POLITICAL OBLIGATIONS WITHOUT AUTHORITY

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ABSTRACT

What grounds political authority? When pursuing this question, philosophers often proceed as though the very idea of one party obligating another by issuing a speech act—here, enacting a law—is puzzling. Yet children obligate their parents by asking for help; students obligate their teachers by requesting recommendation letters; and spouses create obligations by demanding that their partners be more supportive. These speech acts unproblematically create obligations; so the problem of political authority cannot lie merely in the creation of obligations via speech acts.

The problem resides in the way that governments presume to obligate us. When ordinary people attempt to obligate us by demanding, requesting, and the like, we can challenge them—asking whether the assistance is apt or the need genuine. If their response is inadequate, their speech acts fail to obligate. Governments, however, presume to obligate us without satisfying this challenge-response model. Legislative bodies typically do not answer citizens’ challenges—even when those challenges are thoughtful and made publicly. By presuming to obligate us without hearing our challenges, governments treat citizens as persons to whom justification is not owed—a violation of citizens’ autonomy.

To solve this problem, we need the sort of politics that deliberative democrats envision: a public deliberation that is responsive to the people’s challenges. To clarify the deliberative democrat’s vision, I develop a novel framework for democratic theory that borrows from moral theory the tripartite distinction between meta-questions, normative matters, and applied issues. Distinguishing between metademocracy, normative democracy, and applied democracy is the key to grounding a prima facie duty to obey the law without adverting to authority. Our duty to obey the
law is grounded by our duty to cooperate with our moral peers, not by anyone’s special moral standing.

To further advance democratic theory, I combine insights from three metademocratic views—instrumentalism, epistemic proceduralism, and moral proceduralism—to form a pluralistic account of legitimacy. My account shows that we should prefer normative theories that emphasize public justification. I then draw upon speech act theory to develop an account of democracy as public justification that regards democratic assemblies as deliberative bodies in the business of making and evaluating proposals.
I owe a great deal to each of my advisors. Each has been a model of pedagogic support—tirelessly reading drafts, patiently noting my mistakes (and my successes), and calling me out more sternly when I needed it.

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And, most especially, to Henry Richardson: your systematic approach to philosophy helped me to think broadly, so that my solutions to philosophical problems hung together as a (nearly) coherent whole rather than standing alone as discrete, barely-related units.

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INTRODUCTION

In chapter one, I present the leading characterization of political authority and explain the problem of political authority. I also show that several traditional defenses of political authority face serious obstacles. Given that traditional defenses are beset by serious problems, we should tackle the problem of political authority by breaking new ground, not by tinkering with traditional views.

In chapter two, I criticize instrumentalist justifications of authority in detail. Instrumentalism holds that governments earn authority by securing important goods for citizens. This formal definition makes instrumentalism a capacious heading—views with very different substance fall under it. The substantive diversity of instrumentalist views, I suspect, has allowed instrumentalism to largely escape systematic criticism. I argue that the instrumentalist’s attempt to justify authority by citing the realization of important goods renders political authority otiose: we don’t need it to explain a duty to obey the law. We can, therefore, add all the varieties of instrumentalism to the list of problematic defenses that I catalogue in chapter one.

Before proposing my own solution, I reexamine the problem of political authority in chapter three. The problem of political authority, I argue, is not merely to explain how governments can have the power to create obligations. The real problem is to explain how governments can create obligations in the way that governments characteristically do—via processes that ignore so many citizens’ voices. This understanding of the problem points towards a solution: the problem resides in political processes that offend against autonomy; we can solve it by designing political processes that don’t. To solve the problem of political authority, that is, we must turn to democratic theory.

In chapter four, I borrow from moral theory to structure democratic inquiry. Moral theorists commonly distinguish between meta-questions, normative matters, and applied issues. After distinguishing between metademocracy, normative democracy, and applied democracy, I develop a taxonomy of metademocratic views. Metademocracy holds the key to grounding a prima
facie duty to obey the law without adverting to authority. I argue that democratic theory solves the problem of political authority by splitting the difference between statists and philosophical anarchists. Both statists and philosophical anarchists agree that any obligation to obey the law must derive from (i) the content of the law, or (ii) the authority of the lawgiver. Democracy holds out a third possibility: our duty to obey the law derives from our duty to cooperate with our moral peers.

In chapter five, I move from metademocracy to normative democracy. I begin with the metademocratic task of articulating a pluralistic account of legitimacy. An account of legitimacy is a standard for adjudicating normative theories of democracy. I use my account to show that we should prefer normative theories that emphasize public justification. My last act is to develop a substantive account of democracy—a normative theory—by drawing upon resources from speech act theory: democratic assemblies should be deliberative bodies in the business of making and evaluating proposals. To show that my account of democracy is not an idle, academic curiosity, I bring it to bear on the issue of public reason and the question of gay marriage.
CHAPTER 1
POLITICAL AUTHORITY: THE STANDARD ACCOUNT AND TRADITIONAL DEFENSES

INTRODUCTION

This chapter canvasses the history of philosophical debate about political authority. I begin by explaining why philosophers have settled on the now-standard normative conception of political authority. Next, I showcase the most influential philosophical defenses of authority, explaining their most potent objections along the way. My aim is not to decisively refute these defenses of authority; it is to show that if a successful defense is forthcoming, it is reasonable to expect it from different quarters.

1.0 THE STANDARD ACCOUNT OF AUTHORITY

There are many different kinds of authority. In this section, I examine a series of distinctions and examples to isolate the kind relevant for political philosophy.

We often refer to people as authorities on a particular subject, such as science. Assertions made by these authorities carry special weight—an earth scientist’s views on global warming, for example, carry a great deal more epistemic force than my own. But this sense of authority amounts to something like expertise, and it is primarily an epistemic concept, not a political one. Some theorists offer epistemic justifications for political authority, arguing that a government’s epistemic prowess is, in part, the explanation of why it has authority. But whether or not political authority can be justified by epistemic arguments, political authority itself is not an epistemic concept.

R. B. Friedman makes this point by noting that the pronouncements of an epistemic authority supply or reveal reasons for belief, not action—the correct response to an expert’s well-researched claims is to adjust one’s beliefs.¹ The relevant belief adjustments may, in turn, disclose

reasons to act. For example, earth scientists have given us reasons to believe that global warming is both real and serious. Combined with other plausible claims about the value of human and animal wellbeing, this constitutes a reason to reduce carbon emissions. But as a conceptual matter, the pronouncements of an epistemic authority are primarily in the business of impacting beliefs; if they impact action, they do so indirectly.

Whereas epistemic authority is conceptually tied to belief, political authority is conceptually tied to action. Political authorities are in the business of handing out practical reasons. Some theorists have held that governments create these practical reasons simply by threatening to punish those who disobey. Our reasons for obeying political authority are on this way of thinking prudential: we obey simply to avoid unpleasant consequences. Despite its impressive pedigree—its advocates include Jeremy Bentham, John Austin, and R. Ladenson—this is a fringe view.

H. L. A. Hart’s arguments in *The Concept of Law* (and similar arguments later made by Joseph Raz) are a major reason for its fringe status. Hart points out that if, as a conceptual matter, authority boils down to the ability to make credible threats, the armed thug who demands your wallet has authority over you. As a conceptual analysis of authority, this seems wrong. While we are likely to obey the armed thug, we are not obligated to do so. But when a government tells us what to do—common sense has it—we are obligated to obey. It might, of course, turn out that commonsense is wrong. The state might be the gunman writ large. But the question here concerns the best conceptual analysis of authority; whether or not the concept is instantiated is another question.

As philosophers realized that the prospects of reducing authority to thug-like power were dim, they developed (more plausible) normative accounts of authority. These accounts typically

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hold that political authority is the ability to create reasons or duties. While this analysis of authority seems straightforward, it is important to distinguish it from something superficially similar.

If a petulant child of a brutal dictator whimsically tells the minister to leave the palace, and the dictator will unleash brutality on the masses out of anger if the minister [fails to leave], then the child’s command has created a moral requirement [for the minister to leave the palace].

This excellent example comes from David Estlund’s *Democratic Authority*. Estlund rightly goes on to say that the petulant child is not an authority. The brat does manage to *make it the case* that the minister should depart, but the brat’s command doesn’t *ground* this obligation: the people’s welfare, not the child’s say-so, does the all normative heavy lifting. The lesson here is that one is a political authority only if one’s say-so constitutes the normative ground of another’s reason or obligation.

Up to this point, we have been talking about authority in two different ways:

(i) Authority as the normative ground of obligations
(ii) Authority as the normative ground of reasons

Some philosophers use idiom (i); others seem to prefer (ii). I doubt that anything of importance hangs on the choice. Authoritative demands do not automatically generate an all-things-considered ought. Authoritative demands can be weighty, but they are not absolute. It is, therefore, more plausible, that an authority’s say-so generates a prima facie obligation. But prima facie obligations and reasons behave in awfully similar ways: both combine with other normative considerations to guide action (by outweighing, augmenting, undermining, favoring…). So I suspect that idiom of generating reasons is inter-translatable with the idiom of generating prima facie obligations. I will, in what follows, mostly use the idiom of reasons.

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So the demands of authority generate reasons. Joseph Raz articulates the most developed, influential theory of precisely what these reasons do. According to Raz, “[a]uthority over persons is [the] ability to change protected reasons for their actions.”\(^5\) The definition of “protected reason” is a little involved.

First-order reasons (dis)favor an action directly. Its being warm and sunny, for example, favors my spending time outdoors. Sometimes our deliberation involves only first-order reasons; other times, we additionally have second-order reasons. Whereas a first-order reasons is a reason to act, a “second-order reason is a reason to act [or refrain from acting] for a reason.”\(^6\) Consider an example:

**The Break-Up:** While drinking to dull the emotional ache of a painful break-up, you realize that you have a first order reason to call your ex: you’re lonely and your ex might have a change of heart. But then, you realize that the hours of drinking alone have impaired your judgment. Your being inebriated functions as second-order reason. It is a reason not to call your ex in the hope of a reunion: you’re likely to give a bad account of yourself.

A few clarifications: it would be a mistake to conclude that you don’t really have a first-order reason to call your ex. You do. You genuinely want to resurrect the relationship and your drunkenness neither counterbalances that reason nor diminishes its intensity. Rather, your drunkenness gives you a reason not to act on your first order reasons. It *excludes* one’s desire for a reunion from the set of considerations one should act upon. In honor of its normative function, Raz calls a reason that excludes first order reasons an “exclusionary reason.”\(^7\)

A *protected reason* has a dual nature. It is simultaneously a first-order reason and a second-order exclusionary reason. On Raz’s view, remember, authority is the ability to affect the distribution of people’s protected reasons. An example will make all this clear.

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\(^7\) *Ibid.*
The General: During a war, a general commands a private to steal a jeep. The general’s command constitutes, for the private, a first-order reason to steal the jeep. But this first-order reason faces countervailing reasons: the private doesn’t want to steal the jeep, partially out of laziness and partially because of the pangs of conscience. But according to Raz, the general’s command also creates a second-order reason not to act for any such countervailing reason—the second-order aspect of the general’s command removes the private’s laziness and the pangs of her conscience from the set of considerations that guide her actions. So even if the balance of the private’s first-order reasons disfavor the theft, the private’s first and second order reasons taken together favor thievery. In sum, the second order aspect of the general’s command protects the first order aspect from being outweighed by excluding the first order reasons that compete with it.

Raz introduces the notion of a protected reason to capture the sense in which authoritative demands purport to be decisive. A general’s instruction to steal a jeep doesn’t just outweigh the private’s personal preferences; personal preferences of any intensity aren’t the sort of thing that can overturn genuinely authoritative orders. Authoritative commands are supposed to settle matters. Or so Raz insists.

There is clearly much to be said here. It seems unlikely that an authoritative demand can exclude literally all first-order reasons—particularly if moral considerations can be first-order. And it isn’t entirely clear how to build plausible restrictions into Raz’s view without resorting to ad hoc stipulation. But these problems needn’t detain us. For us, the important point is that authoritative demands create reasons—a special kind of reason that isn’t easily outweighed. I explain Raz’s conceptual machinery here because it’s the most prominent expression of that thought.

We are finally in a position to state what I will call the standard account of political authority.

The Standard Account of Political Authority: Political authority is the normative power to create, cancel, or otherwise manipulate moral (and protected, if one is a Razian) reasons.

The standard account tells us what authorities do. But how do they do it? How do authorities manipulate reasons? To put the same question differently: how is political authority exercised?
David Estlund characterizes authority as “the power of one agent (emphasizing especially the state) to morally require or forbid actions by others through commands.” Estlund thus singles out commands as the instruments of authority. In so doing, he numbers among the overwhelming majority. When discussing political authority, Friedman focuses more or less exclusively on what he takes to be an “especially significant kind of authoritative utterance—a command.” In his argument for anarchism, Robert P. Wolff emphasizes that legitimate authority is “a matter of the right to command, and of the correlative obligation to obey the person who issues the command.” And Raz too says that political authority is a “right to command.” Admittedly, Raz goes on to say that political authority must also cover lawmaking, regulation setting, and punishing. But Raz’s choice of examples—general’s giving commands, arbiters giving commands, and the like—suggests that he takes commanding to be the paradigmatic exercise of authority.

As a heuristic, I find it helpful to organize the foregoing as answers to two different questions—one ontological and one mechanical. The ontological question asks: what kind of thing is political authority? The standard account answers: a normative power, specifically the power to manipulate reasons. The mechanical question asks: how is political authority exercised? Most philosophers answer: via commands. Those who deny state authority are called philosophical anarchists. Those who affirm state authority are called statists.

2.0 Attempted Justifications of Political Authority

Philosophers have devised many justifications of state authority. A careful survey of these arguments would fill several books and strain the reader’s patience. So instead, I’ll use this section

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8 David Estlund, Democratic Authority, 2.
12 Political anarchists stand alongside philosophical anarchists in denying state authority; they go further by advocating a political program that calls for the dissolution of government.
to give the reader a general sense of the terrain. I will outline the leading defenses of political authority and then highlight key difficulties. Many of these difficulties are prominent in philosophical literature; some are my own contribution. As I mentioned in the introduction, my aim in this section is not decisive refutation; it is to show that statists’ best arguments are beset by serious problems.

Plato and Aristotle contributed much to philosophy. But their primary defenses of political authority are implausible. In a slogan, they insist that the best among us are entitled to rule. Different glosses on the meaning of “best” will suggest different leaders. An emphasis on philosophical wisdom anoints Plato’s philosopher kings. Emphasizing practical wisdom aligns one more closely with Aristotle’s political vision. And an emphasis on something else will probably deliver a different picture. But the common denominator in all these pictures is that rulers are authoritative by dint of their excellence.

When a wise and excellent person tells us to Φ, it is probably a good idea for us to go ahead and Φ. After all, the directives of wise and excellent people are typically well supported by reasons. But the fact that someone is smart or capable is a reason to heed her advice. It isn’t a reason to think that someone has a special normative status such that her orders to us are morally binding. David Estlund—rightly, to my mind—goes as far as christening the pattern of inference that moves from ‘X is an expert’ to ‘X is an authority’ the “expert boss fallacy.” That the intelligent, able-bodied, and talented are on equal moral footing with the rest of us is an important and hard-won feature of contemporary moral views. Platonic and Aristotelian theories would have us set it aside too quickly.

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13 Plato does offer something like a social contract theory in the Crito. By his “main defense,” I am referring to his arguments in the Republic. Aristotle’s thoughts on the justification of authority are evident in the Politics, particularly chapters 2-5 of book 1.
14 David Estlund, Democratic Authority, 3.
A second kind of statist argument also warrants a speedy dismissal. Some, such as Robert Filmer, have argued that the government’s authority derives from divine authority. God has dominion over everything, the story goes, and uses His divine authority to imbue political leaders with the special normative status that constitutes political authority. The problems with this view are damning. Set aside questions about God’s existence; how exactly are we to tell that God has ordained a leader? The answer cannot be that God has selected all and only those who happen to be holding the reins of political power. Many political leaders are so (predictably) awful that a good and wise God would never have chosen them. If theorists such as Filmer cannot (a) say what mechanism God uses to ordain leaders, and (b) explain why we should think that the mechanism they identify reflects divine choice, their accounts are more like just-so stories than serious explanatory philosophy.

John Locke—one of Filmer’s most influential critics—is often credited with the invention of consent theory. Whereas Platonic and Aristotelian theories violate moral equality by simply insisting that the best among us are authoritative, consent theories hold that we are bound to obey only if we agree to obey. We have to commit ourselves. Consent theory has the virtue of satisfying plausible convictions concerning equality, but it invites another problem: few have expressed their consent to be ruled. Consent theorists therefore must lean heavily on the notion of tacit consent. Whereas we give expressed consent by swearing an oath or signing on the dotted line, it takes no obvious expression of the will to give tacit consent. Locke, for instance, insists that we give our tacit consent to be governed by merely using roads or by passively benefiting from a legally imposed order. But because such things are so divorced from any recognizable expression of the will, the doctrine of tacit consent is widely regarded as a philosophical dead end.

Another problem—one that’s received less attention—is that there are some things consent can’t justify. Only a rabid consent theorist would regard one’s promise to be a slave as morally
binding. The non-rabid conclusion is that consent can establish only those authorities that it is morally permissible to establish in the first place. Therefore, consent theorists owe—and typically do not give—reasons to think that governments are not, like slavery, a morally problematic instance of authority. Given that anarchists from Kropotkin to Wolff have challenged the state on precisely those grounds, this is a glaring omission.

As it became clear that expressed consent is scarce and that tacit consent is sham, consent-minded theorists turned to hypothetical consent. The general idea is that we are bound to obey the government because hypothetical beings relevantly ‘like us’—they are typically idealized versions of actual people—would consent to be bound. Emphasizing hypothetical consent gets around the problem that so few have actually expressed consent to be governed. And, perhaps, an idealized hypothetical being would never consent to morally problematic institutions like slavery. So hypothetical consent, it seemed, was a promising way to forge a connection between the existence of authority and act of the people’s will. But unfortunately, the suggestion that hypothetical consent establishes authority faces a damning objection all its own: the moral ramifications of an idealized being’s hypothetical consent for one’s actual self are unclear. That a suitably idealized hypothetical agent would consent arguably shows that it would be rational for us to follow suit. Her (its?) consent doesn’t obviously show that we—here and now—have the duties that would have been generated had we ourselves consented.

And there is a second (related) problem. The motivation behind consent theory is that, because of our moral equality, we cannot be required to obey someone without first agreeing to obey. By insisting upon hypothetical consent—and thereby severing the connection to any actual expression of our will—these theories lose touch with what made consent so appealing in the first place.
As the popularity of consent theory waned, theories invoking a duty of fair play rose to prominence. H. L. A. Hart gave the earliest organized presentation of the view, but commentators generally focus on Rawls’s articulation of the theory in his influential “Legal Obligation and the Duty of Fair Play.” The main thrust of the theory is, appropriately enough, a principle of fair play.

**Fair Play:** If we accept benefits from a reasonably just, mutually beneficial, and cooperative practice, we have an obligation to abide by the rules of the practice.

The fair play theorist’s intuition is that it’s wrong to accept benefits made possible by the obedience of others and then to turn around and disobey the very rules one profited from. While this is, we should admit, a compelling idea, its application to legal systems is fraught.

One the theory’s main difficulties, first discovered by A. J. Simmons, resides in the notion of “accepting benefits.” Governments provide many benefits that are nearly impossible to avoid—imagine, for example, trying to get around without using roads or making it through the day without paying with standard currency. Simmons makes the point by distinguishing between *accepting* and *receiving* benefits: one can receive benefits without deliberately accepting them.

Receipt isn’t always sufficient to obligate us. For if it were, we could find ourselves duty-bound to go along with beneficial schemes we want no part of. Since merely receiving benefits isn’t sufficient to create an obligation to obey, fair play theorists must—Simmons’s objection goes—turn to deliberate acceptance. But the move from receipt to deliberate acceptance invites the same problem that sunk expressed consent: few give their expressed consent to be governed; few deliberately accept the benefits that governments provides.

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17 Robert Nozick’s famous example features a system of public broadcasts (philosophy lectures, music, stories, and the like) run by citizens. Each day, a different citizen is responsible for running the broadcast. His point is that even if one sort of enjoys the broadcasts, it’s implausible to think that one’s enjoyment obligates one to participate. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 90-95.
Philosophical discussion about fair play has, in large part, orbited this objection from Simmons. I think there are other important problems as well. One is almost embarrassingly straightforward: some, alarmingly many, in fact, don’t benefit from the legal order. To take just one example, any modern state requires prisons. Any system of criminal justice run by people—with all our conscious and unconscious biases—will imprison innocent people, often from oppressed minorities. For these imprisoned and oppressed minorities, the legal order isn’t even remotely beneficial. Now, if one’s duty to obey the law is supposed to derive from acceptance of benefits, these oppressed minorities have no duty to obey the law. And if anything undermines a government’s authority, imprisoning oppressed minorities that are not under its authority does. So far as I can see, the principle of fair play seems more likely to undermine state authority than to justify it.

A third problem with theories of fair play concerns the individuation of cooperative schemes. We benefit from the rules of road, sure enough. But even our deliberate acceptance of that benefit might result in nothing more than a duty to obey the rules of the road. I can’t see any reason why we should instead be saddled with a duty to obey the whole law. The law houses many sub-systems of rules. To claim that we have a duty to obey the law in general, fair play theorists must—and to my knowledge, don’t—identify all the sub-systems and show that we accept benefits from each.

One class of statist argument is conspicuously absent from the catalogue above: natural duty accounts. Natural duty accounts emphasize the difference between obligations and duties. Obligations, they hold, are voluntarily taken on (via promising, signing a contract, or whatever). Duties apply to us irrespective of any voluntary action on our part. We simply have a duty to refrain from murder, to be honest, and to help those in desperate peril when it costs us little to do so. The natural duty theorist’s idea is that political obedience is a duty rather than an obligation.
I think that natural duty accounts confront a dilemma: either (a) they explain why we have a natural duty of justice, or (b) they don’t. If a natural duty theorist has no explanation of why political obedience numbers among our duties, she, like Robert Filmer, is guilty of telling a just-so story. Why are we under state authority? Because, apparently, the immutable morality spake it so. This isn’t an explanation at all.

Or, turning to the other horn of the dilemma, the natural duty theorist might have some substantive explanation of why political obligation numbers among our duties. But if so, the relevant explanation does all the normative work and the claim that political obedience is a natural duty drops out. For example, Rawls pioneered the natural duty approach, writing that we must “support and comply with just institutions … that apply to us.” But Rawls goes on to ground this duty in the hypothetical consent ‘we’ give in the original position. Rawls’s theory is therefore best analyzed as a species of hypothetical consent; his insistence that political obedience is a natural duty is an idle third wheel. For another example, Christopher Heath Wellman tries to ground political obligation by mobilizing Samaritanism and fair play. He argues, briefly, that we all have a duty to do our fair share to rescue others from the perils of the state of nature. To do that, he thinks, we need to obey our government. Whether or not Wellman’s arguments succeed, his account is best analyzed a fair play account grafted on to what I’ll later call an instrumentalist account. Wellman argues that governments perform some morally important task well (this is the instrumentalist bit) and that we have a duty to our fair share in contributing to that task (and this is the fair play bit). The claim that political obedience is a natural duty does no argumentative work. So, in conclusion, natural duty accounts amount to just-so stories, or they are not really natural duty accounts.

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CONCLUSION

My aim in §1 was to acquaint the reader with contemporary normative analyses of political authority. My aim in §2 was to show that traditional defenses of political authority must overcome serious problems before we consider them contenders for success. It is possible that with some slick revision, a traditional defense will overcome its difficulties. But given the volume of ink that has already been spilled on unsuccessful re-tinkerings of the traditional defenses, that seems unlikely. In the next chapter, I consider a species of statist defense that has largely escaped systematic criticism: instrumentalism.
CHAPTER 2
BUT WHY MUST WE OBEY?
WHY INSTRUMENTAL DEFENSES OF AUTHORITY FAIL

INTRODUCTION

Instrumental defenses of political authority hold that authorities are justified in virtue of excelling at an important job. This is a capacious definition—very different looking views count as instrumentalist. This diversity has, I think, meant that instrumentalist views have largely escaped systematic criticism. My point is not that no one has ever criticized an instrumentalist. Joseph Raz, for example, has many detractors. My point is that whereas philosophical anarchists have located deep, structural problems with (say) consent theory and fair play theory, they have approached instrumentalism in a piecemeal fashion, tackling instrumentalists one at a time.

A systematic treatment of instrumentalist theories has two important advantages over a piecemeal approach. First, by gathering instrumentalists under a single heading, it would point out crucial similarities between (sometimes very) different-looking views. Second, it would advance philosophical debate by pinpointing the key difficulties with instrumentalist views. Thanks to systematic criticism, philosophers can identify the most important hurdles for any consent theory to overcome; a systematic treatment of instrumentalism will accomplish the same thing. In this chapter, I give a systematic treatment of instrumentalist defenses: that someone does an important job well is a good reason to do as she directs; it is not a reason to conclude that she has authority.

My argument proceeds in four steps. In §1, I define political authority and develop a test for it. We should believe in political authority, I argue, only if less controversial sources of normativity cannot ground our obligations. In §2, I explain why David Estlund’s recent work in Democratic Authority depends on instrumentalism and I show that Estlund’s account fails my test. In §3, I show that Raz’s instrumentalism fails for precisely the same reason. And in §4, I argue that Estlund and
Raz are not special cases. All instrumentalist defenses of political authority fail; what’s more, they fail precisely because of their instrumentalism.

1.0 Political Authority: A Definition and a Test

The debate between philosophical anarchists and statists is best understood as a debate about moral ontology. Philosophical anarchists, after all, openly concede that one can be obliged to obey the law—perhaps because the law tells us to do what we should already be doing or perhaps because some important good depends on coordinated action. The philosophical anarchist’s main point is that when we must obey, it isn’t on account of anyone’s authority. We might have a duty to obey the law; but there isn’t any political authority to ground that obligation. Statists, of course, disagree, arguing that political authority is part of our moral world.

How can we resolve this dispute? How, in other words, can we test for political authority? Given that political authorities are in the business of manipulating normative space, we should look to normative space for evidence that it exists. We should try to locate a normative feature (such as a reason, obligation, or permission) whose existence we are hard-pressed to explain without invoking political authority. And unless we find one, political authority doesn’t deserve a place in our moral ontology.19

To see this test in action, recall the following anecdote from David Estlund’s *Democratic Authority*:

If a petulant child of a brutal dictator whimsically tells the minister to leave the palace, and the dictator will unleash brutality on the masses out of anger if the minister [fails to leave], then the child’s command has created a moral requirement [for the minister to leave the palace].20

19 Does this mean that we should jettison all forms of authority? The answer is, “Yes, if we can.” Whether we can jettison any particular form of practical authority—such as parental authority—is a matter that can be settled only on a case-by-case basis. In this paper, I am concerned only with the case of political authority.

20 David Estlund, *Democratic Authority*, 118.
As Estlund notes, the brat in this story is not an authority—despite creating an obligation for the minister to leave the palace. The brat’s say-so, after all, is not the normative ground of the minister’s obligation. My test helps us see this: we can explain the minister’s duty to leave the palace—his duty to obey the brat, that is—by invoking the people’s wellbeing rather than the brat’s authority. Or, to provide further clarity, consider the matter from the standpoint of disobedience: what would be wrong with the minister’s decision to remain in the palace? The answer is that it would be wrong of him to stay because it would cost innocent lives; that he disobeys the brat’s command is not an additional source of wrongness. Authority would, therefore, be a needless posit.

For a contrasting case, imagine that the government of Consentia has devised a fair process that secures each citizen’s actual consent to its rule. When a citizen of Consentia breaks the law, the wrongness of her disobedience might be partially explained by her action’s consequences. Her brazen disregard of the speed limit, for example, might have endangered lives and limbs. But a full catalogue of the wrong she commits will have to include the fact that she has broken her promise. She consented to the government’s rule; but rather than recognizing the government’s just claim—its authority—over her actions, she broke the law.

In the case of Estlund’s minister, the people’s wellbeing was the sole ground of the minister’s duty to obey. In Consentia, by contrast, the citizens’ duty to obey is (at least partially) grounded by the authority that their consent has established. We do not need authority in the case of Estlund’s minister; in the case of Consentia, we do.

It may seem that my test for political authority unfairly puts statists on the defensive. Why, after all, do statists bear the brunt of the argumentative burden? For two reasons. The first is the venerable standard of rational enquiry embodied by Occam’s razor. If something of uncontroversial normative significance (such as people’s welfare) can explain why we have the obligations we do, any
appeal to political authority is an extravagance. Second, there are two prima facie moral challenges to the existence of political authority:

**Freedom & Autonomy:** That people are free and autonomous means, among other things, that there is a presumption against imposing upon their form of life—people are entitled to author their own lives. But political authority routinely imposes on people’s form of life. Therefore, it requires justification.

**Moral Equality:** Moral equality does not imply that we owe every person exactly the same things—I owe my spouse considerably more than I owe to random strangers on the street. But moral equality does mean that such departures from equality call for explanation; equality is morality’s default setting. The doctrine of political authority is a radical departure from equality, crediting a select few the power to speak obligations into being for entire nations. Therefore, it requires justification.

Given considerations of parsimony and these prima facie moral challenges, political authority has to *earn* its place in our moral ontology. We should believe in political authority only if less controversial sources of normativity prove incapable of accounting for our reasons and obligations.

In what follows, I apply my Occam-inspired test to two high-profile versions of instrumentalism: Estlund’s recent arguments in *Democratic Authority* and Raz’s normal justification thesis. Both of these cases resemble the case of Estlund’s minister—we can explain everything that needs explaining without invoking anyone’s authority.

2.0 **ESTLUND’S DEFENSE OF AUTHORITY: WON’T YOU BE MY SUBJECT?**

It is widely agreed that one’s consent is sometimes null. If someone promises me her life savings because I’m torturing her, or because I’ve somehow conned her, I’m not entitled to a dime

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21 Henry Richardson pointed out that there are many other important definitions of autonomy. A more Kantian definition holds that autonomy consists precisely in being constrained by norms that—subject to constraints of equality—maximize individuals’ capacity for self-expression. On this definition, the law preserves people’s autonomy whenever it enables self-expression; whether people author the law is irrelevant. Whether political authority runs afoul of autonomy differently defined is an interesting question. But it is not my question. So long as people have the right to craft their social/political world—have the right to autonomy in my sense—there is a prima facie case against political authority.
of her money. Estlund’s novel idea is that non-consent can also be null. When consent is null, the normative situation is as if there had been valid non-consent. Again, if someone promises me her life savings under threat of torture, I’m not entitled to a dime. When non-consent is null—Estlund proposes on grounds of symmetry—the normative situation is as if there had been valid consent. Letting ‘=’ stand for ‘is normatively equivalent to,’ we can put the point more pithily with the following equivalence relations:

\[
\begin{align*}
\text{null consent} &= \text{valid non-consent} \\
\text{null non-consent} &= \text{valid consent}
\end{align*}
\]

These equivalence relations are the heart of Estlund’s Normative Consent Theory. Notice, however, that these relations establish (at most) a conditional: if it is ever wrong to withhold one’s consent to be ruled, one’s null non-consent establishes the relevant authority. Estlund needs to show that this conditional’s antecedent is sometimes true, that it is sometimes wrong for us not to consent to subject-hood. His strategy is to argue that we must consent to subject-hood because authorities excel at important tasks. Estlund’s comprehensive view is thus composite: the idea of normative consent is one part of his considered view; instrumentalism is the other. There are reasons to think that Estlund’s normative equivalence relations are, in fact, false. But I want to grant them in order to focus on the instrumentalist half of his view.

Estlund’s defense of instrumentalism takes the form of an analogy, a thought experiment whose protagonist (“Joe”) occupies a normative situation that mirrors our own:

Consider a fight attendant who, in an effort to help the injured after a crash, says to Joe, “You! I need you to do as I say!” Let us not yet

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22 Estlund, *Democratic Authority*, 121.
23 The problem begins with counterexamples raised by Estlund himself. Plausibly, it can be wrong to refuse one’s committed partner sex or refuse to lend a friend one’s car. Estlund’s theory seems to imply that your sexual partner or your friend may proceed on as though you consented—provided you were wrong to say no. But this is obviously false. Estlund’s solution is to place domain restrictions on the equivalence relations above. One’s null non-consent, he suggests, is not equivalent to valid consent if it would “permit another to interfere with [one’s] person or property.” This maneuver is arguably ad hoc, and may not solve the problem. For doubts about the truth of Estlund’s equivalence relations, see William A. Edmundson, “Consent and Its Cousins,” *Ethics* 121 (2011): 335-353.
suppose this puts Joe under her authority. Even if it does not, Joe would (I hope you agree) be morally wrong not to agree to do as she says. Once that is granted, the question remains whether, by refusing, wrongly, to agree to do as she says, Joe has escaped the duty to do as she says. Consent theory … [concludes]: Joe may have various obligations in such a terrible scenario, but the flight attendant’s instructions have no authority over him. Why? Because, lucky for Joe, he is despicable. If you find consent theory’s implication implausible here, as I do, then you think that Joe has not escaped the authority by refusing to consent. So he is under authority even without having consented.  

Joe’s situation vis-à-vis the attendant is isomorphic to our situation vis-à-vis the government. We, along with Joe, confront a morally important task: Joe is duty-bound to save the passengers; we are duty-bound to save people from the state of nature, where living conditions are, Estlund insists, “solitary, poor, nasty, brutish and short.” Like Joe, we cannot complete our task by working alone: to save the passengers, Joe needs to work with the uninjured; to avoid the state of nature, we need to work with those around us. And finally, in order to successfully discharge our duties, we both need to appoint a competent decision-making agent: in Joe’s case, the flight attendant is apt for this role; in ours, the government is (allegedly) the obvious choice. Given the similarity of our normative situations, if Joe should consent to the attendant’s authority, we should probably consent to our government’s authority.  

The trouble with this defense of instrumentalism is that Estlund does not adequately address what one must consent to. Should one agree to do as the agent-running-the-show says for the sake of some important end? Or must we agree to give the agent-running-the-show the moral power to

24 Estlund, Democratic Authority, 124.
25 Ibid., 146.
26 Ibid., 149-150.
27 Strictly speaking, this matter is more complicated. Estlund thinks that we are obliged to institute the most competent decision-making agent that no one can reasonably object to. According to Estlund, a representative democracy fits the bill (ibid., 40-64). I include this complication for the sake of accurate exposition; I relegate it to footnote because it does not materially affect my argument.
28 This assumes of course, that our government is solving problems as effectively as the flight attendant. In many cases, this assumption is false.
ground new obligations for us? These are importantly different questions. The first is a question about whether we ought to cooperate in the pursuit of valuable ends. The second is a question about whether we should agree to an unequal ruler-subject relationship. That Joe must answer, “Yes” to the first question is an unremarkable, anarchist-friendly result; anarchists have long held that we ought to comply with de facto authorities when there are good, authority-independent reasons to do so. Estlund has to defend the more remarkable claim that it is wrong for Joe to say “No” when the flight attendant demands that he become her subject.

Yet there is literally no argument on this score: Estlund simply asserts that Joe would be “despicable” to refuse. Not only does Estlund offer no argument, there are powerful reasons to think that Joe needn’t consent to the attendant’s authority. When the attendant turns to Joe and says, “You! I need you to do as I say,” suppose Joe replies, “I pledge myself to the morally important end of helping the passengers, and will comply with your demands as a means to that end. But I will not accept you as a literal authority, as a ruler over me. My duties here are grounded, without remainder, by the unconditional value of the injured passengers.” Having made it clear where he stands, suppose Joe begins to do as he’s told—efficiently, respectfully, and out of a sense of duty to his fellow passengers. Joe’s response would probably surprise the flight attendant; but I can’t see why he would be despicable to give it.

In fact, here is a quick argument that Joe can withhold his consent to be ruled without doing wrong. If Joe has done wrong in this situation, there must be something wrong with his intentions or with his actions. But nothing seems amiss with his intentions: he aims to save the injured while preserving his own autonomy. Neither is there any obvious problem with Joe’s actions: he labors tirelessly to save the passengers and treats the attendant respectfully—acceding to her expertise.

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listening attentively when she speaks, and making sure that she doesn’t take more than her fair share of risks. There is nothing wrong with Joe’s actions; there is nothing wrong with Joe’s intentions; therefore, Joe’s non-consent is morally blameless.

In §1, I developed an Occam-inspired test for political authority. Because authority is a special and controversial moral standing, we should invoke it only when we cannot explain the shape of normative space by less controversial means. We, along with Joe, are morally obliged to do as we’re told when lives or limbs (or public order, or economic wellbeing, or public health…) hang in the balance. But we don’t need authority to explain this obligation—the value of lives and limbs will suffice.

2.2 Estlund’s Rejoinder and My Response

Estlund anticipates something like the argument I give in §2.1. He writes,

Suppose that [the attendant] were to order Joe to grab the bandages from … the overhead compartment. Joe correctly believes that it would be wiser to secure whatever fresh water can be found first. Does this exempt Joe from the duty to obey her command? On the contrary, unless the stakes were especially high, it would be wrong for Joe to decline to obey on that ground… This is a characteristic of authority, and different from merely following the leader when and only when she is leading correctly.\(^{30}\)

There’s a subtle point buried in this paragraph; a little terminology will help to draw it out. Call an order sub-optimal if (a) it doesn’t seriously imperil anyone; (b) it comes from someone who is effectively coordinating our actions towards an important goal; and (c) a different order would serve that goal slightly better. The attendant’s demand that Joe collect bandages is an example. With this lingo in hand, Estlund’s subtle point can be put as follows:

\(^{30}\)Estlund, Democratic Authority, 125.
(1) Joe has a duty to follow the attendant’s sub-optimal orders.
(2) Were Joe’s obligations grounded entirely by the needs of the injured, he would not have this duty.\textsuperscript{31}
(3) The flight attendant’s being an authority explains this duty.
Therefore,
(4) The flight attendant is an authority.

What should we say about this argument? To diagnose its mistake, we need to distinguish two kinds of cases: those in which there are authority-independent reasons for Joe to follow sub-optimal commands, and those in which there are not.

**Case 1:** Suppose that there are good authority-independent reasons for Joe to follow the attendant’s sub-optimal commands. Perhaps his reticence to follow orders will cause panic by undermining other passengers’ confidence in the attendant. Or, perhaps, while making important plans, the attendant assumed that Joe would get the bandages. Thus, his disobedience would unsettle important plans. Or whatever. But notice: as soon as some such justification is given, we do not need authority to explain Joe’s duty to follow sub-optimal orders. Why must Joe obey? Because doing otherwise will induce panic; because it will unsettle important plans; or whatever. When there are good authority-independent reasons to follow sub-optimal commands, premise (2) is false.

**Case 2:** This case focuses on sub-optimal orders that cannot be supported by authority-independent reasons. Equivalently, the only possible reason to obey is the commander’s authority. The problem here is that it’s simply not obvious that disobedience is wrong. It is not obviously wrong to speed on an utterly deserted rural highway. Nor is it obviously wrong not to use one’s turn signal when no one is around to see it. Similarly, it is hard to see why Joe would be wrong to disobey when disobedience has no ill consequence. In fact, there is significant pressure to think that Joe should disobey: it would serve the passengers better than his obedience would. When there are no authority-independent reasons to follow sub-optimal commands, it is plausible to deny (1).

When there are authority-independent reasons for Joe to do as he’s told, we should cite those reasons—not the attendant’s authority—to explain why Joe must adhere to the attendant’s

\textsuperscript{31} If Joe’s obligation is grounded entirely by the needs of the injured, he should do whatever best addresses their needs—even if that means disobeying the attendant. The problem here is isomorphic to the famous ‘rule-worship’ objection to rule utilitarianism.
demands. And when authority is the only possible explanation of Joe’s duties, it is eminently plausible to deny that Joe must obey at all. Given that his disobedience would better serve an important end, it is hard to see why Joe must obey when nothing of uncontroversial value hangs on his obedience. Asserting that Joe must obey in such a case is awfully close to simply asserting the attendant’s authority.

So the instrumentalist half of Estlund’s comprehensive view still succumbs to my Occam-inspired test. Estlund manages to show that we should obey our governments when lives, limbs, or something else important hangs on our obedience. And he manages to show that we should obey when our disobedience would undermine the government’s future ability to serve important ends. But we don’t need to invoke anyone’s authority to explain these obligations. Estlund would have justified authority if he had shown that we should agree to a ruler-subject relationship with our governments. But he hasn’t.

### 3.0 Raz’s Normal Justification Thesis

Raz is the godfather of instrumentalism. His service conception of the state has many integrated parts, but the normal justification thesis is the only part directly relevant for justifying authority:

**Normal Justification:** 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* (other than the alleged authoritative directives) if he accepts the directives of the alleged authority … and tries to follow them rather than … trying to follow the reasons which apply to him directly.

Interpreting the normal justification thesis is not a straightforward affair. As I see it, the two italicized phrases contain the most significant ambiguities. Consider the first: *should be acknowledged to*

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32 If we accept his normative equivalence relations, that is.
33 Joseph Raz, “Authority and Justification,” 18-19 (emphasis added).
have authority. To earn its title, the normal justification thesis should tell us how to justify authority. Taken at face value, however, it merely tells us whom we should acknowledge as authoritative. But as Mark Murphy has emphasized, showing that it would be good for someone to have a moral power simply isn’t the same thing as showing that she actually has that moral power—the fact that Jones would make an excellent president does not suffice to make Jones the president.\textsuperscript{34} To deny this would be to collapse ‘ought’ and ‘is’ in a particularly implausible way. So, if we take this first italicized phrase at face value, the normal justification thesis is a trivial piece of advice about who it would be beneficial to regard as an authority. To avoid trivializing it, we should instead read the normal justification thesis as a claim about who actually has authority.

Turn now to the second italicized phrase: involves showing that the alleged subject is likely better to comply with reasons which apply to him. Construed literally, this is an bland claim: of course fully justifying any ruler will “involve” demonstrating her ability to serve people’s reasons (which, for Raz, includes their needs and basic interests). Credible theorists since Aristotle have insisted that serving the people’s good is a necessary condition of authority. It would be surprising if someone as eminent as Raz were touting the obvious and established as a new philosophical insight. To avoid trivializing the normal justification thesis once again, we need to construe Raz as making a bolder claim: servicing people’s authority-independent reasons must be a sufficient condition of authority, not a merely necessary one.

Given these observations, a better, clearer construal of the normal justification thesis is this:

**Normal Justification 2:** \( X \) is an authority if \( X \)'s subjects will better comply with their authority-independent reasons by adhering to \( X \)'s commands than by attending to their authority-independent reasons on their own.

\textsuperscript{34} Mark C. Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press, 2006), 109-110.
Thankfully, textual evidence from a variety of sources supports my interpretation. While explaining the normal justification thesis in a section suggestively titled “The Justification of Authority,” Raz writes, “[the normal justification thesis is] a thesis about the type of argument which could be used to establish the legitimacy of an authority.”35 Years later, Raz described his service conception as “an account of authority, which includes an explanation of … when one has authority and is subject to it”.36 But, as we just saw, Raz’s service conception is not an account of when one has authority unless we construe the normal justification thesis along the lines I suggest. A last piece of clear textual evidence is that Raz presents the claim that the normal justification thesis names a merely necessary condition of authority as an objection to his account; he goes on to defend his account from the objection.37

3.1 CRITIQUE: BUT WHY MUST WE OBEY?

I argued above that to avoid trivializing Raz’s theory, we must construe the normal justification thesis as follows:

**Normal Justification 2:** X is an authority if X’s subjects will better comply with their authority-independent reasons by adhering to X’s

37 Joseph Raz, “The Problem of Authority: Revisiting the Service Conception,” 1036. Unfortunately, the textual evidence isn't univocal. In a very recent article published by *Ethics*, Raz denies that the normal justification thesis is a sufficient condition of authority: “it is not my claim that whenever these conditions [the ones specified by the normal justification thesis] are met, the authority is legitimate” (Joseph Raz, “On Respect, Authority, and Neutrality: A Response,” *Ethics* 120 (2010): 298). Besides being at odds with much of Raz’s writing on authority—the textual evidence above is, in the main, representative of the way Raz talks about the normal justification thesis—this claim trivializes Raz’s theory. As I point out above, of course servicing citizens’ authority-independent reasons is a necessary condition of authority.

In the same article, Raz advances an even more puzzling claim: “the normal justification thesis was presented as no more than an explanation of normal justifications…”(ibid., 298). Here, it isn’t even clear that the normal justification thesis is a necessary condition of authority. This claim leaves open the possibility that Raz is trying to explain the empirical fact that people defend authority in a certain way. However, while his language here is consistent with this possibility, charity demands that we not interpret Raz in this fashion. If Raz is simply coming to grips with the empirical fact that people tend to offer justifications of a certain sort, he’s advancing a theory of (a particular) human behavior, not a theory of authority. But clearly, Raz means to advance a theory of authority. And doing so involves taking a stand on how attunement to citizens’ reasons relates to a government’s having authority—it can be necessary, sufficient, or both. Since construing the normal justification thesis as a necessary condition of authority trivializes Raz’s theory, we are back to construing it as, at least, a sufficient one.
commands than by attending to their authority-independent reasons on their own.

The problem, however, is that our efforts to rescue the normal justification thesis from triviality have rendered it false. Suppose Aristotle’s phronimos showed up, uninvited, at your doorstep and used her prodigious practical wisdom to issue commands that served your authority-independent reasons better than you yourself could. According to the second normal justification thesis, she would have authority over you.\(^{38}\) But a talent for devising rules that ‘line up’ with authority-independent reasons makes one wise; it does not make one a practical authority. The phronimos’s wisdom might be a reason to install her as an authority. But without committing what Estlund has rightly called the expert-boss fallacy, there is no way to infer authority from wisdom alone.\(^{39}\)

Stephen Darwall has recently made a similar point.\(^{40}\) Darwall imagines that someone—named \(B\)—lacks the psychological fortitude to get out of bed in the morning. Because his authority-independent reasons overwhelmingly favor \(B\)’s rising at seven, \(B\) hires someone with an authoritative bearing—named \(A\)—to command him to get out of bed. The point, of course, is that even though \(A\)’s commands line up exceptionally well with \(B\)’s reasons, \(A\) is not a genuine authority.\(^{41}\)

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\(^{38}\) Elsewhere, Raz insists that one cannot be fully authoritative without being a de facto authority, without exerting substantial control over one’s subjects: “only bodies that enjoy de facto authority … can have legitimate authority over … matters [pertaining to the solutions of coordination problems]” (Joseph Raz, “The Problem of Authority: Revisiting the Service Conception,” 1036). Perhaps, then, Raz might defend himself by pointing out that Aristotle’s phronimos—as I depict him above—isn’t a de facto authority, and, therefore isn’t a genuine authority at all. Two comments on this defense: first, Raz isn’t consistent about deploying it. In the same article, he writes, “… legitimate authorities are not always de facto authorities” (ibid., 1005). Second, the defense is easily overcome. As I depict him above, Aristotle’s phronimos isn’t a de facto authority. But we can make her one by imagining that her commands are widely distributed and backed by credible threats. Yet even so depicted, the phronimos lacks genuine authority. For if anything violates our autonomy, the phronimos so depicted does.

\(^{39}\) Estlund, Democratic Authority, 3.


\(^{41}\) Darwall additionally insists that the mark of true authority is that subjects owe a directional duty of obedience to the relevant agent-in-charge (Ibid., 259). This is a claim fraught with difficulty, particularly when the government is the authority in question. Fortunately, the negative point—that a talent for issuing commands that line up with people’s authority independent reasons doesn’t justify one’s authority—doesn’t depend on the details of Darwall’s positive view.
Darwall and I are exploiting the same weakness in Raz’s instrumentalism: if someone’s commands ‘line up’ with people’s authority-independent reasons particularly well, we don’t need to posit her authority to explain why we should obey. The importance of people’s authority-independent reasons provides a simpler, less controversial explanation. My Occam-inspired test shows that we should prefer it.

4.0 The Problem Generalized

Nearly every defense of political authority requires governments to perform important tasks well. But most see this as a necessary condition of authority, not a sufficient one. Consent theorists, for example, believe that only effective governments can be authoritative, but they additionally require that the people agree to their government’s authority. Fair play theorists, to take another example, also insist that governments must perform important tasks to be authoritative. But the doctrine of fair play also leans heavily on citizens’ voluntary acceptance of benefits. Instrumentalists, by contrast, try to ground political authority on a more slender foundation: they cite nothing more than the government’s performance of important tasks.

Let $T$ be any task such that (a) it is morally important for us to perform $T$, and (b) some kind of centralized body is necessary, or helpful, for doing so. For Estlund, $T$ is rescuing people from the state of nature by solving political problems correctly and then instituting the solutions. For Raz, $T$ is getting people to conform to their authority-independent reasons. Kit Wellman’s political samaritanism assigns doing one’s “fair share of the communal samaritan chore of rescuing others from the perils of the state of nature” to $T$. But the specific choice of $T$ is unimportant. Whatever $T$ happens to be, its authority-independent importance is sufficient to explain our duty to obey. We should look no further. The instrumentalist’s foundation is too slender.

One might object: “But if governments are in the business of instituting solutions to coordination problems, they must wield some sort of authority. Since coordination problems typically have more than one adequate solution, the act of legislating one such solution—making one such solution the ‘right’ one—must be an exercise of authority. After all, before the enactment of any particular solution (that we drive on the right side of the road, say), the existing reasons don’t favor any of the possibilities. Therefore, there is nothing besides the relevant authority’s say-so to recommend any particular solution.”

My response to this objection is two-fold. First, even if authority is necessary to institute the solution to a coordination problem, the need to invoke authority dissipates as soon as the relevant solution is put in place. As soon as a custom of driving on the left is established, authority is no longer necessary to explain why citizens must continue to drive on the left. Doing differently would endanger lives and limbs.43 This is already a serious blow to our commonsense view of authority: we don’t typically imagine that authorities dissipate their own normative standing by wielding it effectively. But even if instrumentalists are prepared to make this concession, there is a second problem: authority isn’t required to institute a solution to a coordination problem at all. William A. Edmundson explains:

To see that coordination and authority are but loosely connected, note that one’s being in a unique position to coordinate doesn’t mean one is ipso facto an authority. Suppose the young George “Foghorn” Wilson (a child actor who had a booming bass voice) is on the scene, and due to surrounding smoke and noise, only he can coordinate an escape. Foghorn is in a unique position to coordinate, but not ipso facto an authority, nor in possession of authority. One ought morally to do what Foghorn says to do, but not because Foghorn says it.

43 It would be a mistake to object that authority is necessary to explain why defecting from the solution to a coordination problem is wrong when defection would have no ill effect (such as driving on the right hand side of the road on a long, straight stretch of deserted highway). The mistake here essentially Estlund’s mistake about sub-optimal commands: it simply is not obvious that we must obey when defection really is harmless. I grant that authority is required to ground an obligation in such circumstances. But we need a compelling argument that we really are obligated in such circumstances to turn this observation into an argument for authority.
One ought to do as Foghorn says because a coordinated response is needed and only Foghorn can be heard.44

In the situation Edmundson imagines, people’s wellbeing depends upon their acting in concert. Foghorn makes a series of demands that—let us suppose—pick out a reasonable solution to their coordination problem. The point, of course, is that it would be wrong to disobey Foghorn, but not because he’s an authority. Foghorn’s virtue is his volume, not his special normative standing.

Edmundson’s keen analysis readily applies to governments. The coordination problems faced by nation-states often require cooperation across large territories and among disparate groups of people. To institute a solution to a coordination problem under these circumstances, one needs to ‘speak loudly.’ Like Foghorn, the government’s virtue might well be its volume, not its special normative status. Since we should posit authority only when necessary, we should actually prefer the volume-based explanation.

Edmundson’s way of thinking is especially compelling when we consider how governments are actually formed. Typically, the influential or powerful get together and advocate particular policies or organizational structures. The masses then fall in line—perhaps because they see the benefit, because they lack the clout to be a dissenting voice, because they cave to mounting social pressure pushing for conformity, because they fear the consequences of disobedience, or whatever. The point is that it takes simple volume—not authority—to get the masses on the same page. And once they are, we don’t need authority to explain why it’s wrong to defect.

**CONCLUSION**

Political authority is a special normative standing. Given considerations of parsimony and the twin facts of our autonomy and moral equality, I have argued that it is a normative standing that

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we should posit only if we must. To defend political authority, then, statists need to locate a normative feature that less controversial sources of normativity are ill equipped to explain. I have argued that, despite their popularity, instrumental defenses cannot do that.
CHAPTER 3
WHAT'S THE PROBLEM WITH POLITICAL AUTHORITY?

INTRODUCTION

If my arguments in chapter two are cogent, we can add instrumentalism to the already-lengthy list of failed attempts to justify political authority. The problem of political authority is thus alive and kicking. But before suggesting a solution of my own, I want to reexamine the problem. My argument in this chapter is that once we understand why political authority is a problem, we will see that democracy is the only solution.

Political philosophers working on the problem of political authority commonly proceed as though the very idea of one party giving another reasons by issuing a speech act—here, enacting a law—is puzzling. Yet children give reasons to their parents by asking for help; students give their teachers reasons by requesting recommendation letters; and spouses create reasons by demanding that their partners be more supportive. Given that all these speech acts unproblematically create reasons, the problematic aspect of political authority cannot lie merely in the creation of reasons via speech acts. The real problem with political authority, I argue, is that governments presume to make demands of citizens without assuming a commitment to answer their challenges—a violation of citizens' autonomy.

My conception of the problem of political authority suggests a solution. By presuming to obligate citizens without hearing their challenges, governments treat citizens as persons to whom justification is not owed. To solve this problem, we need the sort of political process that deliberative democrats envision: a public deliberation that is responsive to the people’s challenges. Democracy—not consent, fair play, nor any of the other usual suspects—solves the problem of political authority.
1.0 THE RECEIVED PROBLEM OF POLITICAL AUTHORITY

When the government lowers the speed limit, philosophical orthodoxy holds that we are morally obligated to slow down. When a government levies a tax to cover military spending, we are obliged to open our wallets. And if it decides to criminalize a drug, possessing that drug is wrong. According to philosophical orthodoxy, an authority gives us moral reasons by performing some kind of speech act—typically the laying down of a law or policy. These moral reasons typically result in obligation. In effect, the government (morally) obligates us to \( \Phi \) by telling us to \( \Phi \). Call this the standard account of political authority. As I explained in chapter one, Joseph Raz has developed influential version of the standard account, and an overwhelming majority of contemporary philosophers—both statists and anarchists—are standard account loyalists.\(^45\)

The nature of political authority sets the stage for the problem of political authority. According to the standard account, political authorities are in the business of creating moral reasons by performing speech acts. The problem of political authority is, for standard account loyalists, to understand how that could be. What could give one party the standing to speak moral reasons into being for another?

While I agree that governments use speech acts to create moral reasons, this description of what they do makes it hard to see why political authority is problematic. Ordinary people, after all, unproblematically use speech acts to create moral reasons every day. As I mentioned in the introduction, children create moral reasons when they ask for their parents’ help; a spouse creates them when she demands that her partner be more supportive; and students give their teachers reasons when they request recommendation letters. In the right circumstances, even total strangers

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45 For the canonical statement of Raz’s account, see: Joseph Raz, “Authority and Justification.” For other examples of standard account loyalists, see: David Estlund, Democratic Authority; R. B. Friedman, “On the Concept of Authority in Political Philosophy;” and Leslie Green “Who Believes in Political Obligation,” in For and Against the State, ed. J. Sanders and J. Narveson (Lanham, MD: Rowman and Littlefield Publishers, 1996), 1-18.
can create moral reasons for one another. Think of the elderly woman who asks—or if she’s pushy, demands—that you retrieve her favorite cereal from an out-of-reach shelf at the grocery store. We routinely use speech acts to give each other moral reasons. So why has it seemed so problematic that governments do precisely the same thing?

Two answers are common in contemporary literature on political obligation. The first is outcome oriented, suggesting that political authorities create reasons of a special kind: protected reasons. The second proposal is procedural, claiming that political authorities create reasons in a special way: with content independent directives. After explaining protected reasons and content independence, I will show that these features cannot explain why political authority is so controversial. Governments might very well hand out protected reasons and use content-independent directives; but so do the rest of us.

Consider the proposal that political authority is problematic because governments create a special kind of reason. Joseph Raz gives the leading account of the specialness of government-created reasons: a political authority’s demands are unique because they create protected reasons. According to Raz, our government’s demand that we \( \Phi \) performs two normative functions: (i) it gives us reason to \( \Phi \), and (ii) it gives us reason not to act on countervailing reasons. Function (i) gives us a positive reason to \( \Phi \); function (ii) protects this reason to \( \Phi \) against being outweighed, making the government’s say-so decisive.

Consider a concrete example. The government’s demand that I pay income tax (i) gives me a reason to pay income tax. But this reason confronts countervailing reasons to spend those dollars differently, perhaps on fun things like sports equipment or on noble things like cancer research. Function (ii) of the government’s demand, however, takes these countervailing reasons off the metaphorical scale. Once my reasons to spend those dollars on sports equipment or cancer research

\footnote{Joseph Raz, \textit{The Authority of Law}, 17-21.}
are off the scale, my government-created reason to pay income tax tips the balance. Governments stand alongside us in using speech acts to create reasons; in creating protected reasons, Raz thinks they stand alone.

Philosophers have challenged the claim that governments create protected reasons on a variety of grounds. My challenge is that this Razian story fails to explain why political authority is so problematic. Ordinary people, after all, routinely give one another protected reasons—despite Raz’s suggestion that protected reasons are the hallmark of authority. Imagine that your partner refuses to have sex after a long and trying day. His refusal (i) gives a you a reason not to have sex; if his refusal is steadfast, it (ii) takes countervailing reasons off the scale.

One might initially suspect that your partner’s refusal outweighs your countervailing reasons rather than removing them from the scale. But outweighing is simply the wrong metaphor for this case. Picture the metaphorical scale: your desires sit on one side; your partner’s bodily autonomy sits on the other. His autonomy is a heavy consideration, but it is, in principle, possible to surpass its weight by adding more and stronger desires. It might be unlikely that you desire sex so ardently. But I’m making a theoretical point: if his bodily autonomy does not remove your desires from the scale, it is possible for your desires to outweigh his autonomy.

But it is, of course, wrong to think that your desires could outweigh his bodily autonomy, even in theory. His right to control his body is categorically more important—it cannot be overridden by desires of any strength. To imagine that your desires could outweigh his right to bodily autonomy is to elevate yourself above him. It is to disrespect him. A more plausible view

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47 A die-hard utilitarian will disagree, holding that if you desire sex ardently enough (or if enough other people desire it), your partner’s bodily autonomy be will outweighed. I think such a die-hard utilitarianism is implausible, but its advocates won’t buy in to Raz’s theory of protected reasons either—they will have nothing to do with reasons that take other reasons of the scale. For them, morality is (at least theoretically) a simple matter of weighing of everyone’s happiness. My argument is for those who do not reduce morality to simple weighing.
holds that your partner’s steadfast refusal takes your desires off the scale. And this means, to revert to Razian terms, that his steadfast refusal gives you a protected reason.

So sexual partners join governments in creating protected reasons. Parents do too: a beloved father’s dying wish might remove reasons from one’s scale. Friends can join this not-so-exclusive club as well: a promise to a dear friend—perhaps to resolve a personal disagreement over coffee—can remove countervailing reasons. And I could go on.

Given that ordinary people create protected reasons, Raz fails to pinpoint the thing that makes political authority so uniquely problematic. Again, I am not claiming that Raz is wrong to think that governments give us protected reasons. My point is that the giving of protected reasons doesn’t distinguish political authority from more ordinary and unproblematic normative powers. And I can’t see a way to remedy the problem if we continue to focus on the character of government-created reasons. Government-created reasons don’t, as a category, seem to excel in weight, what we might call persistance or durability, or anything else. Accordingly, the literature’s second proposal for distinguishing political authority moves away from the character of government-created reasons to focus on the procedure that creates them.

What’s unique and problematic about the way that governments create reasons? The leading answer is that a government’s demands are content independent. As Scott Shapiro explains, a content independent directive gives “an agent a reason to comply irrespective of whether the agent has a reason to act on [the directive’s] content.” In other words, the normative force of such directives does not depend on what we are being required do. Contrast: Sometimes we must do as random passersby command. Imagine a stranger demanding that you refrain from murder. In this case, your duty to comply depends entirely on the fact that the passerby ‘points to’ an already-

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existing moral requirement. If she instead told you to do pushups, you wouldn’t have to obey. That
an authority’s demands are content independent means that we are bound to obey whether or not
their demands pick out preexisting requirements.

While I endorse a procedural approach, a government’s directives are not, strictly speaking,
content independent. If the legislature passed a law requiring that petty thieves be drawn and
quartered, its speech act wouldn’t give us a moral reason to draw and quarter anyone. The content
of that command is simply out of bounds. Only fanatics deny that the state’s authority is
circumscribed. So whether a government’s demand creates a moral reason depends, in part, on the
content of the demand.

What is true is that governments have considerable leeway in what they command. Certain
commands are out of bounds, but so long as they don’t stray into that forbidden territory, a
government’s demands give us reasons. The problem, however, is that this again places
governments alongside ordinary folk: lots of people without political authority have similar leeway.
Teachers have considerable flexibility in the assignments they give; but I can’t require my students to
do my taxes. Employers can demand rather a lot of their employees; but they may not command
murder. Spouses can demand even more from each other; but they are constrained by (at least) the
boundaries of human dignity. Governments don’t have more leeway than parents, and they don’t
have leeway over more important domains than spouses. Given that having leeway is such a
common and unproblematic phenomenon, pointing out that governments have leeway in what they
command isn’t sufficient to explain why political authority is so uniquely problematic.

To sum up: By defining authority as the ability to use speech acts to create reasons, the
standard account ignores what makes political authority both unique and problematic. What’s
worse, contemporary literature lacks the resources to remedy this problem—people without political
authority can create protected reasons, and their directives are every bit as content independent as
the government’s. My point is not that we need an account of authority such that all and only
governments wield it. For there is no a priori reason that other institutions can’t claim the same sort
of authority that governments do. But our account should illuminate the problematic aspect of
political authority rather than ignoring it.

2.0 A NEW PROBLEM OF POLITICAL AUTHORITY

In this section, I explain the *challenge-response* model for reason creation. When ordinary folk
use speech acts to give each other reasons, their speech acts are challengeable—we get to ask for the
reasons behind the demand, or question whether the request is urgent. A concrete example will help
to guide our thinking: imagine that romantic partners have the following exchange as they get ready
for a law firm’s annual holiday party.

Pat: Oh—would you mind changing into a dressier shirt?
Alex: I’d rather not; this shirt’s comfortable. It may be a little on the casual side, but it’s well within
acceptable bounds.
Pat: I know; you’re right. And ordinarily I wouldn’t care. It’s just that some of the firm’s
partners look for every little reason to judge new associates. And, dumb as it is, they’ll
notice that my date is a little on the casual side.

This exchange conforms to what I’m calling the challenge-response model. In the course of
this conversation, Pat uses a request to give Alex a reason to change shirts. But Pat’s request is
susceptible to challenge; indeed, it is challenged. Alex says, “I’d rather not; this shirt’s comfortable.”
Confronted by this challenge, Pat must either (a) come up with an adequate response, or (b) forget
about giving Alex a reason. Pat chooses the former course, saying, “It’s just that some of the firm’s
partner’s look for every little reason to judge new associates…” The important point, here, is that
absent such a response, Pat would have failed to create a reason for Alex.

The exchange between Pat and Alex is not unique in conforming to the demands of the
challenge-response model. Recall the examples I gave earlier: Children can obligate their parents by
asking for help; but if the parents are bone tired or think that it may be important for their children
to struggle through the problem on their own, they can challenge their kid’s request: “Are you sure you need help right now?” or “I’ll help if you can’t solve it, but spend an hour or two working by yourself first.” When a student asks for a recommendation letter, a teacher may say: “Do you need one from me in particular? I’ve got an editor breathing down my neck and my book manuscript is nowhere near finished.” And, finally, when the pushy old woman in the grocery store demands that you retrieve a box of cereal from the top shelf, one could say, “There’s a similar box of cereal just over there; why do you prefer that one?” Of course, the conversation such a challenge invites might be more of a bother than simply reaching for the cereal. One might be inclined to acquiesce without comment. But the point remains: all these attempts to give reasons are challengeable.

But why are the speech acts that ordinary folk use to give one another reasons challengeable? I think the answer is that ordinary folk relate to one another as equals. When I give you a reason, I change your normative world. I (potentially) change what you are bound to do. Having the ability to give a reason to another is thus to have a certain kind of power over them. The fact of moral equality, however, means that this power cannot be unlimited. I can give you a reason; but you have something to say about it.

Modern governments, by contrast, do not satisfy the demands of the challenge-response model. When the legislature passes a law, it often fails to acknowledge, much less answer, citizens’ challenges—even when citizens demand justification in newspapers, online, or in formal protests. I can, for example, challenge my government to justify spending my tax dollars on a morally dubious war. But even if I make this challenge publicly (by writing a letter to my senator, an article for the newspaper, by organizing a demonstration, or whatever), it is unlikely to be answered. It is even more unlikely that the government will rescind the offending portion of its spending plan after failing to respond.
By purporting to give reasons without answering challenges, governments treat citizens as moral inferiors. As I explained a few paragraphs earlier, having the ability to give someone a reason is to have a kind of power over her. By carrying on as though they can give us reasons without answering our challenges, governments presume to stand in a profoundly unequal relationship with us. Governments treat citizens as persons to whom justification is not owed. And this, I submit, is the real problem with political authority.

Here's another way to conceptualize my point. We can regard normative practices as games structured by rules. On this way of thinking, I juxtaposed two games above: romantic relationships and modern politics. Both provide for the creation of reasons. But political authority is distinct—on my view—because the rules of modern politics seem to give governments a special normative status that, as it were, eliminates or replaces the ordinary burden of rational justification.

Admittedly, circumstances can conspire to make it unwise—or even wrong—to challenge demands issued by ordinary people. And this, it might seem, closes the gap I've tried to open up between political authorities and ordinary folk. But when demands issued by ordinary people are unchallengeable, it is because of exigent circumstances, not because the rules of our interactions preclude the possibility of challenge. After a heated argument, it is imprudent to challenge demands made by one's spouse. But this is not because the rules of romance give anyone the final say; it is because one ought not stoke the argument's dying embers. Or if an emergency requires swift action, it might be wrong to challenge an ordinary person's demands. But it is wrong because circumstances require a speedy response; not because settled rules of interaction give anyone immunity from challenge. Our political game, by contrast, gives governments an abiding immunity. Immunity from challenge is written into the very practice of government—in turbulent times and in periods of calm.
Someone will be quick to object that governments are not really as immune as I’ve claimed. Laws, after all, can be challenged and overturned, most obviously through judicial review. But while judicial review is an important check on the legislature’s power, it is an example of one governmental branch challenging another. The important thing for my argument is the way that the governments relate to individual citizens. And an unbiased appraisal shows, again, that legislatures and courts alike do not relate to citizens as equals. First of all, courts reserve for themselves the right to decide whether or not to entertain a citizen’s criticism of its laws. Sometimes, the decision to halt judicial process is a discretionary one, as when the Bush and Obama administrations forestalled trials in the name of national security, or when a court of discretionary review simply declines to hear a matter. Other times, it is a matter of settled law that citizens’ challenges not be heard. Either way, the government decides for itself—perforce of will, not argument—whether it will hear a citizen’s challenges. And second, even if it hears a citizen’s argument, the court claims to have the final say on the argument’s merits. Therefore, even taking mechanisms like judicial review into account, governments do not regard their laws as challengeable in anything like the way that our demands of one another standardly are. The rules of modern politics permit some challenges; yet the whole game is rigged.

Some have objected that the dialogue between Pat and Alex reflects an overly idealized view of romantic relationships. Many romantic relationships—like a highly traditionalist marriage, with its entrenched male privilege—seem to preclude one partner’s challenges in much the way that politics does. So if the rules of politics seem problematic—the objection presses—it is only because I’ve juxtaposed them with something unrealistically excellent.

In response, we should be suspicious about any relationship that credits one party the right to make demands that aren’t, even in principle, open to challenge. Un-egalitarian marriages and contemporary politics are both deeply problematic. I juxtapose politics with a better, more
egalitarian romance in order to highlight something troubling about the former. If this juxtaposition highlights something troubling about un-egalitarian relationships generally, so much the better.

Others have objected that my account doesn’t differ materially from Raz’s. Raz invented the nomenclature of protected reasons precisely to illuminate the way in which authoritative commands are immune to challenge. Their immunity—a standard account loyalist might insist—simply consists in their ability to take countervailing reasons off the scale.

But this objection overlooks the very point I’ve belabored. Once a protected moral reason is in place, we must do as it directs. Whether the process that creates that reason in the first place allows for challenges is a separate issue. My suggestion, again, is that political authority is problematic because it involves the power to create reasons through a process that is relatively insensitive to citizens’ voices.

Lastly, one might object that my account of political authority actually depicts something like despotic authority. Since despotic authority is philosophically indefensible, it may seem that my characterization of political authority stacks the deck in philosophical anarchism’s favor.

My reply is that actual governments do purport to have immunity from challenge—at least from the average citizen. The U.S. Supreme Court, for example, recently eliminated monetary limits on corporate donations to political campaigns. Whether the Court addressed citizens’ qualified objections or not, Americans now live in a country with weak campaign finance regulations. A similar point holds for Congress—its laws bind citizens regardless of whether the legislature answers citizens’ challenges.

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49 Henry Richardson has pointed out that different branches of modern democracies can challenge one another. But this shows, at most, that the different branches of government regard each other as equals. Equals, remember, have to answer challenges from those they purport to obligate. Answering challenges from other branches of government is not the same thing as answering challenges from citizens. In fact, Richardson’s observation illustrates my point: while branches of government may listen to one another’s objections, they are not in the habit of responding to the individual citizens who are subjected to their power.
I’ve developed my account of the problem of political authority by paying close attention to the lived experience of average citizens. So if the objector is right that I’ve described despotic authority, we should conclude that political authority is, in important ways, despotic. I didn’t stack the deck in anarchism’s favor, governments did. Racists, chauvinists, kings, certain religious leaders, slave owners, and others have claimed indefensible normative statuses. It would prejudice inquiry to assume that governments don’t stand alongside them.

To sum up: In both politics and romance, we must do as the balance of reasons directs. And in both politics and romance, people create reasons by performing speech acts. The difference is that the rules of our political game credit governments the ability to make demands without thereby assuming a commitment to answer citizens’ challenges.

**3.0 ONLY DEMOCRACY CAN SOLVE THE PROBLEM**

Anarchists have long insisted that political authority conflicts with citizens’ autonomy. But when pressed to explain the nature of this conflict, anarchists often produce bad arguments. Robert Paul Wolff, for example, famously argues that submission to a government is incompatible with our duty to act autonomously. He thinks that autonomy requires one to consider matters for oneself, and, thereafter, to act on one’s best judgment. Since submitting to a government involves acting on its judgment rather than one’s own—Wolff contends—submission violates our duty to act autonomously.⁵⁰

While there’s something to Wolff’s argument, his formulation won’t do. As Joseph Raz and Mark Murphy have each pointed out, it simply isn’t plausible that we have a duty to act autonomously in Wolff’s sense. We often and unproblematically defer to the judgment of others—perhaps because they are experts, or perhaps because we simply lack the time and energy to make up

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⁵⁰Robert Paul Wolff, “The Conflict Between Authority and Autonomy.”
our own minds about literally everything.\textsuperscript{51} So while it is prescient, Wolff’s argument proves far too much: it implies that we violate our autonomy whenever we defer to anyone about anything.

My account explains how political authority conflicts with autonomy without implying such overbroad conclusions. On my view, the problematic aspect of political authority is its claim to make demands without shouldering the usual burdens of rational justification. The rules of the political game, as I said before, offend against autonomy by letting governments treat citizens as people to whom justification is not owed.

So how can we solve this problem? As a first step, notice that traditional defenses of political authority are barking up the wrong tree. Consider three of the most common accounts.

According to consent theory, political authority is justified because we accept it. But treating people as though they aren’t entitled to justifications is morally problematic, whether or not they consent to it. There is a deep, structural problem with practices of marriage that appoint men to be women’s superiors. That women say, “I do,” doesn’t address this underlying problem at all. Consent simply cannot justify a practice of systematically violating autonomy—in marriage or in politics.

Natural law justifications traditionally emphasize the government’s role in directing us towards characteristically human goods. But while the realization of such goods would be a positive thing, being directed by a system that routinely violates autonomy is not.

Theories of fair play insist that we are obligated to support the fair systems of rules that benefit us. They typically measure fairness in terms of material inputs and outputs: the rules are fair if (a) they don’t take more than they give back; and (b) they take the right amounts from the right people. While there is something worthwhile about systems that are fair in this sense, my account

\textsuperscript{51} See Joseph Raz, introduction to \textit{Authority}, 11-12. See also Mark Murphy, \textit{An Essay On Divine Authority} (Ithaca: Cornell University Press, 2002), 168-169.
shows that the moral character of our rules is not exhausted by material inputs and outputs. It also matters that the rules of political game respect citizens’ autonomy. The problem of political authority is that the rules of our political game regard citizens as persons to whom justification is not owed; pointing out that the rules are fair from the perspective of material input and output is to simply miss the point.

Can we do better than these attempts to solve the problem of political authority? I think so. Locating the true problem of political authority is the first step towards a solution. Once we recognize that autonomy violations are a routine part of the practice of government, we as political theorists have two options. The first option is somewhat pessimistic and almost amounts to admitting defeat. We could admit that political authorities do a bad job of respecting autonomy, but argue that this moral loss is compensated by gains elsewhere (in security, the quality of roads, or whatever). Our view of the practice of government would be neither unrestrained endorsement nor wholesale rejection. It would be the more ambivalent, realistic recognition that governments are, morally speaking, a mixed bag.

But if we are more hopeful, there is a second option. The problem of political authority resides in processes that offend against autonomy; we can solve it by designing processes that don’t. Recent democratic defenses of political authority are a step in this direction.\textsuperscript{52} These democratic defenses of political authority aim to respect autonomy by instituting a political process that gives people a say in government.

**Conclusion**

By defining authority as the ability to use speech acts to create reasons, the standard account overlooks the problematic aspect of political authority. The problematic aspect is that the rules of

our political game allow governments to treat citizens as people to whom justification is not owed. Once we realize that this is the problem of political authority, we will see that a full solution must come from democracy. In chapters four and five, I explain how we can use democracy to solve the problem of political authority.
INTRODUCTION

All parties in the philosophical debate about political authority have accepted a false dilemma: any prima facie duty (or reason) to obey the law must derive from (a) the law’s content, or (b) the lawgiver’s authority. Philosophical anarchists opt for the first horn, holding that insofar as we must obey a law, we must obey because the law tells us to do what we should already be doing anyway. This is a coherent position; but many find it hard to stomach. The idea that life in political community with others adds no new substance to morality is, after all, counterintuitive for those who see morality as an essentially social phenomenon. Statism avoids that pitfall by opting for the second horn, insisting that we are bound to obey, in part, because of the lawgiver’s authority. But despite centuries of dedicated and creative effort, statists have yet to devise a workable defense of the lawgiver’s authority.

In this chapter, I will argue that democracy solves the problem of political authority by splitting this dilemma. In a genuine democracy, we have a prima facie duty (or, if you like, a reason) to obey the law. But this prima facie duty isn’t grounded in a lawgiver’s authority. It is grounded in our duty to cooperate with our moral peers. In order to support this conclusion, I develop a novel framework for doing democratic theory.

1.0 METADEMOCRACY, NORMATIVE DEMOCRACY, AND APPLIED DEMOCRACY

It is customary to divide ethics into three subfields: metaethics, normative ethics, and applied ethics. While the lines dividing these subfields are at times blurry, it has on the whole proven useful to separate concrete, feet-on-the-ground moral questions from questions about substantive ethical
theory, and to separate both of these from highly abstract questions about the nature and status of morality.

I propose a similar tri-partite scheme for democracy. Metademocracy is the counterpart of metaethics: just as metaethics concerns the nature and status of morality, metademocracy concerns the nature and status of democracy. Moving one step towards the concrete, normative ethics is still a theoretical enterprise, but one that is relevant to action. A theory in normative ethics, that is, gives us some clue about how we should act by articulating a substantive account of what morality is all about (maximizing happiness, respecting agency, and living excellently are the usual suspects). Similarly, a theory in normative democracy gives a substantive account of what democracies ought to do (promoting liberty, advancing citizens’ interests, and providing a forum for public justification are familiar suggestions). And finally, just as applied ethics deals with concrete issues such as abortion, applied democracy deals with concrete issues, such as whether or not a political community should enact a certain bylaw.

In this chapter, I will chart the metademocratic terrain. Carefully distinguishing between different kinds of metademocratic views is the key to determining what sort of democracy can ground a prima facie duty to obey the law.

1.1 A Metademocratic Taxonomy

The literature on the nature of democracy (what I call metademocracy) is rife with different-but-related distinctions. These distinctions carve up conceptual space in different-yet-familiar ways, making it easy to lose one’s bearings. This subsection is a map.

The first important distinction separates aggregative from deliberative conceptions of democracy. On the aggregative conceptions, democracy amounts to the mere collection of preferences: each citizen votes her preference, the votes are counted, and the majority rules.
Aggregative accounts face criticisms that are well known, well argued, and damning. Since aggregative accounts are not viable, I will focus on deliberative conceptions.

Whereas aggregative conceptions ‘resolve’ problems by counting inclinations, deliberative conceptions hold that we should solve political problems in the same way that rational people solve other problems: by reasoning. Deliberative democrats envision a logical, open debate in which people consider the merits of various legislative proposals. Debate is ideally open to all, and is designed to facilitate the exchange of reasons. This focus on rational deliberation, however, does not imply that voting has no place in a deliberative scheme. Even in the realm of the ideal, rational consensus might be elusive. When it is, voting is the fairest way to end otherwise interminable debate. But deliberative conceptions retain their rationalist hue even when they rely on voting. Rather than voting their idiosyncratic and possibly unexamined preferences, people are to vote their judgment about the balance of reasons. And since public deliberation always precedes voting in deliberative conceptions, voters’ judgments are informed.

Several competing accounts of democracy emphasize public deliberation. I’ve organized them on the decision tree below. (The boldfaced text designates a family of theories. As I will later explain, some of the theories that cast themselves as epistemic are in fact instrumentalist.)

Is the democratic process itself—the public giving of and asking for reasons—valuable?

No: **Instrumentalism**

Yes: **Procedural Conceptions**

What kind of value does the democratic process have?

Epistemic value: **Epistemic Proceduralism**

Moral value: **Moral Proceduralism**

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53 The argument, in brief, is that aggregative accounts of democracy are irrational. Many have made this criticism, and in subtly different ways. See Henry Richardson, *Democratic Autonomy* (New York: Oxford University Press, 2002), especially chapter 5. Also see Fabienne Peter, *Democratic Legitimacy* (New York: Routledge, 2009), especially chapter 2.
The most fundamental question in metademocracy is: what kind of value does a democratic assembly (potentially) have? An error theorist about democratic values would answer, “None, for there are no such things as democratic values.” Instrumentalism, epistemic proceduralism, and moral proceduralism, however, each give a different positive answer. Instrumentalists hold that the public exchange of reasons—democracy—is merely a tool for serving other valuable ends. Epistemic proceduralists claim that democratic processes themselves instantiate epistemic value. Moral proceduralists agree that democracy is intrinsically valuable, but emphasize democracy’s moral merits.

The tripartite division between instrumentalists, epistemic proceduralists, and moral proceduralists is a theoretical distinction, not a practical one. In practice, all three families might propose the same (or similar) rules for actual democratic proceedings. But each family has a different justification of those rules. Each has a different story about why democracy should emphasize public deliberation, a different story about what democracy is for. These theoretical differences correspond to different standards of legitimacy.

1.2 LEGITIMACY & AUTHORITY

“Legitimacy” is a term of art. Following Max Weber, many democratic theorists use it to describe subjects’ beliefs and attitudes. A government is legitimate, according to this usage, if people accept it as an authority over them. This sense of legitimacy is important for sociology, anthropology, and political strategy. But it isn’t much use in political philosophy: people have an unfortunate habit of deferring to morally bankrupt institutions. For the purposes of philosophical inquiry, we recognize that what people consider legitimate might not be legitimate. We need the

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54 It is worth noting, here, that moral and epistemic proceduralism are not incompatible. In fact, I devote a chunk of chapter five to combining their respective insights.
concept of legitimacy to function as a normative standard, not to simply describe subjects’ attitudes. As Fabienne Peter writes, legitimacy sets a “benchmark of acceptability or justification of political power or authority.”\textsuperscript{55} She mentions, here, two ways to construe the concept of legitimacy:

(i) As related to the justified exercise of political power.
(ii) As related to the justification of political authority.

It is wrong-headed to argue—as some have—that one of these construals is the ‘correct’ one. If we are trying to determine when governments are entitled to act coercively, interpretation (i) may be useful. But my investigation concerns political authority, and the justified exercise of power is not the same thing. The random crowd member who tackles a would-be murderer, for example, justifiably uses power without having authority over the villain. I will therefore employ interpretation (ii): ceteris paribus, a legitimate government is authoritative.

Enough about the abstract nature of legitimacy. What is its substance? What standards must a democracy satisfy to achieve legitimacy? I earlier grouped deliberative democratic theories into three classes: instrumentalism, epistemic proceduralism, and moral proceduralism. Each has a different view about what democracy is for, about the democratic telos. Each is (or should be) committed to a corresponding standard of legitimacy. Legitimacy is a normative benchmark for democracy; and as Aristotle once remarked, “the well is thought to reside in the function.”\textsuperscript{56} Because knives are for cutting, a good knife cuts well. Instrumentalists, epistemic proceduralists, and moral proceduralists advance different democratic teloi. Since each has a different idea about what democracy is for, each has a different idea about what it would mean for a democracy to do well. Each has a different standard of legitimacy.

Before pressing on, let me quickly forestall any metaphysical worries about essentialism. Democracy is human-made. It is an artifact. We can therefore determine its essence pragmatically, referring to the roles it plays in our thought and in our lives. The claim that democracy has a telos is therefore no more metaphysically ambitious than the claim that flatware and forks are (paradigmatically) for eating. The next steps in my argument are to (i) articulate the substantive conception of legitimacy each family is committed to; and (ii) and determine whether any of these conceptions of legitimacy can ground authority.

### 2.0 Legitimacy for Instrumental Conceptions of Democracy

A once-popular argument concludes that a wise and benevolent dictatorship is the ideal form of government: freed from clumsy bureaucracy, a morally excellent and capable dictator would be maximally efficient about securing important goods for citizens. Notice, however, that this argument assumes that the telos of government is simply to secure goods of independent worth (such as political stability, economic prosperity, protection of basic rights…). To put the same observation differently, this argument assumes an instrumental conception of government.

Some theorists embrace instrumentalism, but use the framework to support democracy rather than dictatorship. Democracy, they hold, arrives at wise decisions because it pools the citizens’ deliberative resources, corrects for individuals’ cognitive bias by giving everyone a vote, or whatever. The point is that instrumentalists see democracy purely as a tool for achieving independently important ends. Because instrumentalists see democracy as tool for realizing further values, they arrive at the following (scalar) conception of legitimacy:

**Instrumental Legitimacy**: A democracy is legitimate to the extent that it efficiently secures the relevant goods while minimizing negative externalities.
There is much to like about instrumental justifications: they are straightforward and can be made to rely on uncontroversial values. But instrumental conceptions of democracy cannot ground authority. In chapter two, I used an Occam-inspired test against Raz’s instrumentalism, arguing that we should invoke authority only if it is necessary to explain the shape of normative space. The problem here is the same: if the whole purpose of democracy is to serve independently valuable goods, we can, and should, use those very goods to explain our duty to obey. Think of it this way: Instrumentalists see democracy as a tool for bringing about certain ends. We use hammers and saws to build important things like houses; we use democracy to protect human rights and achieve political stability. On an instrumental account, failing to obey a democratic assembly is failing to use a good tool. When we urgently need to build another’s house, we shouldn’t eschew hammers. And since we urgently need to protect equality, we shouldn’t eschew democracy. But in both cases, the wrongness results from compromising a valuable end. We needn’t, and therefore shouldn’t, imagine that our tools are imbued with any special normative standing.

2.1 Legitimacy for Epistemic Proceduralism

Sometimes instrumentalists masquerade as epistemic proceduralists. David Estlund, for example, emphasizes epistemology and procedure; but he defends democracy by arguing that democracies get the correct answers to political questions more reliably than any other non-objectionable arrangement. For Estlund, morality rules out arrangements like epistocracy (rule of the wise), and democracy is simply the most reliable arrangement that’s left. Despite the epistemic and procedural trappings of his view, this justification of democracy places Estlund squarely in the

57 There is also much to dislike about instrumental defenses. One perennial worry is that their justification of democracy is too flimsy. Whenever a non-democratic arrangement would better serve the instrumentalist’s desired ends, the instrumentalist case for democracy collapses. This worry, of course, is isomorphic to the worry that rule consequentialism collapses into act consequentialism. It may not constitute a decisive problem; but it is a problem.
58 David Estlund, Democratic Authority.
instrumental camp. The public exchange of reasons is not, for him, valuable in itself. It is a mere means, a device, to the end of correct legislation. For Estlund, democracy is a moral calculator for figuring out what we should have been doing all along.\textsuperscript{59}

To develop an epistemic account of democracy that avoids instrumentalism, Fabienne Peter builds on a conception of epistemology developed by Helen Longino.\textsuperscript{60} The function of our epistemic practices, according to Longino, is not to produce beliefs that are justified by accurately reflecting things as they are. Epistemic practices instead play a constitutive role: our beliefs are justified \textit{because} they emerge from a properly constituted epistemic practice. For Longino, standards of correctness or truth cannot be defined without reference to the exchange of reasons that takes place in science, philosophy, or democracy. Peter summarizes the matter:

\begin{quote}
Epistemic values, in this account, are best interpreted as irreducibly procedural—there is nothing beyond critically engaging with each other in transparent and non-authoritarian ways.\textsuperscript{61}
\end{quote}

To get a better grip on this sort of epistemology, it is useful to conceptualize epistemic practices—chemistry, physics, philosophy, or whatever—as normative games. At a highly abstract level, these games are essentially the same: they are an exchange of reasons. Differences emerge when we descend from the abstract. Since chemists study testable physical phenomena, their exchange of reasons profitably takes the form of empirical research. In philosophy, by contrast, we (typically) study less concrete matters. Straightforward empirical testing doesn’t reveal much about universals, modals, or morals, so we have found it more productive to exchange reasons in the form of logical argument. This is, of course, a simplistic picture. But the simplistic picture makes a sound

\textsuperscript{59} For a more detailed treatment of Estlund’s view, see chapter two.
\textsuperscript{60} Note that some theorists take an instrumental approach to epistemology. Reliabilists, for example, hold that the value of every epistemic practice boils down to its tendency to point one towards truth. Epistemic proceduralists, however, need a conception of epistemology more like Longino’s. After all, epistemic proceduralists want to locate value in democratic processes themselves; they do not hold that democratic practices are valuable simply as a means for arriving at truth.
\textsuperscript{61} Fabienne Peter, \textit{Democratic Legitimacy}, 124.
point: epistemic practices are an exchange of reasons; the form of the exchange (or the rules for the game) depends, on which methods prove to be useful.

Democracy, on this way of thinking, is an epistemic game alongside physics or philosophy. Just as a proposition in physics is justified because it survives the scrutiny of experts playing the game of physics, a legislative proposal is justified because it survives the scrutiny of a properly constituted democracy. This sort of proceduralist epistemology is Peter’s key for locating epistemic value in democracy itself: like Estlund, Peter thinks that democracy arrives at correct legislation; unlike Estlund, she thinks that surviving the public exchange of reasons makes legislation correct.

Given that a properly constituted democracy is the conceptual root of epistemic proceduralism, an epistemic proceduralist’s account of legitimacy should tell us what a properly constituted democracy looks like.

**Epistemic Procedural Legitimacy:** A democracy is legitimate to the extent that it facilitates an exchange of reasons that is publicly observed, rational, and open to all.

This criterion of legitimacy seems to embody the moral idea of fairness; but that seeming is an illusion. The moral idea of fairness requires an exchange of reasons that is open to all simply because each person is equally deserving of a voice. But rather than defending an open, inclusive exchange on grounds of fairness, epistemic proceduralists turn to standards of rational inquiry. In a rational inquiry, researchers are supposed to respond to the substance of one another’s claims. One may disregard an interlocutor’s argument because it is fallacious; one may not disregard it because one’s interlocutor is a woman or a racial minority. Epistemic proceduralists emphasize an exchange of reasons that is open to all because an exchange of reasons that systematically excludes people compromises its epistemic bona fides. This is not, of course, to say that everyone’s voice carries the same epistemic weight. One ought to take an expert earth scientist’s pronouncements about global warming more seriously than any conjecture I might make. Some play the relevant epistemic game
better than others. But because we can’t know whether someone is good at the game without letting her play, we must maintain a policy of openness.°

With this understanding of epistemic proceduralism in hand, we can see that epistemic proceduralists achieve the appearance of democratic authority: we must do as democracy says, and, in a sense, we must do it because democracy has said it. Whereas the instrumentalist’s exclusive focus on the end products of democracy made appeals to democracy itself otiose, epistemic proceduralists assign democratic processes a constitutive role, ensuring that democratic processes cannot be similarly ‘explained around.’ This appearance of authority is, however, simply an appearance. The problem is that practical authority and epistemic prowess are conceptually different—even if we construe epistemic prowess procedurally. An illustration: if Xavi Hernandez (one of the more savvy midfielders in soccer history) tells you to stay wide and track back, you should stay wide and track back. Yet it is Xavi’s prowess—his skill in the game of soccer and his ability to instruct you—rather than any supposed practical authority that explains why you should obey.

What holds for Xavi holds for experts in other fields as well. Even assuming a proceduralist epistemology, we are not bound to reduce carbon emissions because earth scientists have the moral standing to bind us by creating new norms (practical authority, that is). We should abide by their recommendations because, being experts, they are skilled in the game of earth science. Because Peter sees politics as just another epistemic practice, democracy is in the same boat as earth science.

On a non-proceduralist epistemology like Estlund’s, we should do as democracy says because it is

° There may be a problem lurking here. The argument thus far shows that we may exclude people before we let them play. But what of those who get an opportunity to play and use that opportunity to demonstrate their incompetence? If I try out for the basketball team, but lack basic skills, the practice of organized basketball may move on without me. Consider a political analogue: Rick Perry demonstrated his utter lack of political skills (which, on an epistemically view, includes basic reasoning abilities). May we exclude him from the public exchange of reasons in the future? If so, epistemic proceduralists are not entitled to claim that our exchange of reasons must be open to all. One possible response is that it would be wrong to permanently exclude Rick Perry on the basis of his failed campaign in same way that it would be wrong to permanently exclude someone from basketball on the basis of one tryout. Or perhaps epistemic proceduralists will advert to practical considerations, arguing that if a democracy has the power to exclude people based on performance, it will likely abuse that power by excluding marginalized groups. Since my main interest, in this paper, concerns the link between democracy and authority, I will leave this problem aside and press on.
likely to arrive at a procedure-independent truth. On a procedural epistemology like Peter’s, we should do as democracy says because democratic assemblies excel at the game of politics. Either way, practical authority doesn’t enter into the picture.

To sum up: On Peter’s novel view, justification is a practice-dependent affair—it is, even in principle, impossible to define correct outcomes independently of the relevant epistemic practice. Epistemic proceduralism gives us the illusion of authority: we must do as democracy says because democracy says it. But the character of this “because” is epistemic rather than moral. Disobeying well-intentioned experts is unwise; it is not, in itself, immoral. The high cost of being wrong can, of course, make it immoral to ignore experts. Unchecked global warming will cause—has already caused—suffering and death. But my point is nonetheless sound: procedural epistemology or not, the wrongness of ignoring earth scientists is not a matter of ignoring their moral standing to constitute norms; it is a matter of hard-headed ignorance carrying grave consequences. Epistemic prowess is one thing; practical authority is another.

2.2 Legitimacy for Moral Proceduralism

Epistemic and moral proceduralists agree that democracy is intrinsically valuable. But whereas epistemic proceduralists emphasize democracy’s wisdom, moral proceduralists emphasize that democracy embodies moral equality and respects autonomy.

Moral proceduralists often begin by observing that people share a social-material world. We befriend one another. We make and raise children. We build, trade, work, think, learn, and play with others. Moral proceduralists needn’t invoke Aristotle’s essentialism, insisting that it is inescapably our nature to be social. It is enough that world-sharing is our contingent empirical reality. Realistically, we do not face a choice between community and solitude; we face choices about what kind of community we will have.
We have to make choices about the shape of our social-material world—about how we meet our physical needs, about the structure of our families, about our system of education, about the nature of our friendships, and about more besides. These choices partially specify people’s identities. John Horton has recently pointed out that it is impossible for someone in contemporary urban America to inhabit a samurai identity.\(^6\) His point is not merely that samurai training is hard to find nowadays; it is that the whole social-material context in which the role ‘samurai’ made sense is simply gone. One can’t be a lawyer without a judicial system, a priest without religion, or a professor without an academy.

Our social-material world further restricts our identities by creating some, but not other, material goods. It is impossible to be an astronaut in a society that doesn’t make rockets, and you can’t be a programmer if there are no computers. Karl Marx’s materialism probably overestimates the impact of our material context—more than one set of identities is compatible with any given material basis. But in constructing our identities, we have to work with the materials we’ve got.

In addition to limiting our identities, the social-material world is the backdrop for our relationships. People invent rules—sometimes deliberately, sometimes unconsciously—about how people in different stations should interact. Kings weren’t supposed to befriend commoners and the rules made it perilous for peasants to hang out with samurai. Contemporary rules may be less rigid, but our society is still stratified. Watch employers talk to the people who work for them (at work or outside it). Or consider the interactions between employees and their boss’s children. Social stations come bundled with expectations about how to address others, who (and whether) one should marry, how one should speak, who one should befriend, and what friends should do together in their spare time.

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We shouldn’t be tempted by the thought that we can avoid all this by adopting a laissez-faire approach. When people live together, patterns of cooperation emerge; and these patterns shape our material-social world by creating social roles for people to fill. We can make conscious, reasoned choices about the shape of our world, or we can let the chips fall where they may. Either way, our identities and relationships hang in the balance.

Neither should we be tempted by an Edmund Burke-style conservatism and have faith that a laissez-faire approach will empower capable and saintly people to shape the world for everyone’s benefit. Accidents of history, along with force and fraud, have made certain people rich and powerful. These forces don’t reliably select for capability or saintliness. More importantly, moral proceduralism’s key insight is that, as equals, all persons have the same right to determine the shape of our world. This makes democracy an attractive option: democracy gives everyone an equal say in legislation, at least ideally. The most important function of democracy, for moral proceduralists, is to honor autonomy by respecting people’s agency, and to honor equality by respecting each person’s agency equally.

Moral Procedural Legitimacy: A democracy is legitimate to the extent that it (a) gives citizens the power to shape the shared social-material world, and (b) empowers each citizen equally.

Moral proceduralists divide over how democracy honors equality. Some chase a Rousseauian vision in which citizens jointly constitute a unified collective, typically called “the people.” When “the people” makes a decision—the Rousseauian story goes—each individual has an equal share in it. Other moral proceduralists try to make do without recourse to an irreducibly plural subject.

But whether moral proceduralists chase the Rousseauian vision or aim to get by without an irreducibly plural subject, they agree about why citizens should obey the law. Scott Shapiro explains
that a citizen who undermines a democratically instituted law is guilty of an “unreasonable arrogation of power.”

Tom Christiano agrees and elaborates:

If they refuse to go along and disrupt the democratically chosen arrangements, they are assuming for themselves a right to determine how things should go that overrides the equal rights of others. They are, in Peter Singer’s words, assuming the positions of dictators in relation to the others.

Dictatorship is an overblown metaphor. The democrat who cheats on her income taxes disrespects her peers; she doesn’t belong in the same moral category as Pinochet. But stripped of exaggeration, moral proceduralism seems like a promising defense of political authority: we must do as the democratic assembly says, and we must do so because the assembly said it. What’s more, this “because” has a moral rather than an epistemic character. Our duty to obey is not grounded in anyone’s epistemic prowess; it is grounded by our moral obligation to treat others as our equals.

While there is much to like about the moral proceduralist’s view, it is a mistake to characterize the democratic government she envisions as a practical authority. As I explained in chapter two, authority is a special normative status that we should invoke only if less controversial sources of normativity prove explanatorily inadequate. My argument in this section is similar: the moral proceduralist’s commitment to grounding political obligation in our duty to respect our moral peers renders any appeal to political authority otiose. And because political authority is a controversial and hard-to-defend posit, we should do without it whenever possible.

To see why moral proceduralists can (and therefore should) do without political authority, it is helpful to ask: what sort of mistake does the disobedient democrat make? When we disobey a practical authority, our mistake is, at least in part, a failure to recognize someone’s authoritative standing. If a general has legitimate authority over a private, for example, and the private disregards

64 Scott Shapiro, “Authority,” 12.
an order without good reason, her failure to heed the general’s normative standing (or the normative standing attached to the general’s office) is an ineliminable part of the private’s wrongdoing. The private’s disobedience might also be wrong for other reasons—her disobedience might have imperiled an important mission, needlessly endangered lives, or whatever. But a full catalogue of the private’s error will include her failure to properly respond to the general’s moral standing. To put the point more formally, the private’s wrongdoing is partly a matter of uptake gone awry: she fails to see the implications of the normative difference between the general and herself.⁶⁶

Return, now, to Christiano’s and Shapiro’s account of the wrong committed by the disobedient democrat. They do not characterize the wrongness of her disobedience as a failure to recognize anyone’s special moral standing; they characterize it as mistakenly privileging oneself, as putting oneself above others. The disobedient democrat sees that her peers have (jointly) worked the social-material world into a particular shape, but then decides to structure the world according to her own designs, as if the carefully laid plans of her peers count for nothing.

Christiano’s and Shapiro’s indictment of the disobedient democrat bears an important similarity to Rawls’s indictment of libertarians. I think it would aid understanding to make this similarity explicit. Reasonable persons, according to Rawls, aim to cooperate with others on terms that those others can accept. Libertarians, by contrast, wish to impose a legal and social order that is built upon a particular (and tendentious) conception of liberty. They single out an idiosyncratic interpretation of liberty and then privilege that value at the expense of all others—despite the protests of reasonable people. Therefore, libertarians are paradigmatically unreasonable: their

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⁶⁶ I should emphasize that this argument doesn’t assume that one wrongs practical authorities when one disobeys them. Sometimes disobedience to a practical authority clearly counts as disrespecting that authority. When children brazenly disregard their parent’s directives, for example, parents have the right feel peeved. But other times, disobedience does not constitute disrespect to anyone. It is, for example, a bit odd to think disobeying a law amounts to disrespecting the legislators who voted for it. Fortunately, my argument covers both kinds of cases. Whether or not one’s disobedience counts as disrespect, one’s disobedience is a failure to recognize someone’s practical authority over one. The talk of “uptake” and “normative standing” is inspired by: Rebecca Kukla and Mark Lance, ‘Yo!’ And ‘Lo!’: The Pragmatic Topography of the Space of Reasons (Cambridge: Harvard University Press, 2008).
political program is the antithesis of reasoned cooperation. On Christiano’s and Shapiro’s analysis, the problem with disobedient democrats is essentially the same: like libertarians, disobedient democrats decide to structure interactions on their own terms, others be damned.

Someone will be quick to point out that individuals need protection. Given completely free rein, after all, democratic assemblies are likely to trample upon individual rights. But while it is true that legal systems ought to protect individuals, that fact shows only that there are some limits to democratic authority. That there are some things democratic assemblies may not command is a reason to think that our duty to cooperate has limits; it is not an invitation to enact a political program that imposes one’s favorite value on everyone else.

The problem with the disobedient democrat is, to sum up, like the problem with the disobedient private: it is a matter of uptake gone awry. But the democrat’s mistake is a failure to recognize others as moral peers with an equal right to shape the material-social world; it is not the private’s mistake of failing to recognize anyone as normatively special. The unique normative standing that constitutes authority plays no explanatory role in this account of why we ought to obey democratic assemblies. Given that moral proceduralists have no need of authority, they should dispense with it.67

Henry Richardson has voiced a natural objection to this argument: “In an unstructured collaboration between equals, there is no authority—true enough. But in most democratic

67 Mark Murphy has objected that this argument proves too much. For if sound, it would show that fair play can’t establish authority either. Theories of fair play, after all, hold that obligations of fairness to one’s peers—not an obligation to respect anyone’s moral standing—grounds our duty to obey the law. My response is two-fold. First, I don’t see why we should take it as a datum that theories of fair play would establish authority. It may be that fair play—were it not beset by technical problems—is another strategy for grounding a prima facie reason to obey the law without adverting to authority. Second, I don’t think that fair play accounts can do without authority. The mere fact that people are engaged in a system of cooperation that is fair from the perspective of material inputs and outputs isn’t sufficient to make them beholden to that system—the system could have been established coercively or the character of the system’s rules could violate people’s autonomy. Fair play theorists must, therefore, explain how the systems they favor can have claim on people, how, that is, they can count as the people’s system. One strategy would be to insist that the people must somehow have a say in the system’s rules; but this would turn theories of fair play into democratic accounts. The other possibility is to insist that the say-so of someone with authority makes the system the people’s system. And so, it seems, fair play theorists cannot do without practical authority.
arrangements, certain individuals are empowered as lawmakers, presidents, or prime ministers. Don’t these figures have exactly the sort of authority that political philosophers have been arguing about for so many years?”

I don’t think they do. We need to remember the distinction between power and authority. In a structured collaboration like democracy, power is unequally distributed. Some have the power to make the rules, others to enforce the rules, and still others to interpret the rules. The problem of political authority is to explain the moral significance of these power distributions: why does the mere fact that some are official rule makers give the rest of us a prima facie obligation to do as they say? Why isn’t the government—with its powers of rulemaking and rule enforcement—just Hart’s armed gunman writ large?

The statist’s answer invokes authority: the difference between legislators and Hart’s gunman is that legislators have a special normative status. But the statist’s answer is not the moral proceduralist’s answer. Shapiro, remember, insists that disobedient democrats assume “for themselves a right to determine how things should go that overrides the equal rights of others.” So even though democracy is a cooperative scheme marked by an unequal distribution of power, the wrongness of disobedience still boils down to misrecognizing one’s moral peers as moral inferiors. Disobedience is therefore not a failure to recognize anyone as normatively privileged. For moral proceduralists, our prima facie duty to obey the law is grounded in a duty to cooperate; it is not grounded in authority, in a normative difference between legislators and ordinary folk.

The moral proceduralist’s answer, I admit, is frustratingly schematic. It insists that our duty to obey the law derives from our duty to cooperate with others; but it does not say how that derivation is supposed to go. In what remains, I will rectify that defect. I will, that is, explain how a duty to cooperate with our moral peers can ground a prima facie duty to obey the law.
My explanation borrows from moral philosophy. Tamar Schapiro observes that practices can break in two distinct ways. First, a practice might fail to promote the ends it was intended to promote. The practice of medicine, for example, aims to make sick people well; but if physicians are in the grip of a false medical theory, they might fail to do that. Belief in bodily humors led physicians in western medieval Europe to treat patients with bloodletting. Despite failing to achieve their aim of healing, medieval physicians were (let’s suppose) involved in a practice that aimed to heal. They made mistakes, but their mistakes are intelligible as moves in the practice of healing; the physicians played badly, but the nature of the game is clear.

But there is a second, more comprehensive way for practices to break: the structure of the practice can degenerate altogether. If a group of schoolchildren is playing soccer during recess and a field player inadvertently uses her hands, she breaks the rules of soccer while leaving the structure of the game intact. However, if several kids begin to use their hands deliberately, the whole game breaks down. Imagine that they pick up the ball, run, and throw it into whichever net happens to be nearby. With the game so disrupted, it no longer makes sense to call the happenings on the field by the name ‘soccer’. Whereas medieval physician’s mistakes are intelligible as moves in the medical game, the structure of the schoolchildren’s game has degenerated so much that their actions are not intelligible as moves in the game of soccer at all. This demonstrates an important lesson: what we do depends not only on our own movements and intentions, but on those we act with. Even if one of the schoolchildren follows FIFA regulations to the letter and manages to kick the ball into one of the nets, her actions don’t count as scoring a goal. Scoring a goal is possible only in the context of soccer, after all, and the other children have subverted the whole game.

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Schapiro mobilizes this insight to solve the problem of the lying promise, a perennial objection to deontology. The problem is that if dishonesty is intrinsically wrong-making—as deontologists typically insist—there is something morally problematic about lying to the would-be murderer who asks for the whereabouts of an intended victim. In such a case, however, lying is the obviously virtuous thing to do. So the deontologist’s insistence that lying is intrinsically wrong-making seems mistaken, or at the very least, awkward. Schapiro’s creative (and, I think, correct) solution is to argue that it is impossible to be dishonest (or honest) with the would-be murderer.

Her strategy is to situate the rules of honesty in the context of a bigger game: the game of acting with and alongside others as one would in the Kingdom of Ends; or, more pithily, the game of co-legislation. She writes:

Notice that on the view I am proposing, commonsense moral rules such as “be honest” are to be regarded neither as absolute commands to be followed blindly, nor as mere rules of thumb to be valued for their efficacy. Instead they function as constitutive rules for the moral relationship [or equivalently, as constitutive rules for the game of co-legislation].

The deontological rules prescribing honesty, then, are constitutive of playing the game of co-legislation in the same way that the prohibition of NFL-style tackles is constitutive of playing soccer. But—and this is the crucial move—the rules are meant to regulate interactions within the context of the game. An NFL-style tackle is a clear foul in a soccer match; but the concept of a foul doesn’t even make sense in the schoolchildren’s unstructured running about. Similarly, lying to someone who is playing the game of co-legislation is a clear instance of dishonesty. But the would-be murderer is not playing that game; so while it is possible to mislead him, it is impossible to be dishonest with him.

Mark Murphy has raised an important objection to Schapiro’s ‘constitutive rule’ approach to honesty. While it is permissible to tell lies that will frustrate the would-be murderer’s plan, Murphy claims, it is impermissible to lie to him about anything else. So the notion that the would-be murderer is somehow ‘outside’ our game of co-legislation is overblown, and this casts doubt on Schapiro’s whole ‘constitutive rule’ approach to honesty.

I think Murphy’s objection calls for a development of Schapiro’s view rather than its abandonment. The key is to recognize that participation in the game of co-legislation is something that admits of degrees. Some people—such as a dedicated Nazi—are entirely uninterested in co-legislation. The dedicated Nazi is bent precisely on shaping the social-material world in ways that marginalize and exclude their moral peers. So on a view like Schapiro’s, Nazi’s have no right to be told the truth. This, of course, is the result that Murphy found so implausible, but its apparent implausibility is blunted by the fact that one might (and probably does) have other reasons for telling Nazi’s the truth: perhaps they are likely to discover your lie and can be expected to react so violently that the truth better serves the balance of pain and pleasure; perhaps one is a member of the resistance and must appear cooperative to protect that secret; or maybe one is truthful with a Nazi to show her a better way, hoping, that is, to induct her into the game of co-legislation. But once we (plausibly, I think) situate truth-telling in the bigger social game of co-legislation, it follows that characters like the dedicated Nazi do not have the same right to be told the truth that the rest of us do. They have quit the game.

Now imagine an example from the other end of the spectrum: a member of our community in good standing utterly loses his head and begins to plot his neighbor’s death. He is, let’s suppose, overreacting to an insult that cut particularly deeply. This case is more complicated. Whereas dedicated Nazis quit the co-legislation game and seek to replace it with oppression, the person we’re imagining now is still bound up with the life of the community in a variety of ways: perhaps he is a
friend from your recreational soccer team, perhaps his kids are classmates of your kids, perhaps he belongs to your church, or whatever. My point is that his murder plot is a deviation from a settled pattern of good and productive interaction rather than a symptom of quitting the co-legislation game altogether. This murder-plotting member of our community is neither entirely in nor entirely out of the game: insofar as he’s still participating in the life of the community he’s in; insofar as he’s planning a murder he’s out. In a case like this, Schapiro’s view gives a plausible explanation of why our intuitions pull in different directions. On the one hand, we want to say that he isn’t owed any truths that would facilitate his murder plot. Murder is, after all, inconsistent with both the letter and the spirit of co-legislation. On the other hand, it seems wrong to treat him as one would a Nazi, for he hasn’t quit the game altogether. Treating him as though he had no claim on our honesty would be tantamount to giving up on him as a moral agent. Yet he co-legislates with most of us and there seems to be a real hope that he’ll come to his moral senses. Schapiro’s view implies that we should lie when we must to stymie his murder plot, but should otherwise acknowledge him as a fellow co-legislator by telling him the truth. If one finds these results plausible, as I do, Murphy’s objection does not require us to abandon Schapiro’s ‘constitutive rule’ approach to honesty.

It might initially seem that Schapiro’s view is a sort of rule-consequentialism: moral rules like ‘be honest’ amount to prerequisites for realizing an important good. But it is important to recognize that the good Schapiro’s rules aim at is not simply the promotion of happiness. Schapiro’s moral rules aim to institute the game of co-legislation, wherein people jointly shape the social-material world while respecting one another’s autonomy. The game of co-legislation will, one hopes, result in happy states of affairs. But Schapiro’s view is not species of rule-consequentialism. Her moral rules constitutive of co-legislation; they are not mere heuristics for maximizing happiness.

Rousseau thought that politics and morality should be understood together. I agree and think that Schapiro’s moral philosophy can help us understand political obligation. Schapiro’s key
insight is that we can see rules prescribing honesty as constitutive rules with a primarily social function: while systematic misinformation can frustrate an individual’s private plans, the more significant problem is that it erodes the trust that we need to establish and maintain morally valuable relationships. So it is a mistake to understand our duty to be honest merely as an abstract imperative that applies to individuals (though, of course, it does apply to individuals). We understand honesty aright when we recognize its role in helping us live together.

I think we should approach our prima facie duty to obey democratically enacted laws in the same way that Schapiro approaches honesty—as a constitutive rule that serves a primarily social function. Moral proceduralists, recall, begin by recognizing that world-sharing is our practical reality. Since all persons have an equal right to shape our world, we have to shape it cooperatively with them. Unstructured cooperation has its charms, to be sure, but shaping the social-material world with our peers is a complicated task that involves many people. It is therefore more practical to develop institutional structures like democracy. Democracy, for moral proceduralists, is simply an institutional structure that makes it possible for us to treat our moral peers as fellow players in the game of co-legislation.

Now, if the demands of honesty and our prima facie duty to obey democratically enacted laws are both constitutive rules with a primarily social function, the wrongness of dishonesty and the wrongness of political disobedience deserve similar treatment. Let’s begin with dishonesty: on an account like Schapiro’s, there are two central moral problems with dishonesty. First, one’s dishonesty might somehow undermine the game of co-legislation (perhaps by misleading one’s fellow co-legislators on some crucial point). And second, the dishonest person treats her fellow co-legislators as if they were not, in fact, co-legislators. She disrespects them. Notice that this second

70 Of course, a lie might also be wrong for other kinds of reasons. It might create lots of unhappiness, inculcate a harmful disposition, set a bad example, or whatever. My task is to pinpoint what’s centrally wrong with dishonesty, not to catalogue all the harms that a lie might create.
source of wrongness does not depend on one’s actually undermining the game. Even if (for whatever contingent reasons) her lies have little impact on the game of co-legislation, the dishonest person manifests a problematic moral disposition. For my purposes, the most important point is that neither source of wrongness—undermining the game or disrespecting fellow co-legislators—is a notion that presupposes practical authority. And this is unsurprising: a few theorists argue that only God’s authority can account for the wrongness of acts like lying, but the vast majority have theories that account for the wrongness of lying without adverting to anyone’s authority.

Now consider the wrongness of disobeying a democratically enacted law. On an approach like mine, our prima facie duty to obey is grounded in the same way as our duty to be honest. Unsurprisingly, then, disobedience is centrally wrong for the same two reasons. First, disobedience may undermine the game of co-legislation (perhaps by destroying the social expectation that people follow the law). And second, even if the game of co-legislation remains intact, one fails to recognize others as fellow co-legislators. One acts as though the reasoned agreement of others counts for nothing. As before, these are sources of wrongness that do not presuppose anyone’s practical authority. We don’t need authority to explain the wrongness of dishonesty; we don’t need authority to explain the wrongness of disobeying democratically passed laws; so we shouldn’t invoke authority to explain either. Morality and politics are both, on my way of thinking, authority-free cooperative ventures.

At this point, those sympathetic with Richardson’s objection might think I’m being deliberately obtuse: “The statists’ project is to ground political authority, such as the ‘authority’ of a president. If a duty to cooperate with one’s moral peers can do that, then the statists are right and the philosophical anarchists are wrong. QED.” This thought, however, misidentifies the real accomplishment of moral proceduralism. Moral proceduralists don’t ground authority; they show that we can ground a prima facie reason to obey the law without adverting to authority at all.
Both statists and philosophical anarchists have accepted a false dichotomy, agreeing that any prima facie duty to obey the law must be explained by (a) the content of the law, or (b) the authority of the lawgiver. Philosophical anarchists have, of course, hopped on the first horn. We must obey a law—they think—only if it tells us to do something that we should be doing anyway. Philosophical anarchism is hard to stomach, however, because the view that political institutions add nothing to one’s moral duties is fairly counterintuitive. Statists, for their part, have clung to the second horn. They don’t deny that the law’s content can oblige us, but they insist that the lawgiver’s authority is also a source of normativity. Centuries of political philosophy, however, have shown us that any lawgiver’s authority is diabolically hard to justify.

Moral proceduralism splits the dichotomy by pointing out a third possibility: we have a prima facie obligation to obey the law, but this obligation is a constitutive rule that structures cooperation with our moral peers. The philosophical anarchists are right to think that no one has authority. But the statists are right to think that the law needn’t be morally inert, merely reporting on the obligations we already have. No one has the special moral standing of an authority; but we share a material-social world with our peers and must therefore submit to the rules that enable us to shape it together. The duty to cooperate thus replaces the duty to submit and we can happily dispense with the notion of authority that philosophers have struggled so mightily to justify.

To quickly recap: Moral proceduralists can ground a prima facie duty to obey democratically elected groups like legislatures. This prima facie duty survives at least some legislative mistakes—our reason to obey is grounded by our duty to cooperate with our moral peers, and that duty does not necessarily disappear when our peers are mistaken. We do not respect another’s autonomy, after all, if we cooperate with her when and only when we think she’s in the right. Moral proceduralists can therefore give statists what they’ve wanted all along: a duty to obey the law that survives legislative mistakes. But they can do that while simultaneously satisfying philosophical anarchists.
For philosophical anarchism is best construed as a thesis about moral ontology: anarchists explicitly agree that we can be obliged to obey the law, they deny only that there is any political authority to ground that obligation. Moral proceduralists can ground political obligations in the same way that deontologists like Schapiro ground our duty to be honest: democratic law and principles of honesty are constitutive rules for the game of co-legislation.

CONCLUSION

In this chapter, I distinguished between metademocracy, normative democracy, and applied democracy. I then distinguished between three metademocratic views: instrumentalism, epistemic proceduralism, and moral proceduralism. Moral proceduralism, I argued, can ground a prima facie reason to obey the law without adverting to political authority.

If the foregoing arguments are cogent, an adequate account of democracy will solve the problem of political authority. This is an important result, but it leaves us a difficult task: designing an adequate normative theory of democracy. In chapter five, I begin this task, sketching an approach to normative democratic theory that builds on core insights from instrumentalism, epistemic proceduralism, and moral proceduralism.
CHAPTER 5
A FRAMEWORK FOR NORMATIVE DEMOCRACY

INTRODUCTION

The last chapter showed that a properly constituted democracy solves the problem of political authority by splitting the difference between statists and philosophical anarchists: our duty to cooperate with our moral peers can generate a prima facie obligation to obey the law. This is an important result, but one that prompts a question: exactly how does a properly constituted democracy generate reasons for action?

To answer this question, we need to move beyond discussions about the abstract nature of democracy to develop a substantive account of how democracy is supposed to work. We need, that is, a normative democratic theory, a theory that characterizes right governance in the same way that a theory in normative ethics characterizes right action. Before turning to normative theory, however, I beg the reader’s patience for a brief metademocratic foray. Instrumentalism, epistemic proceduralism, and moral proceduralism are typically cast as rivals, but I combine their respective insights to form a pluralistic account of democratic legitimacy. Democracy has instrumental, epistemic, and moral axes; democratic assemblies are apt to be judged along all of them.

I then use this pluralistic account of legitimacy to adjudicate between the three leading normative theories on offer in contemporary literature.

I. Democracy as protection for liberty
II. Democracy as a means for advancing citizens’ interests equally
III. Democracy as public justification

I will argue that there are weighty reasons to worry about the legitimacy of I and II. Then, I draw upon resources from speech act theory to begin sketching a promising version of III. The speech act of proposing is the key to understanding how a democracy can generate reasons for action without relying on political authority. I will conclude by showing that my proposal-based
conception of democracy advances normative theory by using to criticize Rawls’s suggestion that we confine democratic deliberation within the boundaries of public reason.

1.0 A Pluralistic Account of Democratic Legitimacy

Instrumentalists, epistemic proceduralists, and moral proceduralists each have a different idea about what democracy is for. These ideas, I showed, result in different accounts of democratic legitimacy. While these different theories are usually cast as rivals, they needn’t be. Consider, again, the criteria of legitimacy that each advances:

**Instrumental Legitimacy:** A democracy is legitimate to the extent that it efficiently secures the relevant goods while minimizing negative externalities.

**Epistemic Procedural Legitimacy:** A democracy is legitimate to the extent that it facilitates an exchange of reasons that is public, rational, and open to all.

**Moral Procedural Legitimacy:** A democracy is legitimate to the extent that it (a) gives citizens the power to shape the shared social-material world, and (b) empowers each citizen equally.

As things now stand, each aspires to be a comprehensive definition of legitimacy. But once we purge these accounts of their aspirations to comprehensiveness, there is no logical barrier to forming a pluralistic view. On such a view, legitimacy is a multi-dimensional concept: several kinds of considerations are relevant to democratic legitimacy and each kind of consideration is irreducibly different from the others.

Perhaps a comparison to another evaluative concept will be helpful: consider the concept *good midfielder* (in soccer). To be good, midfielders need a variety of defensive talents: they must win the ball back from their opposition, they need to recognize and compensate for the frailties of their own team’s formation, and they need to anticipate where their opponent’s attack will go. But midfielders also need a variety of offensive talents. They need a playmaker’s knack for directing the attack in ways that exploit their opponent’s vulnerabilities. They must know when to send the long
ball and when to work the ball up the field with a series of short passes. And what’s more, they
need to master the skill of balancing their defensive and offensive duties, recognizing when the flow
of the game requires them to adopt a more defensive or attack-minded role. None of these criteria
are reducible to any of the others, so midfielders are (properly) judged along several different axes. I
think the evaluative concept legitimate democracy is also multi-dimensional—like midfielders,
democracies are apt to be judged along many axes.

How exactly should we glue together insights from instrumentalism, epistemic
proceduralism, and moral proceduralism? To begin, notice that there is a neat division between the
theories concerned with the democratic process itself and instrumentalism, which is outcome-
oriented (concerned, that is, with whether or not democracy secures goods like stability or
prosperity). A convenient division, then, distinguishes between procedural and outcome-oriented
standards for judging democracy.

The procedural standards, of course, come from moral and epistemic proceduralism. Despite their traditional opposition, epistemic and moral proceduralism complement each other
quite well. Exchanging reasons with one another, after all, is one of the primary ways we show
respect. If I have an idea about how to shape our social-material world and I don’t bother to
consult you, I disrespect you. I treat you as though you don’t deserve a say in the matter. Morality
requires that I consult you; that I listen and respond to your objections; that I play the game of
giving and asking for reasons with you.

My point is that a democracy cannot live up to the moral proceduralist’s vision if it does not
also live up to the epistemic proceduralist’s vision. An inclusive public deliberation is important both
for the epistemic task of making democracy wise and for the moral task of respecting citizens’
autonomy. Epistemic and moral proceduralism, that is, have standards of legitimacy that combine
neatly into a single procedural criterion:
**Procedural Legitimacy:** A democracy is legitimate to the extent that (subject to the constraints of equality) it empowers citizens to shape the shared material-social world through a deliberation that is public, rational, and open to all.

Turn, now, to outcomes. The epistemic and moral commitments that undergird the procedural criterion of legitimacy should lead us to see the wisdom in instrumentalism. Moral proceduralists insist upon the moral importance of democratic institutions that respect autonomy and equality. But autonomy and equality are not the only things that matter morally. It matters that our political systems are stable, protect basic human rights, and the like. It matters, in other words, that democracies secure the benefits that instrumentalists fixate on.

Not only do the instrumentalist’s benefits matter, they are so important that a democracy’s legitimacy hangs in the balance. Whether it treats people as equals or not, a political system that disintegrates every few years will cause needless suffering. And on every plausible moral theory, needless suffering is bad thing. So if we begin with moral proceduralism and have a plausible moral theory—any plausible moral theory—we will have to accommodate instrumentalism. A democracy’s legitimacy turns, in part, on whether it secures the instrumentalist’s goods.

Our foundational epistemic commitments dovetail with instrumentalism as well. The procedural criterion of legitimacy is partially motivated by a concern that our democratic assemblies be structured in a way that makes it wise. And it is hard to think of better evidence of an assembly’s foolishness than its persistent failure to protect people’s rights, maintain stability, and the like. Whether we adopt a proceduralist epistemology like Longino’s or not, bad outcomes are evidence that something has gone wrong with our decision-making procedure. I propose, therefore, that we supplement our procedural criterion of legitimacy with an outcome-oriented criterion:

**Outcome Legitimacy:** A democracy is legitimate to the extent that it efficiently secures goods like stability and the protection of basic human rights while minimizing negative externalities.
So a democracy’s legitimacy, in the end, turns on whether, and to what extent, it satisfies both the procedural and the outcome criterion. My pluralistic account of democratic legitimacy opens up the possibility of tension: efforts to satisfy the procedural criterion might come at the cost of worse outcomes, or vice versa. One might be inclined to call this a shortcoming: whereas I’ve merely implied that such tension is possible, a theory of democracy should suggest a solution. This criticism, however, confuses a normative democratic task for a metademocratic task. In metademocracy, we aim to articulate the nature of democratic assemblies. I have argued that democracies are apt to be evaluated by procedural and by outcome-oriented standards. Whether we should privilege procedural standards or outcome oriented standards on a token occasion is a matter for normative democratic theory. Or, perhaps, the question of whether we should privilege procedural or outcome-oriented standards depends so unpredictably on the particulars of a situation that principles from normative theory will be of little use. (An analogy: particularism in moral theory.) Neither metaethics nor metademocracy resolves first-order moral disputes. That is not their job.

2.0 Normative Democracy: The Players

Just as a normative theory of ethics provides some guidance by articulating a substantive account of right action (as maximizing happiness, respecting agency, or living excellently), a normative theory of democracy provides guidance by articulating a substantive account of right governance. As I mentioned in the introduction, there are three kinds of normative views:

I. Democracy as protection for liberty
II. Democracy as a means for advancing citizens’ interests equally
III. Democracy as public justification

In what follows, I will use my pluralistic account of legitimacy to object to I and II. I will then show how we can construct a version of III that succeeds where I and II fail.
2.1 Democracy as Protection for Liberty

Instrumentalists regard democracy as a tool for furthering independently valuable ends. In Western politics, individual liberty is the most popular such end. John Stuart Mill, Isaiah Berlin, Carol Gould, and others have all argued that democracy’s raison d’être is the protection of individual liberty.

The contours of liberty-based views should be familiar. In the state of nature, people’s aims and projects will conflict. Because they lack official judicial mechanisms to solve these conflicts, people in the state of nature will settle matters with violence (or, at least, there will be an ever-present threat of violence). In this state of war, people are not free—the threat of violence significantly constrains their behavior. The solution, for liberty-views, is to install a government. Theorists differ over just how much power this government needs, but the general point of the government is always the same: to remove the threat of violence by establishing a stable, predictable regime. Government thus frees the people.

Besides ending the war of all against all, what should the government do? What should this government be like? According to most liberty-based views, the government should be democratic. Like everything else for the liberty theorist, the reason derives from individual liberty. Monarchies, oligarchies, and any other form of government that empowers a select few are liable to oppress people—particularly those without a strong political voice. Democracy, in which each person gets an equal say, is more likely to maximize individual’s freedom. More formally, the (lexically ordered) goals of democracy for the liberty theorist are:

(i) End (or prevent) the war of all against all.
(ii) Secure for each person the largest set of liberties that is compatible with everyone else enjoying the same set.

Theorists divide, however, about precisely what sort of liberty democracy should protect. While Isaiah Berlin acknowledges positive freedom, he argues that democracy should exclusively
concern itself with protecting its negative counterpart. Democracies are, according to Berlin, to eliminate as many ‘external’ constraints to freedom as possible. Carol Gould’s account of liberty, by contrast, blends together negative and positive aspects of freedom. But regardless of their conception of liberty, their common structure makes liberty views vulnerable to many of the same criticisms.

Leave aside doubts about the liberty theorist’s state-of-nature approach to justifying government. Three serious problems remain. We have already seen the first: being a species of instrumentalism, liberty-based views are unable to ground a prima facie duty to obey the law. (For the details of this argument, see chapter four.)

The second problem is that liberty-based views fair badly in the outcome-oriented test of legitimacy. However we construe liberty, it is but one among many important values (other values include stability, equality, happiness, the good of public justification…). Yet despite this plurality of values, liberty-based views proceed as if liberty is the only one worth pursuing. Compare: Peter Singer is surely right that pain and pleasure matter morally; but he is just as surely wrong to think that pain and pleasure are the only things that matter. (There is also autonomy, after all.) The outcome-oriented test of legitimacy holds that democratic assemblies are legitimate to the extent that they secure important instrumental goods. There is a wide array of instrumental goods; liberty-based theories neglect most of them.

The third problem is that as badly as liberty-based views do vis-à-vis the outcome-oriented criterion of legitimacy, they do even worse vis-à-vis the procedural criterion. Moral proceduralists taught us that democracy is a means for shaping our social-material world with our moral peers. This process of shaping the social-material world is, in a sense, the process of writing certain values

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into society’s basic structure. Given what Rawls has called the fact of pluralism, different citizens have different ideas about which values we should privilege. Yet liberty-based views would privilege liberty despite citizens’ protests. For a concrete example, recent tax cuts in Washington D.C. would have eliminated programs that provide for homeless people. The majority of D.C. citizens balked and demanded higher taxes so that the homeless would not be left out in the cold (literally, as one of the imperiled programs was a van service that takes the homeless to shelter when temperatures drop below freezing). Given that D.C. citizens demanded higher taxes, it would have been antidemocratic for city officials to cite negative liberty as a reason to refuse them. The procedural criterion of legitimacy holds that democracies are legitimate to the extent that they empower citizens equally to participate in the public deliberation and legislation. Yet liberty-based views counsel government officials to ignore citizens whenever the citizens happen to be clamoring for something besides liberty.

The root of this problem is that liberty-based views have lost sight of the fact that democracy is a cooperative venture. Cooperation requires compromise. Given the fact of pluralism and the unlikelihood of universal agreement, citizens must compromise with one another about which values they write into society’s basic structure. Yet liberty-based views are, by their very definition, unable to accept compromise. Even Carol Gould, whose sensitivity to the interconnectedness of people is somewhat unique among liberty theorists, writes:

Where a person is constrained, coerced, or manipulated to act on behalf of another’s interests or aims, then it may be said that such actions do not contribute to a person’s self-development. These are cases of domination by others, and [my] conception of freedom … is incompatible with such domination.\(^\text{72}\)

It would be a problem if people had no say over which compromises they end up making, if our compromises worked to the exclusive benefit of the same few people, or if the burdens of

compromise were foisted upon a discrete and insular minority. But the mere fact that one is making compromises about the structure of society does not constitute a moral problem; it is a natural and appropriate part of living together.

2.2 DEMOCRACY AS A MEANS FOR ADVANCING INTERESTS EQUALLY

A second normative account holds that democracy is fundamentally about advancing citizens’ interests while satisfying the demands of moral equality. Tom Christiano is the foremost advocate of such a view. Whereas liberty-based views privilege a single value above all others and largely ignore citizens’ voices, Christiano’s account empowers citizens to determine which values society will promote. The outline of Christiano’s view is simple: Each citizen has a variety of interests. Some individuals’ interests are co-possible, others conflict. Given that people’s interests bias their judgment, an unequal distribution of legislative power is a prescription for domination. Democracy, on the view I’m explaining here, is the antidote: by giving each an equal say, democracy ensures that no one’s interests are overlooked or ignored.

So far so good: Christiano’s account resonates nicely with core insights from moral proceduralism. But what role does public deliberation play in an account like Christiano’s? The answer isn’t immediately obvious. For the mere insistence that each have an equal quantity of legislative power doesn’t imply anything about the role of public deliberation.

Christiano addresses this lacuna in a later article, arguing that deliberation serves, in the first place, a strictly instrumental function. Deliberation, he holds, enables democratic assemblies to make better decisions than they otherwise would. To see why, I find it helpful to imagine an individual who acts uncritically on her perceived interests. Because she forgoes the instrumental advantages of reflection, such a person is especially likely to choose ends that conflict with one another. And what is perhaps worse, she is likely to pursue ends that she will later regret. An assembly that forgoes the instrumental advantages of reflection would do no better: it too would
pursue contradictory and regret-worthy ends. Deliberation is not, of course, proof against these things, but it helps.

So on a view like Christiano’s, the value of deliberation is, in the first place, instrumental. Once public deliberation is up and running, however, equality comes into play. If an individual or a minority is effectively shut out of deliberative proceedings, any ensuing legislation is likely to neglect their interests. It is only by listening to another that we can even hope to appreciate her point of view; so the equal importance of citizen’s interests demands that everyone have a voice. Moreover, there is an expressive problem with excluding citizens from deliberation: our refusal to hear them communicates a profound disrespect. We treat them as inferiors with no right stand alongside side us in legislative proceedings. In sum: Christiano is an instrumentalist about the value of deliberation; but if we are going to have public deliberation at all, we must structure it in a way that satisfies the demands of equality.

I think each of Christiano’s positive claims is correct: democracy is a means for advancing interests and counteracting bias, deliberation has important instrumental benefits, and excluding people from deliberation is wrong for all the reasons he cites. The problem with views like Christiano’s is that they don’t go far enough. The procedural criterion of legitimacy requires us to value deliberation in itself, not merely as an instrument whose use must is subject to the demands of equality. The following passage makes the problem particularly clear:

Now consider a … democratic society in which no one discusses the merits of policy and law with one another. Either each person simply reflects on his or her own what the best policy is, as Rousseau recommended citizens do, or everyone engages in bargaining and coalition building without discussing the merits of the preferences from which they begin. Here I suggest that there is nothing intrinsically wrong with either situation. No one is treating anyone else unjustly or with contempt. No one’s interests or points of view are privileged…. Clearly there is something amiss in this situation: citizens fail to go through the learning process that discussion among differently situated persons with different points of view affords. But
it is not intrinsically problematic; as long as each person’s deliberations take place against the background of equality of access to the conditions of decision making [such as access to relevant information or education], there is no injustice.\textsuperscript{73}

There is no argument here. Christiano hopes the reader will find his claims intuitive: if no one is being privileged, there is nothing \textit{inherently} wrong with the political situation; the situation is defective only in the sense that citizens won’t reap the instrumental benefits of public deliberation. I find Christiano’s claims here \textit{un}intuitive and will argue that our procedural commitments—commitments that Christiano shares—require us to reject Christiano’s instrumentalism about public deliberation.

In §1, I showed that moral and epistemic proceduralism made fine bedfellows. Moral proceduralism aims to respect autonomy and equality by empowering all citizens equally to shape their social-material world. Epistemic proceduralism tells us how to satisfy moral proceduralism’s aims. Exchanging reasons with one another in rational deliberation is, after all, one of the main ways that we show respect to one another. In politics, we make decisions with profound ramifications for people’s lives. Taking the time to hear someone’s opinions, objections, and questions is how we recognize her as an equal with a valid point of view. As I said before, an inclusive public deliberation is important for both for the epistemic task of making democracy wise and for the moral task of respecting citizens’ autonomy.

So when Christiano says there is nothing intrinsically wrong with a political situation wherein each citizen deliberates privately but doesn’t bother to consult her peers, he is wrong. \textit{Each} citizen is disrespecting all the others. No one is being singled out for bad treatment, true enough. But respecting others is not simply a matter of regarding everyone in the same way; it is also matter of treating people \textit{well}. We respect our moral peers as rational agents when we give them a chance to

change our minds, to answer our questions, to make objections, and to ask questions of their own. We respect them, in other words, when we play the game of giving and asking for reasons alongside them. Public deliberation does not merely have instrumental value (though, one hopes, it does have that). Public deliberation also has intrinsic value as the recognition of people’s rational agency.

2.3 DEMOCRACY AS PUBLIC JUSTIFICATION

A third normative account of democracy addresses the deficiency of the second. The problem with conceiving of democracy simply as a means for advancing citizen’s interests is that it instrumentalizes public deliberation: if the point of democracy is merely to advance citizens’ interests, public deliberation is, at best, a helpful tool in that pursuit. But, as I argued above, public deliberation is valuable in itself; it constitutes respect for citizens’ rational agency. The third normative account focuses on respect for rational agency by conceiving of democracy as a forum for public justification.

Unfortunately, the literature on democracy as public justification is a dense, heterogeneous thicket. Whereas liberty-based views and interest-based views exhibit readily assailable structures, accounts of democracy as public justification vary so much that a comprehensive overview would lack systematicity. For the sake of clarity and order, I will proceed as follows:

A. Sketch an account of the speech act of proposing
B. Leverage my account of proposing into a conception of democracy as public justification
C. Reflect on Rawls’s influential suggestion that democratic assemblies confine themselves to public reason in order to prove that my conception of democracy advances normative democratic theory.

A. PROPOSALS: WHAT ARE THEY?

Rebecca Kukla and Mark Lance recently developed a powerful framework for understanding language.74 Their framework is pragmatic: rather than understanding words and phrases in terms of logical, grammatical, or representational structure, Kukla and Lance analyze speech acts in terms of

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74 Rebecca Kukla and Mark Lance, ‘Yo’ and ‘Lo’: the pragmatic topography of the space of reasons.
how we *use* them. They conceptualize linguistic practices as games structured by rules and speech acts as moves in these games. When seeking to understand a category of speech acts $C$, their primary question is: how does an act of type $C$ function in the game?

Imagine: I interrupt our stroll through the neighborhood by exclaiming, “Lo, a rabbit.” This speech act—Kukla and Lance call it an observative—is a move. Within the rules of the game, it sets the stage for your next move. You can take up my speech act as fodder for further inference—“I’d better protect my garden” or “Given the way rabbits breed, there are probably more.” Or alternatively, you might suspect that my observative was somehow defective—an invalid move—and seek to strike it down. Rather than taking my observative up as fodder for further inference, your next move would be a challenge—“Are you sure? You’re not wearing your contacts and your unaided vision sucks.” This challenge is itself a move in our game. It creates a debt: I now owe an explanation of how I could have recognized a distant rabbit without help from corrective lenses.

Again, the important point is that speech acts are moves in a linguistic game, and that one’s moves are typically responses to earlier moves.

Kukla’s and Lance’s pragmatic framework is particularly useful for thinking about normatively complicated speech acts like commands. Commands, they point out, come in two varieties: alethic and constitutive. An *alethic* imperative is, in a sense, like an observative. Its function is to license further inference by calling attention to a fact. But whereas an observative—“Lo, a rabbit”—calls attention to the existence of an ‘ordinary’ fact, an alethic imperative calls attention to reasons. Consider an example: noticing my dramatically increased crankiness, my partner tells me, “Luke, take your allergy medicine!” My allergies cause discomfort, thereby making it hard to work productively. They make me irritable, thereby interfering with relationships I value.

75 In ‘Yo’ and ‘Lo’ Kukla and Lance use “constative” in place of “constitutive.” But, apparently, linguists use the label “constative” differently. Mark Lance indicated in conversation that he now favors “constitutive,” and I will use the new terminology.
These facts give me a reason to pop a few antihistamines. 76 When my partner tells me to take my allergy medicine, the command’s function is to direct my attention to this reason.

Now let me complicate the picture: whereas some alethic imperatives call one’s attention to already-existing reasons, constitutive imperatives create reasons. If I order my students to write a paper, for example, I give them a reason to write. Speech acts like constitutive imperatives add an interesting and important flexibility to our language games—we are not limited to reporting on the balance of reasons, we can attempt to shift the balance. Kukla’s and Lance’s framework thus shows how our normative commitments can, in part, result from intentional human activity. In the balance of this subsection, I will examine another normatively complicated class of speech acts: proposals. Like Kukla and Lance, I will adopt a pragmatic order of explanation, aiming to understand proposals in terms of their function in linguistic practice.

To begin, I think that proposals, like commands, come in two varieties. One kind of proposal is at home in explanation. Imagine, for example, that car trouble interrupts a trio of friends on a road trip. As the car sits useless on the side of the road, the trio begins thinking about what’s gone wrong. One suggests that the timing belt might be too loose. The second friend, however, is unimpressed: “If that were the problem, we’d have heard a repetitive whining/squeaking sound for the last several miles.” Seeking other explanations, the first friend tries again, saying, “Well, maybe we’re out of gas and we can’t tell because the gauge is broken.” But the third friend shoots down this explanation just as quickly: “That can’t be; we filled the tank an hour ago.”

These road-tripping friends pool their deliberative resources to discover an explanation. One friend proposes a candidate explanation; and once the explanation is in public space, so to speak, it becomes the object of the group’s attention. More formally, proposals in an explanatory

76 Or, if you like, these facts together with my desires give me a reason. I am not taking a stand on the metaphysical nature of reasons.
context focus the group’s deliberative resources on a single target by picking out a particular explanation from the infinity of possible explanations. Call proposals of this kind explanatory proposals.

As a move in a language game, an explanatory proposal invites comment and criticism. When someone uses an explanatory proposal to put a candidate explanation on the docket, subsequent moves in the game should, if all goes well, engage the explanation’s merits. But while explanatory proposals are moves in a normatively structured practice, there is a sense in which they are normatively inert: they do not create reasons for action as, say, constitutive imperatives do. This is not to say that explanation is unrelated to action. If our road-tripping trio discovers that their car has leaked all its oil, they have reason to repair the leak and replenish the oil. But when explanations give us reasons for action, they do so indirectly: they give us reasons for belief that, in turn, can give rise to reasons for action. A constitutive imperative, by contrast, creates reasons for action directly.

When I demand that my students write a paper, I am not aiming to convince them that writing would be a good idea and hoping that they’ll come to the right practical conclusion on their own. My demand that my students write a paper simply gives them a reason to write.

The second kind of proposal has its home in planning. And like a constitutive imperative, it is normatively fecund. Whereas the aim of explanation is to discover a fact (such as the fact that the oil line is leaking), the aim of planning is to achieve our ends. This introduces an element of subjectivity, yet planning is a rational enterprise nonetheless. Consider an example: a recreational soccer team is deciding how to assign positions. Their aims include winning, playing an enjoyable style of soccer, and ensuring that no one gets stuck with a position she dislikes. Some choices are so obvious that deliberation is all but unnecessary: a goal keeper’s skill set is so unique that if your team

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77 One might suspect that I am convincing my students that they should write by making an implicit threat to their GPA should they do otherwise. It is, of course, true that my students’ GPA would suffer if they didn’t write papers when I told them to. But the reduction of authority to commands backed by a threat has been tried. As we saw in chapter one, it doesn’t work.
has a talented, willing keeper, christening her the net-minder is a no-brainer. But most other decisions are not so straightforward. The fact that someone is fast is a reason to put her at outside midfield or forward; but if your team lacks reliable fullbacks, you may need her speed at sweeper to chase down your opponents’ breakaways. Complicating matters further, some good players simply don’t play well together. In traditional lineups, two center midfielders work together to control the middle of the field and orchestrate the offense. But it often happens that a team’s most ‘natural’ center midfielders make an ineffective pairing. Figuring out how to combine the individual talents of eleven people is rarely a straightforward affair. (And this only describes the challenge of assembling a starting lineup; substitution patterns pose another problem, with the additional constraint of distributing playing time fairly.)

Often, the laying of plans is a group activity. When she sees that a particular lineup doesn’t gel, one of the players might say during halftime, “We need a more defensive presence in midfield, let’s switch Tom and Janet. Tom’s good in defense, but we need his tenacity further up the field, and having Janet’s passing skills on defense will help us keep possession of the ball in our own half.” This is a proposal. Just as an explanatory proposal puts a candidate explanation on the docket, a planning proposal puts a candidate plan on the docket. As before, the proposal focuses the group’s deliberative resources on a definite target so that people can profitably trade reasons. Tom himself might respond, “I agree about needing a more defensive presence in the midfield; but their midfielders are really fast and I don’t think I can cover them. What if we put Juan there instead?”

Up to this point, explanatory proposals and planning proposals have served much the same function: making something salient for group deliberation. And in both cases, the group’s deliberation counts as truth-oriented. In the explanatory context this is easy to see: there is an objective fact of the matter about what caused the trio’s car to stop working. In the planning context, deliberation is still truth-oriented, albeit in a somewhat thinner sense. In planning, we do
not aim to discover an entirely ‘objective’ fact (such as the fact that the oil line is leaking), but the
degree to which our plans fail or succeed depends on how things in the world unfold. If the soccer
team tinkers with its lineup only to be overrun, outscored, and outplayed, their plans have failed.
Planning is truth-oriented in the sense that only certain outcomes count as success, and there are
facts of the matter about whether or not a given plan is likely to realize a successful outcome.

Beyond this point, the differences between explanatory proposals and planning proposals
overshadow the similarities. Explanatory proposals are conceptually linked to reasons for belief, not
reasons for action. If a group of expert mechanics deliberating about the trio’s busted car settles on
the proposal that the oil line leaks, the trio has a reason to believe that the oil line leaks. The fact
that competent earth scientists have settled on the proposal that carbon emissions cause global
warming constitutes a reason to believe that carbon emissions cause global warming. And so on. In
general—and given a proceduralist epistemology—when a deliberative process leads experts to
endorse a proposal, their consensus makes belief in that that proposal correct.

For the sake of clear exposition, I have thus far focused on explanatory proposals in
contexts like automotive repair and earth science. But as I explained in chapter four, epistemic
proceduralists see important similarities between all epistemic practices. When viewed abstractly,
philosophy, chemistry, physics, history, and the like are all truth-oriented inquiries that feature an
exchange of reasons. Since, say, chemists study testable, empirical phenomena, the exchange of
reasons in chemistry profitably takes an experimental form. Because straightforward empirical
testing reveals little about traditional philosophical topics, philosophers have by and large turned to
logical argument instead. But whatever form deliberation takes, explanatory proposals are an
important deliberative tool; we use them whenever we want to focus a group’s attention on a
candidate explanation.
This means that we use explanatory proposals in normative fields like ethics or political philosophy. In chapter four, for example, I proposed a solution to the problem of political authority: our duty to cooperate with our moral peers can ground a prima facie duty to obey the law. Consequentialists propose ‘maximizing happiness’ as an explanation of what makes actions right. Philippa Foot proposed the doing-allowing distinction to explain an alleged disanalogy between abortion and the case of Judith Jarvis Thompson’s imagined violinist. And so on. That we use explanatory proposals in ethics and political philosophy may seem inconsistent with my claim that explanatory proposals are conceptually tied to belief rather than action. Political philosophy and ethics, after all, are supposed to be action guiding.

The apparent inconsistency dissipates, however, when we focus on exactly how political philosophy and ethics are supposed to guide action. Consequentialists aim to guide action by giving us reasons to believe that morality requires the maximization of happiness. Judith Jarvis Thompson’s defense of abortion aims to guide action by changing (our confirming) our beliefs about the implications of self-ownership and autonomy. In the *Nicomachean Ethics*, for yet another example, Aristotle offers successive specifications of happiness to explain how we should orient our lives. So while ethicists and political philosophers work in a practical field—they ask, that is, what we should do—they aim to guide action in the same way that climate scientists aim to guide action: by giving us reasons for belief that, in turn, give us reasons to act.

Notice how different the ethicist and the practical authority are: ethicists aim to rationally convince; practical authorities simply *command*. As I said earlier, when I command my students to write a paper, I am not trying to convince them that writing is in their best interest (though it is) and then hoping that they’ll come to the right conclusion on their own. I give them a reason without detour through rational argument. Similarly, military leaders (who purport to wield practical authority) simply give their underlings reasons for action. They do not, qua commander, aim to
convince their underlings to act by pointing out the merits of their plan. So even when our
deliberation concerns practical matters, explanatory proposals are conceptually tied to reasons for belief. The relevant beliefs may (or may not) give rise to subsequent reasons for action.

By contrast, an accepted planning proposal functions more like a constitutive imperative:
planning proposals are conceptually tied to reasons for action. To put the same point differently,
the primary function of planning proposals in linguistic practice is to give persons reasons to act. When they adopt plans for a new lineup, members of the soccer team have reasons to play new positions. When the people in a cooking club jointly form a plan for who will bring and cook what—to borrow an example from Scott Shapiro—they have reasons to act. And, as I’ve been arguing off and on for two chapters, when the legislature in a genuine democracy settles on a law, citizens have reasons to do as the law directs.

Yet planning proposals are not exactly like constitutive imperatives. Whereas constitutive imperatives purport to create reasons for action without detour through rational argument, planning proposals invite comment and criticism. When Tom proposes that Juan move to midfield, he is inviting his teammates to evaluate the merits of his plan. Planning proposals are, remember, deliberative tools: they put a candidate plan on the docket for public scrutiny. Planning proposals are like constitutive imperatives in that they create reasons for action; they are unlike planning proposals in that they invite, rather than preclude, rational deliberation. These properties, I will argue in the next subsection, make planning proposals apt for cooperative ventures like democracy.78

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78 Putting this aside in the main text would interrupt my argument’s flow, but there is a bootstrapping-style objection to my account of planning proposals. I argue that when group deliberation settles on a planning proposal, members of the group have a reason to abide by the plan. But in the case of an individual, it doesn’t seem that merely laying plans to \( \Phi \) gives one a reason to \( \Phi \). But—the objection presses—if bootstrapping is suspicious in the individual case, it is surely suspicious in the group case as well. However much bootstrapping is a problem in the individual case, it is less a problem in case of group planning. Group planning involves more than a single agent, and this makes all the difference. An individual who disregards a group’s plan disrespects her moral peers by acting as though the considered judgment of her co-legislators counts for nothing. In the individual case, by contrast, one does not disrespect anyone by revisiting one’s own plans. Since my claim is simply that group plans give reasons to individuals, I am not vulnerable to a
For some time, philosophers have characterized authority as the power to create reasons for action. But when pressed to say exactly how authorities create reasons, most philosophers turn to what Kukla and Lance call constitutive commands. David Estlund characterizes authority as “the power of one agent (emphasizing especially the state) to morally require or forbid actions by others through commands.” 79 Estlund thus singles out commands as the instruments of authority. In so doing, he numbers among the overwhelming majority. When discussing political authority, Friedman focuses more or less exclusively on what he takes to be an “especially significant kind of authoritative utterance—a command.” 80 In his argument for anarchism, Robert P. Wolff emphasizes that legitimate authority is “a matter of the right to command, and of the correlative obligation to obey the person who issues the command.” 81 And Raz too says that political authority is a “right to command.” 82 Admittedly, Raz goes on to say that political authority must also cover lawmaking, regulation setting, and punishing. But Raz’s choice of examples—general’s giving commands, arbiters giving commands, and the like—suggests that he takes commanding to be the paradigmatic exercise of authority.

The image of government-as-commander, however, is hard to square with democracy. As I explained in chapter four, much of democracy’s appeal lies in its recognition that everyone has the same right to structure the social-material world we inevitably share. It takes a special practical authority issue constitutive commands, and anointing anyone or anything to the privileged place of official commander seems to vitiate the recognition of equality that made democracy so attractive in

79 David Estlund, Democratic Authority, 2.
82 Joseph Raz, introduction to Authority, 2.
the first place. Yet many political philosophers, it seems, have been unable to see how else political institutions could generate reasons for action.

In the balance of this section, I will leverage my account of proposals into an account of democracy. By casting imperatives aside in favor of proposals, we can develop an account of democracy that generates a prima facie obligation to obey the law without relying on the sort of practical authority presupposed by constitutive imperatives.

My account builds on the results from chapter four. People have to share a social-material world. We can make reasoned choices about the shape of our world, or we can let the chips fall where they may. I argued that given what’s at stake, leaving the shape of our world to chance is so foolhardy that it borders on immoral. We need to make wise choices about our world’s structure; so we need rational deliberation. Choosing the basic structure of social-material world is, in a way, like choosing a career: there typically isn’t a single best choice. While some choices are obviously bad—no one should take up contract killing; unrestrained capitalism mercilessly exploits the most vulnerable—there is a wide range of acceptable options. We need to weigh the merits and defects of these options to make an educated choice. Yet whereas careers and basic structures are alike in that we have some latitude to choose, the choice of a basic structure is different in that our deliberation must be inclusive. Because each has an equal right to say how things should go, deliberation about basic structures may not ignore anyone.83

Last section’s account of planning proposals builds on this general picture by explaining how a deliberative process between equals can generate reasons for action. Citizens will use planning proposals to put candidate plans for the basic structure (or amendments thereto) on the docket. Since planning proposals do not bypass deliberation as constitutive imperatives do, these proposals

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83 Does this imply that direct democracy is the only morally acceptable option? I’m not sure. The answer depends upon whether there is a workable account of political representation. Political representation, however, is an issue for another day.
invite debate. This is a process of public justification. Citizens aim show each other that the downside of that proposal isn’t worth the risk, or that this proposal will disproportionately redound to the interests of the well off, or whatever. If deliberation settles on a particular plan for the basic structure, each individual citizen has a reason to abide by the plan. To do otherwise would, as chapter four explains, disrespect one’s moral peers by acting as though their considered judgment counts for nothing. This source of wrongness, notice, does not depend on one actually undermining the community’s plan. It would be wrong to undermine the community’s plan; but acting as though the considered judgments of others have no normative traction on one is to fail to treat others as co-legislators.

One might think that one’s co-legislators have no right to object if one’s disobedience doesn’t undermine the group’s plans. In some cases, this objection may be correct. But it is an invitation to debate the limits of democratic authority. Group plans shouldn’t pursue trivial ends at the expense of important individual rights or interests. But the fact that there are some plans a democracy may not make is not a reason for individuals to do whatever they wish, as though the considered judgments of their co-legislators count for nothing. That is simply arrogance.

I should also point out that I am not developing a version of consent theory. I argued above that when deliberation settles on a plan, each individual citizen has a reason to abide by it. And, one might initially suspect, deliberation doesn’t settle on a plan until all the deliberators say it does. But however initially compelling this thought might be, a moment’s reflection shows it to be false. Consider other examples: if most of the soccer teams supports a particular lineup for good reasons, the few who disagree have a reason to go along with the plan. Acting as though they had no such reason would be acting as though their own say-so counts for more than the combined weight of their teammates’ does. If, after careful consideration, the bulk of a philosophy department approves a new hire, the few with a different vision for the department have a reason to go along with the
plan. They ought not, without strong countervailing reasons, hold everyone else hostage to their idiosyncratic vision. And so on.

So democracies are in the business of making and evaluating planning proposals. But to do that, they need to make evaluate explanatory proposals as well.⑧⁴ The reason is that deliberation about plans is likely to prompt deliberation about ends. And to determine which ends we should pursue, we need to utilize explanatory proposals.

Consider an example: A democratic assembly is trying to figure out the best way to make public transportation available to people in wheelchairs.⑧⁵ One option is to make the existing structures wheelchair friendly—by adding elevators to the existing escalators, by widening the aisles on subway cars, and by equipping buses with wheelchair lifts. A second option is to set up a dedicated van service. People in wheelchairs would be able to call a hotline, schedule an appointment, and a van will pick them and take them where they need to go. Suppose the second option—the van service—is much less expensive. Given their tight budget and the other important programs that need funding, many in the democratic assembly see this as a weighty reason to choose option two. But there are also reasons to choose option one. Some worry that the van service will unfairly burden those in wheelchairs. Whereas those who can walk can, without careful planning or forethought, catch a subway to downtown, one can’t use the van service without having a phone, calling ahead, and waiting (perhaps outside in rugged weather, if circumstances conspire).

We cannot evaluate the merits of these plans without considering ends. We need to ask questions such as, “How much should we value economic efficiency?” And, “Why should, or shouldn’t, we think that the value of equal access trumps efficiency?” These are philosophical questions. In the course of deliberating about them, people will offer up explanatory proposals,

⑧⁴ Many thanks to Henry Richardson for suggesting that I consider deliberation about ends.
⑧⁵ I borrow this example from Henry Richardson’s Democratic Autonomy.
candidate explanations of why we should prioritize this or that value. So democracy needs both planning and explanatory proposals.

In sum, we should think of democratic assemblies as deliberative bodies in the business of making and evaluating proposals of both the planning and explanatory variety. Planning proposals are the key to seeing how a deliberation between equals can generate reasons for action. Moreover, the making and evaluating of proposals is a process of public justification—citizens try to show each other why this or that proposal deserves implementation. So if all goes well, democratic assemblies will satisfy the procedural criterion of legitimacy as well as the outcome oriented criterion.

C. THE PROBLEM WITH PUBLIC REASON

In this subsection, I want to show that my conception of democracy has merits in addition to those discussed above. A proposal-based conception of democracy organizes debate around three foundational questions:

(i) What are the limits on the content of proposals that are suitable for public debate?
(ii) What reasons may citizens appeal to as they debate the merits of planning proposals?
(iii) When does a planning proposal count as being accepted or ratified?

A complete normative theory will answer (i)-(iii). I do not have space to develop a complete theory, so I will focus on (ii), leaving (i) and (iii) for another day.86

Question (ii) asks about what reasons citizens may appeal to in official debate. As is often the case in contemporary political philosophy, the leading answer is inspired by John Rawls: in political liberalism, Rawls introduces the idea of public reason. Public reason is a set of shared principles and values. But not every set of shared principles and values counts as public reason. Consider, for example, a fascist regime whose brilliant propaganda campaign has ‘persuaded’ the masses. In such a political situation, there will be lots of shared principles and values, but no public

86 For a start to question (i), see Amy Gutmann and Dennis Thompson, “Moral Conflict and Political Legitimacy,” Ethics 101 (1990): 64-88.
reason. Public reason, Rawls explains, refers to the set of principles and values that democratic citizens appeal to qua democratic citizens.\(^{87}\) This definition whisks us round a circle: we asked what reasons democratic citizens may use to decide the merits of planning proposals; we are told that democratic citizens may use principles and values that it is characteristic for democratic citizens to use. But circularity aside, this definition has the merit of showing that public reason is a set of principles and values peculiar to democracy, not merely something shared.

I find it helpful to think of public reason as emerging from a deliberative procedure rather than something whose content is antecedently specifiable. I do not claim that this interpretation is Rawls’s own; but it is recognizably Rawslian. Imagine: A group of persons must share their social-material world. While a few in this group agree about virtually everything, disagreements about morality, metaphysics, religion, and ultimate values abound. People differ, that is, in their comprehensive views. But despite their differences, these people are committed to choosing the laws that structure their social-material world together. They recognize that, at least ideally, the laws ought to be justifiable to everyone. Since the best test of whether something is justifiable is, simply, to try to justify it, they design a fair, inclusive process of public deliberation.

With this image in mind, we can define public reason as whatever principles and values are accepted in public as having a justificatory force. The content of public reason is, in other words, whatever principles and values a diverse-but-democratically-minded group would refer to in the course of truth-oriented deliberation about which laws to implement. It would be more satisfying to lay out substantive necessary and sufficient conditions for belonging to public reason. But doing so may be impossible. Public reason is an attempt to say what counts as a good justification in democratic politics. And on a proceduralist epistemology there is no transcendental standard of

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justification. We cannot, that is, define justification apart from the epistemic procedures that
generate justifications. Recall this quote from Fabienne Peter:

> Epistemic values, in this account, are best interpreted as irreducibly
> procedural—there is nothing beyond critically engaging with each
> other in transparent and non-authoritarian ways.\(^8\)

However we define public reason, philosophers have been fairly consistent about how it is
supposed to function: legitimacy in democratic politics depends upon confining public deliberation
to the contents of public reason. So, for example, one cannot argue that we should ban abortion
because properly interpreted Biblical injunctions tell us to. Both Biblical injunctions and standards
of proper Biblical interpretation fall outside the domain of public reason. The same goes for appeals
to the specifics of Kantian moral theory, Utilitarianism, and Aristotelian teleology: these views fall
outside public reason and thus cannot play a justificatory role in democratic politics.

Thinking about democracy in terms of proposals helps us see two reasons why it is a mistake
to automatically rule out justifications that fall outside the (current) boundaries of public reason.
First, the making and evaluating of proposals is a truth-oriented affair. Returning to the example of
the soccer team, there are facts of the matter about which lineups are likely to succeed. It would,
therefore, be irrational for the team to automatically discount proposals for novel lineups—
particularly if nothing so far has worked. The point of deliberation in this context is, after all, to
devise the best possible lineup. It might be that certain proposals are so obviously bad that they
warrant little to none of the group’s time. But the soccer analogue of public reason would be a
refusal even to entertain, however briefly, a new suggestion. There are facts of the matter about
which lineups are likely to work, about their relative upsides and downsides; the only rational thing is
to evaluate proposals according to these facts.

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\(^8\) Fabienne Peter, *Democratic Legitimacy*, 124.
At the most general level, soccer and politics are alike: the soccer team’s deliberation aims to devise the best lineup; the democratic assembly’s deliberation aims to devise the best law. But whereas lineups in soccer are (for the most part) evaluated according to whether or not they produce wins, the meaning of ‘best’ is less clear as applied to law. Proposals in politics tend to serve certain values quite well while doing less well by others. What proposal one deems best depends upon how much weight one assigns the relevant values. But politics is like soccer in that refusing to even consider a proposal because its grounding principles or values fall outside public reason is irrational dogmatism. This is a particularly problematic stance in democracy, as the procedural criterion of legitimacy demands an open, rational deliberation. The motivations for this criterion, remember, were partly epistemic and partly moral. The epistemic proceduralists taught us that a refusal to even hear objections comes at the cost of our practice’s epistemic bonafides. If economists are unwilling to question the axiom that people are most basically self-interested and acquisitive, they’re not engaged in a truth-oriented investigation. If string theorists refuse to listen to other physicists until such time as those other physicists adopt string theoretic views, their practice has become an epistemic sham. And if a democratic assembly—whose job is to determine which values we should write into society’s basic structure—won’t so much as hear proposals that draw on non-orthodox values, they are not involved in an epistemically serious practice either. Of course, some proposals are so obviously bad they warrant little to none of the assembly’s time—the proposal that we eliminate the free press to reduce the number of newspapers littering our streets is an example. But a principled refusal to hear proposals altogether is prima facie irrational.

The moral motivation for the procedural criterion of legitimacy stems from the insight that we respect another’s rational agency by hearing her arguments, her objections, and giving her the chance to change our minds. Straightforwardly, then, democratic assemblies fail to respect whomever they silence. Again, it might be that someone’s views are so obviously mistaken that we
can consider them quickly and then set them aside. And, of course, democratic assemblies are not required to revisit settled issues when there is no good reason to do so. But silencing people just because they emphasize values that fall outside the purview of public reason is disrespectful. One assumes, at the outset, that they have nothing worthwhile to say. So for both epistemic and moral reasons, the institution of public reason is at odds with democratic legitimacy.

The second reason to be suspicious about the claim that democratic assemblies should confine themselves to a strictly delimited set of principles and values has to do with one function of a proposal. Return to my gloss on public reason: public reason includes whatever values and principles a group of diverse-but-democratically-minded people accept as justification. The idea here is that as citizens trade reasons with one another, a relatively unified set of principles and values will emerge. Showing that one’s planning proposal is consonant with accepted values is, to be sure, one good way of justifying it. But it is not the only way. Sometimes, the point of making a proposal is to add something new to the accepted stock of principles and values. This amounts to justifying a planning proposal by showing that our stock of principles and values could be better than it presently is. The civil rights movement in America, for example, gave us a whole new understanding of equality. The gay rights movement, for another example, is helping us to reconsider the value of marriage. Justificatory practices evolve—the set principles and values that we accept as justificatory is not static. So it is a bad idea to insist that political justifications traffic exclusively in currently accepted principles or values. We can use proposals to expand and revise practices of justification.

Someone with liberal sympathies might object: “But public reason is a useful device for eliminating morally problematic proposals. For example, insisting that public policy be supported from the standpoint of public reason has enabled the push for gay marriage to be as successful as it
has been. If we allow appeals to, say, religious principles or sectarian moral views, powerful groups might legislate their idiosyncratic conception of the good.\footnote{Religious views are, by public reason’s lights, no worse than fully specified moral views. Both are equally out of bounds. I will focus on religious reasons in what follows because religious reasons are the standard example in discussions of public reason.}

If this objection is to have bite at the level of normative theory, it is not enough to argue that a democratic assembly that doesn’t respect the boundaries of public reason might legislate badly. Compare: it is no criticism of consequentialism that people make bad choices when they wonder about what would maximize happiness. The goal of normative theory—in democracy and in ethics—is to say what counts as getting it right. So the objection, here, must be that even in the ideal, allowing appeals to religious or sectarian reasons would result in bad legislation. But I doubt it would.

Consider, as a case study, the arguments for banning gay marriage. I cannot survey all such arguments, but I can briefly catalogue the most prominent argumentative patterns. There are three. The first set of arguments takes their cue from semantics, claiming that the semantic content of the word ‘marriage’ implies a heterosexual union. But this argument is very bad. Set aside the fact that it’s hard to spot heterosexuality in the concept of marriage. This sort of conceptual entailment doesn’t settle a moral dispute: suppose the concept of ‘housewife’ entailed not voting at some time in the past; it doesn’t follow that housewives shouldn’t have voted.

A second set of arguments aims to establish the ‘unnaturalness’ of homosexual sex by arguing that other species don’t do it. But these claims are (a) false insofar as they make sense,\footnote{Several studies have documented animals engaging in gay sex: Anne Perkins observed ‘gay’ sheep, George and Molly Hunt’s studied ‘lesbian’ seagulls, while still others have discovered homosexual behavior in animals ranging from apes to elephants to reptiles. I say that these claims are “false insofar as they make sense” because it is unclear that human sexuality, with all its social and cultural texture, has any counterpart in the animal kingdom.} and (b) rely on the dubious claim that human beings should pattern their sexual relationships after those found in the rest of the animal kingdom.
The third set of arguments is more intellectually serious and builds on a natural law approach to ethics. A natural law ethics begins by articulating a list of fundamental human goods. Once a list of fundamental goods is settled, natural lawyers adjudicate actions and practices according to whether or not they promote or destroy these fundamental goods. In (roughly) Aquinas’s words, good is to be pursued and evil avoided. In keeping with this general approach, a natural law approach to ethics of marriage begins by defining a set of marital goods—goods that are perfective of marriage. Next, they show that a union between same-sex couples cannot realize the relevant goods.

What are the marital goods? Lists vary, but typically include: mutual commitment, mutual respect, child rearing, and procreation. Now, gay couples can be every bit as committed and respectful as heterosexual ones; and the best available research indicates that children of gay parents fare as well as children of heterosexual parents. So to conclude that gay marriage is wrong, natural lawyers must—and do—focus on the good of procreation.

But it will not suffice to show simply that procreation is a marital good. Compare: The intense competition of high-level team sports can bind teammates to one another in a way that more casual games cannot. This bond between teammates is an athletic good. Yet the following conditional is false: if one is to pursue team sports, one must compete at the highest level (if one can). If natural lawyers show simply that procreation is a marital good—as the bond between teammates is an athletic good—they are not entitled to claim that if one is to pursue marriage, one must procreate (if one can). The lesson, here, is that practices typically have the potential to realize a

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variety of goods, and which goods one pursues is typically a matter of personal choice. Natural lawyers, therefore, must hold that procreation is a mandatory marital good.

This is a bold view. Critics have objected on a variety of grounds, but I will concentrate on two criticisms. First, the natural lawyer’s position has counterintuitive implications. Imagine that John and Jane Doe are fertile heterosexual couple, that they want children, but that they decide to adopt rather than passing on their genes. Perhaps Jane is a brilliant scientist whose work might cure cancer, but whose long hours and ambitious schedule make pregnancy impossible. Or, perhaps, John and Jane agree that they ought to rescue someone from a childhood spent bouncing from one foster home to the next. With motivations like these, it seems clear that John and Jane’s decision to forgo procreation is neither immoral nor unreasonable—it is supported by weighty moral reasons, after all. But to condemn gay marriage, natural lawyers must insist that it is.

Second, natural lawyers confront a transcendental epistemic challenge: how exactly can one know that procreation is a required good for marriage? Mark Murphy suggests that we might gain knowledge of fundamental goods by two methods. He calls the first method “inclinationism.” Murphy explains: “human beings exhibit a tendency to pursue, life, and knowledge, and friendship, and so forth; and reflection on this tendency occasions an immediate grasp of the truth that [these things] are goods.” But even if inclinationism is a reliable indicator of fundamental goods, it does not show that procreation is a required good. Many couples, after all, forgo biological procreation. Such couples are admittedly a statistical minority, but they are plentiful enough to establish a non-idiosyncratic inclination to not procreate. Worse, there are strong reasons to doubt that inclinationism is a reliable indicator of fundamental goods: human beings demonstrate inclinations

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92 This problem is compounded by the fact that natural lawyers often include things like religion on their list of fundamental goods. While religion seems to enrich the lives of some, it is implausible to think that leading a secular life immoral. I, for example, sincerely tried to be religious but found I literally could not make myself believe. Despite years of effort, I cannot reconcile the existence of God with our world’s endless variety of awful circumstances.

towards vanity, being quarrelsome, and making war—things that no natural lawyer would want on a list of fundamental goods.

Murphy suggests that natural lawyers might shore up inclinationism with what he calls “derivationism.” Whereas inclinationism incorporates elements of a posteriori reflection, derivationism is an a priori process. Derivationists develop a metaphysical account of human nature and derive the fundamental goods from their metaphysical account. How, then, can derivationism rule out our baser inclinations? With a metaphysical account of human beings in hand, Murphy suggests that we could “modify, in a non-ad-hoc way, the objectionable elements … one might be bound to give if proceeding on an inclinationist basis alone.”

But I don’t think that derivationism is much help to the opponent of gay marriage. We began this inquiry with an epistemic challenge: how can we know that procreation is a required good for marriage? Inclinationism cannot answer, so we turned to derivationism. But the derivationist’s brand of a priori speculation seems to be a paradigmatic example of epistemically suspicious reasoning! What faculty does the natural lawyer use to determine that procreation is a mandatory marital good? Why don’t the proponents of gay marriage have a similarly trustworthy faculty? So far as I can tell, the a priori intuition that \( p \) differs little from the bare assertion that \( p \). To warrant belief, both a priori intuitions and assertions must be supported by reasons. Many natural lawyers offer as a reason the claim that their view alone can explain why polygamy, incest, and bestiality are wrong; but this is another very bad argument. Absent a better one, it is hard to see why natural lawyers’ a priori reflections warrant belief.

So a democratic assembly would confront the following dialectic. On the pro gay marriage side, we have considerations like the following:

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94 Ibid.
95 To see it dismantled, refer to: John Corvino, “Homosexuality and the PIB Argument,” *Ethics* 115 (2005): 501-534.
(i) Banning gay marriage is a clear liberty harm.
(ii) The ability to get married would contribute mightily to the happiness of some without hurting anyone else.
(iii) For better or worse, conferring the status of marriage is our society’s official way of recognizing and honoring an important relationship. Denying a segment of the population access to marriage, then, expresses the judgment that they aren’t fit for that sort of union.

And on the anti-gay marriage side, we have:

(i) A howler that appeals to the semantic content of the word ‘marriage.’
(ii) The dubious claim that gay sex is unnatural.
(iii) Some tendentious a priori metaphysics.

Bad arguments cut no ice, and the natural lawyer’s a priori metaphysics is considerably less certain than the considerations that favor gay marriage. With or without public reason, therefore, rational deliberation would endorse gay marriage.

Based on this case study, my response to the liberal’s worry is this: When appeals to traditionally religious or sectarian values are dubious, rational deliberation will reveal them as such. But if we eliminate appeals to traditionally religious principles or values by instituting hard-and-fast boundaries on public reason, we lose the chance to learn from religious traditions. Many who work in religious traditions are sincere, intelligent people with important things to say. We would do well to listen to them. Moreover, hard-and-fast boundaries to public reason come at the expense of democratic legitimacy. This price is too high. We don’t need public reason to filter out the unsavory aspects of sectarian reasoning; rational deliberation can do that all on its own.

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96 And not just in the thin Benthamite sense of ‘happiness.’
97 Consider, for example, Martin Luther King Junior’s speeches on racial equality or cosmopolitanism. Religious reasoning saturates these speeches, yet it is abundantly clear that secular folks can learn a lot from them. For another example, consider Desmond Tutu’s speeches on justice and the way that reconciliation can replace retribution. Religious reasoning again features prominently in Tutu’s thought; yet secularists would be foolish to ignore Tutu on those grounds.
CONCLUSION

In this chapter, I defended a pluralistic account of legitimacy. Democracies should be evaluated according to procedural and outcome-based criteria. I’ve used this metademocratic result to make headway in normative democracy. In particular, I’ve showed that there are strong reasons to suspect that liberty-based views of democracy and views that emphasize democracy’s role in advancing citizen’s interests depict illegitimate regimes. By way of a positive contribution to normative theory, I develop an account of the speech act of proposing and leverage it into an approach to democracy as public justification.

There is still much to do. I have not said anything about what sorts of proposals are apt for consideration by a legislative assembly. And I have not commented on whether proposals require unanimous assent (as some democratic theorists suggest), or whether they can be ratified by a simple majority, a plurality, or by some other voting bloc. But this chapter (along with the previous chapter) articulates a framework for addressing these questions. I hope that this, along with its tidy solution to the problem of political authority, makes the project worthwhile.
BIBLIOGRAPHY


