obligation of autonomy is too strong to be plausible and that many voluntary sacrifices of autonomy—and the authority for others that these sacrifices may create—are perfectly innocent and uncontroversial.[7]

The defender of one of the most influential contemporary accounts of practical authority accordingly
p. 32 concludes that what is most problematic about authority is ↳ not that it seems irreconcilable with autonomy. Rather, Raz argues, the real problem about authority that needs to be addressed is a distinct though closely related one. The claims of authority appear, on their face, to require of us a kind of *practical irrationality*. Joseph Raz suggests that what is troubling about authority is that we take authoritative pronouncements as reasons for action of a special sort—a sort that preempts our own judgments about where the balance of reasons lies. We should obey authorities even when we think them mistaken in their commands, thus acting contrary to the perceived balance of reasons that apply to us (Raz 1990, 5). Authority seems to require individual irrationality.

Raz responds that this appearance rests on an impoverished (and mistaken) conception of practical reason. Some valid reasons for action are "second-order" and "exclusionary"; that is, we sometimes have reasons to act contrary to the "balance of first-order reasons"—to exclude their weight in determining what to do (Raz 1979, 27). This can be true, for example, when authoritative directives are at issue. Such directives claim to replace and exclude the ordinary reasons for action that should otherwise govern our deliberations. When there are good grounds for believing that we will do better by complying with an authority's directives than we would do by relying on the balance of reasons as we perceive it, it is rational to comply with authority rather than doing what seems best independent of its directives. Authority is then justified or legitimate. In this we see the strongest similarity between practical and theoretical authority. In both cases, we can have exclusionary reasons (to act or to believe), because someone's being an authority attests to the existence of such reasons even when we cannot perceive or weigh those reasons.

In the case of political authority, of course, we are likely to do better by complying with its directives only when the authorities are in fact aiming to "serve" those subject to authority (Raz's "service conception" of authority) by designing their commands and rules to help their subjects conform their conduct to the reasons that independently apply to them. When this is the case, treating the government's directives as binding may be the best way to conform to those reasons. Authoritative political/legal directives can then supply reasons that preempt and replace subjects' ordinary reasons for action. Compliance with authority is then practically rational (and obligatory); indeed, it is practically rational even when governmental directives are mistaken and fail to achieve their service-oriented aim[8]; the authority claimed by government is then justified or legitimate (de jure).

Raz argues that political authority can in fact be justified in this "normal" fashion in several kinds of cases, including cases in which the authority is "wiser" than the subject (possessing special expertise the subject lacks); the authority has a "steadier will" (one less prone to weakness, bias, etc.) than the subject; the authority can establish solutions to coordination problems that subjects have difficulty solving for themselves; self-direction by subjects is very costly or time-consuming (and guidance by the authority has few drawbacks); and the authority can solve prisoners' dilemma style problems, in which no individually rational paths to collectively rational solutions are possible (Raz 1986, 75).

p. 33 One obvious consequence of this Razian position on de jure political authority, of course, is that claims to authority, even by apparently similar states or governments, may vary dramatically in terms of their justifiability. Different governments (or the same governments at different times) may have very different ranges of expertise, and their success at generating salient solutions to coordination problems may vary as well. Similarly, different citizens will have both different levels of personal expertise (in various domains) and different kinds of reasons that apply to them independent of authoritative pronouncements. This means, as Raz concedes, that we will have to think about the justification of authority rather differently than we are used to doing (Raz 1986, 73–78, 100, 104). We can no longer think that political authority is either justified or not *simpliciter*. Various aspects of the authority claimed by states may be justified where others are not, and authority may be justified with respect to some subjects but not others. Perhaps, though,

Raz is correct that the all-or-nothing approach in our thinking about political authority needs to be abandoned in any event.

What is less easy to abandon, however, is the idea of a tight connection between justified or legitimate authority and our ordinary understanding of *moral obligation or duty*. For Raz, justified (de jure) authority is (de facto) authority whose directives it is individually rational to treat as authoritative.[9] But simple practical rationality is in many cases not regarded by us as mandatory. We regularly make and act on choices that are not maximally rational, and we are often taken to be perfectly entitled to do so. Unless we think that independent obligations or duties owed to others are thereby breached, we do not normally think that any wrong is done in so acting. But the Razian "normal justification" of authority makes no distinction between other-regarding and self-regarding reasons for compliance with authority. As a result, in some cases whereby we would normally think an action only the one most rational for us—but in no way mandatory for us—Raz's theory implies that we are morally required to act and that authorities are justified in "imposing duties" to act.

One way to try to recapture this tight connection with duty or obligation might be to focus on Raz's apparent neglect of the connection between democracy and authority and to try to link authority's binding force to its democratic origins (and thus more firmly to reasons of collective good). Scott Shapiro, for instance, argues that "Raz's theory of authority is flawed because of the inadequate justificatory role that it accords to democratic decision making" (Shapiro 2002, 431). He rejects Razian "mediation models" of authority (according to which authorities are justified in virtue of serving effectively as "the mediation between reasons and persons") in favor of an "arbitration model," according to which "authorities are legitimate for a given subject just in case acceptance of the process as binding by some of the parties generates a moral obligation for the subject to abide by the outcome." Democratic procedures can produce legitimate, authoritative results because the majority's acceptance of those results gives all parties "reason to accept the outcome of the process" (Shapiro 2002, 433). That reason is that democratic procedures "represent power-sharing arrangements that are fair" (Shapiro 2002, 432). This arbitration model of political
p. 34 authority, Shapiro claims, "has surely been the dominant account ↳ of authority in modern liberal theory," including in its ranks the "social contract theorists" ("such as Hobbes, Locke, and Kant") and "fair play theorists" (Shapiro 2002, 432–33).

While both traditions of thought may involve some notion of "arbitration," there is nonetheless something initially odd about grouping together the theories of political authority at work in the classical social contract theories and those from theories of democracy, for there is surely an important difference between grounding authority in subjects' actual acceptance of a process and grounding it in their having reason to accept that process (which is Shapiro's real position on the subject). Further, of course, neither Hobbes nor Locke nor Kant thought that there was anything *naturally* authoritative about democratic decision procedures. Hobbes and Locke both viewed such procedures as producing binding results only for those who had given prior *consent* to membership in a democratically governed group; even Rousseau, that great champion of democracy, never suggested that democratic procedures produce binding results prior to the social contract that creates political society.

Shapiro's grouping of social contract and democratic theories looks less odd, however, when we consider some contemporary offspring of social contract theory—and, in particular, the political philosophy of John Rawls. Rawls describes his theory of justice as one "which generalizes and carries to a higher level of abstraction the familiar theory of the social contract" (Rawls 1971, 11). But while he finds the contractarian ideal of a fully voluntary political association attractive, Rawls claims that no political society can be a voluntary scheme "in a literal sense" (Rawls 1971, 13). Indeed, Rawls's theory proceeds on the assumption that "political society is closed: we come to be within it and we do not, and indeed cannot, enter or leave it voluntarily" (Rawls 1993, 136). But a society that is just—that offers its members fair terms of cooperation —"comes as close as a society can to being a voluntary scheme" (Rawls, 1971, 13). So "power-sharing

arrangements that are fair" will generate results that are binding on everyone in the society, since each of us has a "natural duty ... to support and to comply with just institutions that exist and apply to us" (Rawls 1971, 115). The "fundamental organizing idea" of Rawls's theory thus becomes that of "society as a fair system of cooperation between free and equal persons viewed as fully cooperating members of society over a complete life" (Rawls 1993, 9).

Rawls extends here not the Lockean but the Kantian branch of social contract theory. In Kant's view, we have a basic obligation to join with others to support—or to create where none exist—the political institutions that alone make justice possible and that allow each person "to enjoy his rights" (Kant 1991, 120). Because the tasks of making justice possible and of resolving basic social disagreements are "urgent" or "necessary"[10]—and because democratic procedures are the best way for a social group to perform those tasks—democracy seems to produce legitimate political authority and binding duties of compliance even without individual (or even general) consent to democratic arrangements. Indeed, refusal to consent to such
p. 35 arrangements may itself be morally wrong, as Kant (1991, 122) argued. David Estlund, ↳ agreeing, writes that in cases where consent is "wrongly withheld" from authority (where there is what he calls "normative consent" to authority), "authority can simply befall us" (Estlund 2008, 117). So "existing democratic arrangements" can have "authority over each citizen just as if they had established its authority by actual consent" (Estlund 2008, 157).

In a similar spirit, Shapiro writes that "deference to democratically elected authority under conditions of meaningful freedom is deference to a power-sharing arrangement that is *socially necessary, empowering*, and *fair*" (Shapiro 2002, 435, emphasis in original). We need a procedure for the resolution of conflict in societies; thus, society has the right to impose a fair procedure of that sort, at least provided that this is done within "conditions of meaningful freedom" (which would involve, e.g., guarantees of rights of franchise and free expression). Under such conditions "disobedience to the democratic will ... amounts to an unreasonable arrogation of power" (Shapiro 2002, 437). Thomas Christiano agrees that "when there are disagreements among persons about how to structure their shared world together and it is important to structure that world together, the way to choose the shared aspects of society is by means of a decision making process that is fair to the interests and opinions of each of the members" (Christiano 2004, 15).

But it is important to see how heavily such democratic authority arguments rely on the idea that persons come prepackaged in political groupings ("shared worlds"), ready to be subjected together to their groups' procedures for resolving internal conflicts. Furthermore, these groupings must be regarded as morally legitimate for the arguments to work. Democratic procedures are not naturally authoritative with respect to just any kind of group (such as the group of "all people over six feet tall"). That my students—outnumbering me—vote to eliminate the final exam requirement in my class does not make their decision binding on me. Democratic decisions have no authority at all over people who are not legitimately subject together to the same collective decision procedure.

But the history of actual political life makes it extremely difficult to see how the world's de facto political groupings of persons and territories could be plausibly described as legitimate, even where authority is wielded democratically. In the United States, for instance, such democratic authority is wielded over the descendants of decimated and enslaved groups and over territories illegitimately annexed or seized. Many other classes of citizens may also be able to make reasonable claims of wrongful subjection to political power. Even were we now to perfect our democracy, this would be insufficient to render legitimate the claims to territories and subjects made by the government of a political group so unjustly formed.

Granted, democratic decision making is a fair procedure for resolving disagreement, and it may even be the fairest possible procedure or, among the various fair procedures, the one that is most likely to generate good/correct results (Estlund 2008, 8, 12). No one believes that it follows from this that the results of democratic decision making are always binding on all those within any group that disagrees about

important matters. The results of U.S. elections could not suddenly be made binding on the citizens of
p. 36 British Columbia because the United States chose to ↳ annex that territory, even if in doing so it extended to these residents full U.S. citizenship rights (including franchise and free expression rights). How the members of a group became a part of the group makes all the difference as to whether democratic decision making has any authority with respect to them. History does matter morally.

However, if an illegitimate annexation cannot today make the democratic authority of our laws binding on the residents of that wrongfully annexed territory, presumably waiting until next week, or next year will not do the job either. It is not enough to say that we must take our systems of justice where we find them or that we must support those that are fair and stable and happen to claim authority over us. While it may be true that "the best solution [to the important social problems that political authority is meant to address] is a districted one" (Estlund 2008, 150), the difficulty remains that the boundaries of existing "districts" tend simply to be illegitimate. Even if the annexation of British Columbia were not resisted by the Canadian government and if U.S. institutions were to become stable and reliable dispensers of justice in that region, surely no one would deny that the residents of that illegitimately seized territory would nonetheless be entitled to complain of their wrongful subjection to this political authority. It is not "unreasonable" or "arrogant" or "dictatorial" (as Shapiro and Christiano claim) for us to refuse to accept even fair terms of cooperation imposed by those whose subjection of us to any terms at all is morally wrong. To deny this is to deny that individual liberty has any moral value worth considering.

One might try to respond by claiming "that personal liberty has value only when schemes of social cooperation are already in place" (Shapiro 2002, 437). While that claim seems to me false, it is certainly possible to overstate the importance of many kinds of personal liberty (as we saw in the case of Wolff's philosophical anarchism). But it hardly overstates the value of individual liberty to insist that it is possible for wrongs of subjection to be done *within* or *by* active "schemes of social cooperation" or that authority can be wrongly claimed and illegitimately imposed on innocents by those who represent cooperative political schemes. No "reasonable" person could deny this. It may well be, of course, that in certain kinds of social emergencies, the best course of action is to temporarily ignore such wrongs of subjection and to treat all as if they had been legitimately incorporated into a democratically governed body. But most of our shared political life lacks this "emergency" character. Remedies that take seriously and that rectify wrongs of subjection, for both groups and individuals, are routinely possible (even if politically difficult). Even in genuine emergency situations, it is doubtful that those best positioned to act as "authorities" either thereby acquire any right to so act (beyond a mere moral liberty) or acquire any other kind of status that is sufficiently enduring to count as political authority, properly so-called.

If we ask how the residents of an illegitimately annexed territory *can* come to be legitimately subject to their new government's authority, the most natural answer does not seem to appeal to the presence of an enduring emergency, to the mere passage of time, to the death of the wronged generation, or to the kind or quality of the government (the "terms of cooperation") to which those residents have been wrongly
p. 37 subjected. In the paradigm cases of illegitimate subjection—such as those ↳ involving "pacified" aboriginal peoples or recently conquered territories—what we tend to look for as a sign of genuinely de jure subjection to authority is some indication of acceptance of their new condition. Such acceptance might be facilitated by using various forms of redress of the relevant wrongs (such as the granting of partial group autonomy or payment of compensation), or it might be accomplished simply through gradual assimilation and identification. But absent such acceptance, it is hard to see how any "authority" over wrongly subjected peoples that is more extensive or enduring than "emergency powers" could possibly be justified in terms that they could (or should) accept.

It is, I think, a mistake to suppose that the moral boundaries of enduring groups that are (legitimately) collectively subject to a single conflict-resolution procedure can be determined in any way other than by identifying the individuals who freely accept group membership. To deny this is, I believe, either to sanctify

merely conventional (and morally arbitrary) distinctions between persons—such as distinctions of legal nationality—or to mistakenly suppose that there are "natural" boundaries between the "groups" that must collectively address urgent tasks. If we refuse to take one of those false paths, however, we will find ourselves unable to fully explain the authority of democratically produced laws and government in terms of the intrinsic value of democracy or the ideal fairness (or epistemic superiority) of democratic procedures, for those arguments can gain traction only when applied to persons who have already jointly consented to be members of one political society, all subject to the same procedure for conflict resolution.

This, of course, returns us to Locke's view: that the authority of democracy is ultimately parasitic on the foundational political authority generated by free consent, a foundation that also tightly reconnects authority to our normal views of moral obligation. The authorization account of political authority thus looks as if it may be the (unstated) premise that is necessary for the plausibility of those rival theories of political authority that claim to have moved beyond it. That conclusion, however, should provide small comfort to those eager to justify the claims to political authority made by actual states. For so little free consent to political authority is in evidence in our political lives that evaluating actual states' claims in the terms of the authorization account seems bound to yield for actual states at best only very partial and severely limited de jure political authority (Simmons 2008, section 3.3).

Notes

1. On the idea of (de jure) political legitimacy, see Simmons 2001. I do not discuss legitimacy further in this chapter. Some contemporary authors identify political legitimacy with political authority (e.g., Wolff 1998, 4–12), while others try to sharply distinguish the two (e.g., Buchanan 2004, 234–38). Where legitimacy and authority are taken to be identical, of course, accounts of de jure legitimacy vary in the same ways as the accounts of authority discussed here.

p. 38 2. ↳ Theories of de jure authority and legitimacy also need to consider the stability of the various possible forms and structures of political society. We may, for instance, refuse to count inherently unstable arrangements as legitimate or as yielding genuine practical authority, but here authority and legitimacy are not simply equated with general belief in claims to authority or legitimacy.

3. In most political societies, practical authority is hierarchical, with political/legal authority establishing the set of duties and rights within whose constraints lower-order practical authorities (such as church leaders, employers, or parents) may permissibly exercise their authority. Genuinely rival practical authorities within the same domains—for instance, lord, king, and pope in medieval society—become unintelligible without some (at least implicit) priority rules or domain rules to preclude rival specifications of the same persons' duties.

4. Locke does not routinely use the word "authority" in the *Second Treatise*; he mostly prefers to use the word "power" to convey the idea of practical authority. He uses the word "authority" often in its theoretical (or epistemic) sense in *An Essay Concerning Human Understanding* and in his writings on religion. The *First Treatise* often contrasts "regal (kingly, royal) authority" and "fatherly (paternal) authority" (e.g., Locke 1960, 144–45; I, 6), while the *Second Treatise* uses "authority" primarily in defining the state of nature and in characterizing our "natural freedom" in terms of the absence of authority.

5. It is possible, of course, to try to defend an account of political authority that completely decouples it from citizens' political obligations. Robert Ladenson understands political authority (or "the right to rule") as a mere "justification right" (what we called a "liberty right" earlier) to use coercion against members of the society. As such, political authority implies no duties of allegiance or compliance for those members (Ladenson 1980, 138–41). This is the "thinnest" possible conception of de jure authority and one that actually challenges the distinction between de facto and de jure authority. Most who have commented on Ladenson's views find this conception too thin to count as a conception of authority at all (as opposed to simply the justified use of force; e.g., Raz 1986, 25–28).

6. For discussion of these and other theories of political obligation, see chapter 3 in Simmons 2008 and chapters 5 through 8 in Simmons 2005.

7. Indeed, Wolff seems himself unable to resist the apparent moral legitimacy of consensual arrangements, concluding that

"a contractual democracy is legitimate, 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 1998, 69)—this despite his earlier insistence that "the concept of the de jure legitimate state would appear to be vacuous" (Wolff 1998, 19).

8. These remarks have briefly summarized what Raz calls "the dependence thesis," "the normal justification thesis," and "the pre-emptive [or "pre-emption"] thesis" (Raz 1986, 46–59).

9. Whether it can be rational to allow a generalization (that is, indirect reasoning) about compliance with reasons—such as the claim that obedience to an authority is likely to better secure such reason compliance than would individual efforts at compliance—to exclude deliberation about any particular act's direct compliance with those same reasons is a separate question that I do not attempt to address here. If it cannot, of course, Raz's views on authority must be rejected.

10. Anscombe appeals to "the necessity of a task" to try to explain both political and parental authority (Anscombe 1990). For doubts about such appeals, see Simmons 2005, 127–42.

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