DEMOCRATIC AUTONOMY AND DEMOCRATIC AUTHORITY

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Let me start with a question.[1] I think of it as the question of democratic authority—though here people's use of the term "authority" will vary. The question is this: How is it that legitimate governments—which, as I will explain more fully in a moment, means democratic governments—can create by means of their decisions new moral duties for their citizens?

This question stands in need of some clarification. What, for instance, is here meant by a "new moral duty"? By a "new moral duty," I here mean, at least, one that cannot be derived from the content of a general—or otherwise pre-existing—first-order moral duty in conjunction with a new, non-moral fact. So, for example, I put drivers under no new moral duty by stepping out blindly into the traffic.[2] Instead, by combining my unexpected presence on the road (which is reckless but is not a moral fact) with their general duty to operate their vehicles with due care, we can infer that they now have a duty to brake or take evasive action.[3] This latter, disjunctive

[1] I presented earlier versions of this paper at a workshop on Democracy: Justice, Participation, and Deliberation University of Basel, July 6, 2012 and at a workshop on Morality and Politics at the University of Pittsburgh, December 1, 2012. I have attempted to take account of the many useful comments and questions received on these occasions, for which I am grateful. I am particularly thankful to my hosts, Robin Celikates and Tilo Wesche, Michael Kessler and Japa Pallikkathayil, not only for their input but also for giving me these opportunities.

[2] I take this example from David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008), 143.

[3] I put this duty (and the one two sentences hence) in disjunctive form to highlight that there commonly is more than one sufficient means available in any given context. The derivation here in question goes via the rational requirement to take sufficient means to one's ends. (On the formulation of that requirement, see John Broome, "The Unity of Reasoning?" in *Spheres of Reason*, ed. Simon Robertson [Oxford: Oxford University Press, 2009]: 62–92). All that can be thus derived is that one must take one of the available sufficient means. Here, by hypothesis, one thus cannot derive in this way a duty to brake. To settle on the duty to brake would be to specify further the drivers'

duty is not a new duty, in the relevant sense: it is simply a statement of what must be done, in the new circumstances, in order to discharge a general duty that was already present. Similarly with special duties: if I have agreed to take care of your vintage MG convertible over the summer, and a thunderstorm comes up while the car is parked in my driveway with its top down, I come under a duty to put the top up or drive the car into the garage. The thunderstorm creates no new duty, in the relevant sense.

In referring what can be inferred from the content of a general duty, I mean to distinguish these cases from ones in which the moral situation is changed by the exercise of a moral power, such as that of promising or consenting—or, as shall be central to my argument, that of exercising discretionary power so as to specify the content of the rights of others.[4] For example, consider my agreement to take care of your vintage MG. This might be conceived either as a promise to take good care of it or, more reconditely, as agreeing to undertake a bailment responsibility over the car. (As understood in the common-law tradition, bailment is the specialized entrustment of something to someone.[5]) This moral change results from a new fact, the fact of my agreeing; but it does not generate the new result in conjunction with the content of a first-order moral duty. Rather, it is derivable only in conjunction with a second-order, empowering principle, one that says that if someone does something (promises, consents, etc.), then a certain duty arises.[6]

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duty. For more on the contrast between specification and more deductive ways of proceeding, see my "Specifying Norms as a Way to Resolve Concrete Ethical Problems," *Philosophy and Public Affairs* 19 (1990): 279-310.

[4] On moral powers, see Joseph Raz, "Voluntary Obligations and Normative Powers," *Proceedings of the Aristotelian Society* 46 (1972): 79-102.

[5] See the discussion of bailment in Henry S. Richardson & Leah Belsky, "The Ancillary-Care Responsibilities of Medical Researchers," *Hastings Center Report* 34 (Jan.-Feb. 2004): 25-33, at pp. 27-8.

[6] On the distinction between first-order norms and second-order, empowering norms, see the text, below, at n. 21. More formally, we might say that a first-order duty has the form, O(p), or a generalization thereof (where, to comport with the propositional form of the content, we may loosely gloss the operator O as "ought to see to it that"),

Arguably, however, when a legitimate, democratic nation duly enacts a tax rate for annual earnings over one million euros, those subject to this tax come under a new moral duty to pay it. To be sure, they started with a duty to do their fair (or just) share in contributing to legitimate public projects; but we may realistically suppose that the duty to pay a 75% marginal tax rate is considerably more specific than anything that can be derived from the content of that initial duty.[7] The question I seek to pursue here is not whether a new moral duty would truly arise in this specific case, but, more generally, how legitimate governments can ever put citizens under new moral duties.

In this paper, I propose an answer to this question of authority, one that would explain how legitimate democratic governments can put us under new duties. Before I can get to this proposed answer, however, I have more work to do in exploring and clarifying the question and

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and that the kind of derivability excluded by the claim that a new moral duty arises is derivation from the content of such a duty (i.e., the proposition *p*) plus some new fact. In my first example, *p* = "one drives with care so as to avoid injuring pedestrians." Obvious physical facts and basic principles of instrumental reasoning indicate that, in the circumstances at hand, so driving implies either braking or swerving. A principle of closure (such as "one has a duty to do what is reasonably entailed by what one has a duty to do") will then allow deriving the more focused, circumstantial duty. Empowering norms, by contrast, are a special case of second-order norms that have a conditional form wherein the antecedent refers to the historical and contingent fact that a particular person has exercised some moral power. For instance, from an appropriately conditional promise-keeping norm and the fact that Anne has promised to take charge, one can derive the conclusion that Anne has a duty to take charge. But this derivation does not operate only with the content of the initial characterization of the action to be done (the consequent of the conditional). Rather, the derivation depends on the entire norm and on the historical fact that this norm's antecedent names. I am grateful to Kieran Setiya for suggesting this way of characterizing the cases of interest to me. How, more exactly, to model this would be controversial. One way to go, suggested by John Broome, is to interpret the promise-keeping norm as a wide-scope requirement: "Morality requires of you that, if you have promised to *F*, you *F*" (John Broome, *Rationality through Reasoning* [Chichester: Wiley Blackwell, 2013], 124). This requirement has the $O(p \rightarrow q)$. As Broome there notes, if you have promised to *F*, the unalterability of the past may be a sufficient basis for holding that one can logically infer or "detach" the requirement to keep the promise. If so, that would explain, in a completely non-mysterious way, how the act of promising gives rise to obligations. As Broome goes on to note (at 125), however, cases where the past action that has made the antecedent true was wrong or illegitimate seem to call for some modification of this detachment rule or of the norm itself. In this paper, since I take up questions of legitimacy separately in the text, I abstract from this concern. I am also grateful to Jamie Dreier, Japa Pallikkathayil, and Paul Weithman for discussion of these matters.

[7] For one thing, both the million-euro boundary of this upper income-tax bracket and the 75% marginal tax rate may each fall somewhere within a significantly broad permissible range of potentially legitimate democratic specifications of what justice requires of the wealthy. For another, seeing to it that the wealthy contribute adequately to legitimate public projects via the income-tax structure may be one among a set of various potentially legitimate alternative solutions that also includes a wealth tax, heftier inheritance taxes, and so on.

in examining various failed answers (including one of my own). My answer will take very seriously the idea that what is to be explained, here, is a moral power of a distinctive sort, to which is correlated, not citizens' duties, but citizens' liabilities.[8] It will also make use of the idea of urgent, morally important tasks for government, but in a much more oblique way than has been common.

To see why it is important to be more oblique about this, suppose that, because a country's legitimate democratic government is undertaking a series of vitally important tasks, beginning with the ongoing task of securing justice for its citizens,[9] its citizens have a special moral duty to obey any legal directives it generates.[10] Suppose, then, that this state duly enacts a law requiring its citizens to purchase health insurance. Because it follows well enough[11] from these suppositions that the citizens have a special moral duty to purchase health insurance, this, too, should not be viewed as a new moral duty, in the relevant sense. Rather, it is derived from the citizens' special duty of general obedience, combined with the supposed fact about the new directive being enacted.[12]

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[8] Following by Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions As Applied in Judicial Reasoning,* ed. W. W. Cook, reprint edition (Westport, CT: Greenwood Press, 1978) [orig. Yale University Press, 1919], I am here using the term "liability" to label the correlate of a moral power. If A has a moral power over B that *p*, that entails (indeed, is basically the same as) that B is under a liability to A that *p*.

[9] On securing justice as an ongoing task, see Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008).

[10] The existence of such a special duty would imply that, for this country, what A. John Simmons calls "the particularity problem"—the problem of tying citizens' duties of obedience to the government of a particular country or jurisdiction—had been solved. I will discuss the particularity problem in the text, below. Regarding the suggestion that the state's legitimately carrying out vitally important tasks might suffice as an adequate ground for citizens' duties to comply with the state's (relevant) directives, I am indebted to Luke Maring, *Political Obligations without Authority* (Ph.D. dissertation, Georgetown University, 2012).

[11] I abstract from two principal issues that may prevent this inference from flowing as a logical entailment: issues pertaining to the use by the sovereign of delegated law-making power and issues pertaining to the conflict of laws. I will treat the former of these issues in the text, below. Note, though, that none of the other cases of derivative duties that I have already mentioned arose from logical entailment in any strict way, but instead went via the rational requirement to take sufficient means to one's ends, as noted in n. 3.

[12] That a general moral obligation can make it obligatory to obey a command even if that command is wholly illegitimate is illustrated by David Estlund's case of the dictator's petulant child, who capriciously tells the minister to leave the palace, and whose brutal father will unleash mayhem on the population if his child's order is not followed: Estlund, *Democratic Authority*, 118.

Political Authority as the Power to Modify Citizens' Moral Rights, Privileges, and Duties

But if I am not interested in this process whereby citizens of a particular country can come under a moral duty to purchase health insurance, what, under the name of "authority," *am* I interested in? The authority of a state can be considered as a matter of whether, and in what regards, its use of coercive force is "authorized," which is to say, morally permissible. It can be considered as a matter of whether the state's rule is not merely permissible but "authorized" in that it involves a "right to rule" correlative to its citizens' special duty to obey it, as just discussed. And authority can also be considered, in the manner of Joseph Raz, as involving the moral power to put citizens under new duties.[13] It is obviously this last sense of the term "authority" that I mean to take up here. Raz's interpretation of the term targets precisely the puzzling phenomenon that interests me here.

If we were fundamentally interested only in whether citizens have a special duty to obey their government, then we would not have strong reason to take up this Razian notion of authority. The phrase, "the right to rule," often associated with the idea of political authority, is multiply ambiguous.[14] It might refer merely to the permissibility of ruling (either impersonally considered or constituted by the fact that the citizens lack rights not to be ruled), to a claim-right that the rulers have over against the citizens, or to a kind of moral power. A special duty of obedience is a natural correlate with a right to rule—a natural understanding of what the claim-right of ruling amounts to, namely a claim that one's directives be obeyed. Such a claim-right to rule might, as I've said, be adequately defended by showing that the government was carrying

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[13] I follow the tripartite distinction in Christiano, *The Constitution of Equality*, 240. For the "moral power" formulation, see Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), chap. 2, and Estlund, *Democratic Authority*, 118.

[14] I am here focusing on the ambiguities classically flagged by Hohfeld, *Fundamental Legal Conceptions*.

out vitally important tasks for its citizens in a legitimate way. As far as this goes, there is no need for the Razian notion of authority.

Consider, however, the fact that no one thinks that the claim-right to rule is unlimited in scope. The question then arises as to what those limits are. One extreme answer is that a government's claim-right to rule is limited to writing into law the provisions of morality: that it has a claim-right to rule only insofar as its directives echo and incorporate into law general provisions of morality, applicable everywhere. If this were the situation, the question of the duty to obey legitimate state directives would be far less interesting than it appears to be; all questions of interest would instead center on the content of morality's universal demands. State directives would make no non-derivative difference to what people morally ought to do.[15] But since claims to political authority typically do assert the power to make a difference to what people morally ought to do, such a restriction of authority's scope would mark a quite radical departure from ordinary understandings.[16] I join Raz in rejecting the "no-difference thesis"—the thesis that political authority can make no difference to what one ought to do.[17] In my own prior work on democracy I have defended this stance *en passant*. My book on democratic theory concentrated on building up a fulsome set of conditions of democratic legitimacy—not indeed for the purpose of building a suitably constrained urgent-task account of authority but for the purpose of

[15] Except, perhaps, by re-prioritizing. In the text, I abstract from issues arising from contingent conflicts internal to morality. The reason for the "non-derivative" qualifier is that the fact that a government has issued some directive might combine with a general moral norm to generate a special duty. For instance, suppose that one has a general moral duty actively to resist unjust action with which one is complicit and that one is complicit, unavoidably, in actions taken by a democracy of which one is a citizen. Under those suppositions, if a democracy generates directives that call for action that, as it turns out, is unjust, then one has a duty to resist these directives. In this way, these directives may a difference to what one ought to do, but only derivatively.

[16] This assertion that governmental directives can make a non-derivative difference to what citizens morally ought to do might be mediated by a general principle to the effect that (within certain limits) citizens morally ought to obey the law (that is, to do what they legally ought to do). Even so, the upshot is, for present purposes, the same as if the assertion were made more immediately.

[17] Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 48. Raz does not state the no-difference thesis using the baseline of morality. For discussion of my departure from Raz, in this respect, see the next section.

orienting our understanding of democratic reasoning. Although I did discuss democratic authority, I did so mostly by arguing for the existence of what I called normatively fruitful democratic procedures—ones that, though partly answerable to procedure-independent standards of truth pertaining to what we ought to do, are underdetermined by them and allow the procedures to play some constitutive role in determining correct answers. Although I did not saliently label this as addressing the issue of authority, it clearly does.[18] Having since had occasion squarely to confront the Razian issue of authority, I have been forced to recognize that my claim that there exist normatively fruitful procedures raises some deep problems that need to be confronted about the possibility that authority, as Raz holds, involves a kind of moral power.

Abstracting from my own specific motivations for talking about Razian authority, there is an important general reason to do so. This conception of authority as a power to put citizens under new moral duties addresses a deep problem we cannot avoid. This is the problem of how to conceive of the relation between a state's (alleged) moral power to introduce new duties and morality in general. As we have just seen, to suggest that governmental authority can make no difference to what citizens ought, morally to do involves radical surgery on ordinary understandings. It would shear the topic of authority of much of its interest. If we were working within such limits, even the duty to obey legitimate state directives would be a far less interesting topic than it appears to be. If, by contrast, a state's directives do make a difference to what its subjects ought, morally, to do, then it becomes apt to understand the "right to rule" as involving, not a permission or a claim right, but what Raz—following Wesley Newcomb Hohfeld and H.L.A. Hart—calls a "normative power": a normative capacity to modify the rights, duties, and

[18] Henry S. Richardson, *Democratic Autonomy: Public Reasoning about the End of Policy* (N.Y.: Oxford University Press, 2002). On the idea of normatively fruitful procedures, see esp. 138-41. This way of speaking about the truth about what we ought to do is closer to Raz's way of presenting the no-difference thesis than is my discussion, otherwise in the text, of morality.

liberties of others.[19] Since we are talking about an alleged capacity to modify *moral* rights, duties, and liberties, I will speak of "moral powers." A clear example of a moral power is the power to waive one of one's rights, say by consenting to have sex with someone. The question of how governments can make a difference to what citizens ought to do thus can be restated as a question of how governments can have such moral powers.

One might think that we could talk about the moral significance of government directives without invoking moral powers of this sort. There is no need to invoke the somewhat mysterious notion of a moral power to explain how, by stepping out blindly into traffic, I give the oncoming drivers a duty to stop or take evasive action then and there without generating any new duty. Similarly, if we could justify or derive a duty to obey one's state's directives that was as fully general (across some jurisdiction) as the one I hypothesized in illustrating how duties to obey specific directives could likewise fail to be *new* duties, then there would be no call for speaking of moral powers to explain the obligations implied by legitimate laws.[20] I doubt, however, that such a fully general duty to obey one's state is really defensible. Thomas Christiano seems to suggest that it might be, writing that "[t]he citizens' duties to the democratic assembly are, within certain scope limitations defined by public equality, duties to do whatever the democratic assembly tells them to do."[21] Now, there might well be other substantive limitations to state authority besides those defined by public equality; but taking just those, and without going into what exactly Christiano means by them, it seems plain that it will not be possible fully to capture their constraints by means of some simple scope limitations. We know this, in effect, from the

[19] Hohfeld, *Fundamental Legal Conceptions*; Joseph Raz, "Voluntary Obligations and Normative Powers," *Proceedings of the Aristotelian Society* suppl. vol. 46 (1972): 79–102. By a "normative capacity," I mean a capacity that one has by virtue of the existence of empowering norms.

[20] Maring, *Political Obligation without Authority*, chap. 2, well deploys this kind of Occam-inspired simplicity sort of consideration against Raz.

[21] Christiano, *Constitution of Equality*, 250. I will return, in the text, below, to Christiano's suggestion that it is "the democratic assembly" that is to be obeyed.

U.S. constitutional jurisprudence of equal protection. Unforeseen substantive constraints based on fundamental ideals of public equality will unavoidably crop up within any attempted delimitation of the state's scope for untrammeled authority.[22] For this kind of reason, it seems doubtful to me that we will be able to explain the specific cases in which citizens have duties to obey their state simply by deriving them from a general duty to obey directives within a certain jurisdiction together with the set of directives issued within that jurisdiction. If that is correct, we will need a more subtle way of understanding the connection between morality and legitimate lawmaking.

Whether an appeal to the state's moral power or powers to generate new duties will fare any better at this explanatory task will depend on the details. In *The Concept of Law*, Hart argued that a legal system such as the Anglo-American one contains power-conferring norms. Recognizing the theoretical possibility of analyzing power-conferring norms away by recasting them as complexly conditional directives ("If legal actor A does x, then do y; if legal actor A does z, then do w"), Hart essentially argued that it would provide a tortuous and unperspicuous account of the content of our law to attempt such a recasting. A clearer understanding will result from recognizing that some laws are power-conferring.[23] One distinguishing mark of a power-conferring norm, he plausibly suggested, is that whereas failure to comply with a directive is an "offense," failure to comply with a power-conferring norm merely yields a "nullity." Thus, when someone attempts to make a new will but fails to meet all of the technical requirements of doing so, the result is no offense, but is a nullity: this action simply fails to accomplish the legal change that it had intended.

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[22] See Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca: Cornell University Press, 1991). As Estlund reminds us, "authority is rarely if ever absolute," *Democratic Authority*, 124.
[23] H. L. A. Hart, *The Concept of Law* (N.Y.: Oxford University Press, 1961), 26-48.

Political authorities purport to put citizens under new duties. Those that purport to do so but proceed illegitimately and arbitrarily dominate their citizens in a criticizable way.[24] Whatever the upshot of their actions with regard to their citizen's *legal* duties, illegitimate, dominating states presumably fail actually to put their citizens under new moral duties. Perhaps legitimate political authorities can put their citizens under new moral duties, but we want to know how this is possible: how do their efforts at this ever avoid nullity? Since wills and final testaments are artificial creatures of the law, it is no surprise that the conditions empowering someone to create one are simply legal and conventional constructs. Moral duties not being artificial constructs in the same sense, we should be puzzled as to where to look for the conditions empowering states to create new moral duties—and not just particular ones, such as for this driver then and there to brake, but general ones, such as (perhaps) for all car owners to get their cars inspected annually.

To be subject to having one's rights, duties, or liberties changed by another's act of will is, as Hohfeld put it, to be *liable* to how the other exercises his or her will. The suggestion that political authority importantly consists in exercising a moral power to create new duties faces a powerful objection, namely, that being morally liable to others' exercise of will in generating directives is incompatible with autonomy. Robert Paul Wolff's assumption, in his pioneering defense of philosophical anarchism, was that each of us has a *duty* not to accept moral direction from others, but instead to be morally autonomous norm-setters.[25] As is now widely recognized, this is an exaggeration. Yet it is morally important that each of us be *respected as* morally autonomous—as having "a will that is just as morally important as anyone else's" and equally

[24] On the importance to domination of purporting to put people under duties, see my *Democratic Autonomy*, 34.
[25] Robert Paul Wolff, *In Defense of Anarchism*, 3rd ed. (Berkeley: University of California Press, 1998).

capable of determining itself to a morally acceptable course of conduct.[26] "[A]n autonomous person," as Raz puts it, "is not subjected to the will of another."[27] This being ideally so, any claim that any person or agency has moral authority over other persons is inherently suspect. Kant's claims about the conceptual links between the will, pure practical reason, and the moral law have perhaps accustomed us to the idea that universal commands of morality are no insult to individual autonomy; but the claim that individuals are liable to having their moral duties shaped by the directives of their state is another matter. *Pace* Rousseau, it does seem necessarily to involve one person's will being subjected to another's, even if that other is collective of which the individual is a part. I will revisit this issue at the end, questioning whether a due respect for the equal autonomy of each really entails than no one be subjected to the will of another. Even if the considerations that I there offer are decisive, still concern for individual autonomy implies that we cannot be cavalier in asserting the existence of governmental power to put citizens under new moral duties.

Failures of Some Previous Attempts to Address This Problem of Authority

In a previous effort to address this challenge that autonomy poses to democratic authority, I had persuaded myself of an answer in which Estlund's doctrine of normative consent could do some useful work.[28] According to that doctrine, if one has a duty to consent, then one's non-consent is null, which means that things normatively are as if one had not refrained from consenting; which is to say—or close enough—that things morally are as if one had consented.[29] Reinforcing a comment of Estlund's, I noted that this seems to work for authority even if it does

[26] The quoted phrase is from Estlund, *Democratic Authority,* 311.
[27] Raz, *The Morality of Freedom*, 155.
[28] Henry S. Richardson, "Estlund's Promising Account of Democratic Authority," *Ethics* 121 (2011): 301-334.
[29] Estlund, *Democratic Authority*, chap. 7.

not work for permissibility. After finding fault with Estlund's argument for a duty to consent to legitimate democratic arrangements, I set out to improve upon it. In so doing, I had accepted an assumption that he had labeled "widely agreed," namely "that under the right conditions consent can establish authority."[30] If this assumption were correct, then the doctrine of normative consent would allow one to move from the duty to consent to the existence of authority. I now think, however, that this assumption that consent can ground authority is fatally ambiguous. It surely is widely agreed that individuals can validly consent to arrangements whereby some become the *de facto* conventional or legal decision-makers for their group. That is a kind of legal authority; but the Razian problem of authority, which I followed Estlund in addressing, is how *moral* authority can arise, such that such *de facto* legal decision-makers end up with the normative power to create new moral duties for individuals. It is not widely agreed that consent can generate such moral powers; and even if it were, it would be of little moment, for this agreement would surely rest on confusion. Just as my consenting that you jump over the Eiger cannot confer upon you the physical power to do so, so, too, my consenting that you create some new moral duties cannot confer upon you the moral power to do so. Even if "ought" implies "can," no one thinks that "may"—that is, "may permissibly"—implies "can."

You may object, here, that I am being overly fastidious, or overly fixated on explaining the possibility of the moral authority of states. If consent can give states the authority to settle the law of wills and testaments and to regulate automobile inspection and health insurance, would that not give us all that we need? And if the doctrine of normative consent can get us the same upshot on the basis of there being a duty to consent, why not be satisfied with that?

In response, I do not mean to fetishize morality in a narrow sense. Raz's development of what I have been calling a "moral power" conception of authority did not, in fact, refer to

[30] Estlund, *Democratic Authority*, 119.

morality at all, but instead to the objective reasons bearing upon what individuals ought, all things considered, to do. The questions I have been raising about whether a state's directives can make a difference to what one morally ought to do could be re-phrased as questions about making a difference to what one ought, objectively, all-things-considered to do. As it happens, the story about democratic authority that I have to offer does center on moral considerations and how democratic states shape them: I will come to that shortly. For that reason, I stick with my focus on moral powers. Yet whether we stick with this language or speak instead about what one ought, objectively, all-things-considered, to do, the same basic puzzle arises and needs to be confronted: how can government directives make a non-derivative difference to that?

In thinking about the work that the doctrine of normative consent can and cannot do for us, I should have been guided by my own admonition that "no duty can by itself imply that any purported authority is reason giving."[31] In Hohfeld's terms, as I have mentioned, what implies that a purported authority has such a power is a liability to shifts in one's duties, as a result of its commands, rather than a duty towards the purported authority wielder.

A focus on duties is one reason that recent appeals to the urgent tasks of government does not solve the problem of authority that I have posed. Relatedly, there is the unnecessary shuffle objection that I have mentioned: if the urgent task directly generates duties to comply, then the appeal to authority seems to add nothing. I will review this point, with fuller reference to the range of urgent-task accounts, drawing on Luke Maring's argument that they all face this fundamental problem.[32] A classic urgent task is Hobbes's: that of preventing citizens' lives

[31] Richardson, "Estlund's Promising Account," 331. Recognizing this, my argument went on to attempt to establish that it is apt for citizens of legitimate democracies to treat the democratic authorities as if they could generate new moral reasons. Perhaps so; but that is a bit like saying that the American electoral facts of 2000 made it apt for citizens to treat Albert Gore as their president: that's an interesting statement about how citizens should act, but not one that entails that Gore was president.

[32] Maring, *Political Obligation without Authority*. In fact, Maring argues that this same basic defect troubles not just the urgent-task approaches, but all instrumental accounts of political authority.

from being nasty, short, brutish, and solitary. A recent twist on Hobbes's concern—and one that fundamentally changes the situation from a strategic impasse insoluble without establishing an unlimited sovereign into one in which individual duties generate a kinder, gentler solution—is to insist that individuals have a duty to do their fair share towards such urgent tasks. Christopher Wellman calls these "good Samaritan" duties.[33] Although Christiano occasionally echoes this kinder, gentler Hobbesian approach, he officially emphasizes instead the more specifically moral task of "establishing justice within a limited jurisdiction," one that cannot be accomplished without securing the sort of public equality in which citizens recognize and affirm one another as equals.[34] Maring's appeal to Occam's razor, however, applies equally well to all of these quite different accounts: Insofar as each brings forward forceful moral considerations, these bear directly on whether citizens have a duty to obey; the idea of authority, as I have characterized it here, is of no help. The forceful moral considerations provide a clear and sufficient basis for explaining the duty to obey. Reference to authority, here, adds a layer of purported explanation that is weaker and more obscure and gains us no new conclusions. One further conclusion it might be thought to generate is that citizens ought to do what the state directs just because the state has so directed. Maring takes up this issue by reference Estlund's example of a flight attendant who has taken charge of things after a crash, effectively arguing that while a passenger may well have a duty to obey the attendant's directives, this does not entail that the passenger must take these directives to be providing non-derivative moral reasons; rather, it suffices that the passenger comply insofar as the attendant's directives remain useful in resolving an acute

[33] Christopher H. Wellman, "Samaritanism and the Duty to Obey the Law," in Christopher H. Wellman and A. John Simmons, *Is There a Duty to Obey the Law?* (Cambridge: Cambridge University Press, 2005), 1-89.
[34] Christiano, *Constitution of Equality*, 239 (for the echo), 237 (for the task of establishing justice), 299 (for the claim that public equality is a necessary condition of democratic justice), and 64-5 (on the fundamental interest in public equality).

coordination problem.[35] The reason the passenger complies, then, could simply be that this purported authority is usefully coordinating the carrying out of an urgent task. The Razian idea of authority thus drops out of the explanation.[36]

Urgent-task accounts also have difficulty solving A. John Simmons' "particularity problem." Any successful account of political authority or political obligation must account for the special character of political obligation (or, to anticipate, political liability).[37] That is, it must account for its being an obligation that citizens of a given state specially owe to that state (or a liability that they hold vis-à-vis that state). Most attempts at accounting for political obligation, Simmons has argued, come to grief on this point. There are two important facets to the problem. The first is the challenge of explaining the duty of obedience as one owed to a particular state, as opposed to being an impartial and undirected moral obligation.[38] The second is the challenge of explaining why a particular state has claims to being obeyed by a given set of individuals, as opposed to other actual and possible states (with different boundaries, say) that might lay claim to their allegiance. Urgent-task accounts fall to the first, more fundamental aspect of the particularity problem because they ultimately appeal to impartially important goods and ills. To illustrate this: As recent news events make plain, it is an urgent task to provide the stateless Rohingya of western Myanmar with lives that are not so brutish and short and with access to a system of equal justice. That being so, why not think that each of us—especially those of us

[35] Maring, *Political Obligation without Authority*, chap. 2; cf. Estlund, *Democratic Authority*, 124.
[36] Raz argues that one of the reasons that governmental directives can make a difference to what we ought to do is that, in resolving coordination problems, they can provide us with reasons not to act on our individual assessments of how best to resolve the problem (*Morality of Freedom*, 46, 59-62). Maring's analysis of the case is compatible with the claim that the directives of the flight attendant give the passengers such exclusionary reasons. His claim is that the notion of authority plays no role in accounting for this.
[37] See, e.g., how Simmons deploys this objection against Wellman's account in his contribution to their joint book, "The Duty to Obey and Our Natural Moral Duties," in Wellman & Simmons, *Is There A Duty to Obey the Law*, 93-196, at 166-79.
[38] Analytically, one might distinguish two aspects of this first facet: whether a particular state is the distinctive *patient* of the duty, in that the duty is to obey this particular state; the other, more demanding aspect is the thought that such a focused duty is owed to the particular state in question. Since I will be arriving at directed duties of obedience, I will, in the text, elide this distinction.

resident in the U.S. and Europe with cash and connections to spare—ought to do our fair share in seeing to it that this urgent task is accomplished? As even this rhetorical question should suffice to indicate, it will not adequately meet the particularity objection to stipulate, as Christiano does, that the urgent task is to establish order or justice in some particular jurisdiction.[39]

Estlund, who appeals to an urgent task not in order to support a duty to obey but in order to support the duty to consent, takes a step further in addressing the particularity problem by asking us to imagine that the limited jurisdiction is part of an at least loosely coordinated system of jurisdictions that represents a first-cut, "districted solution" to the task at hand. Although presuming the existence of such an arrangement for dividing the labor is—as I shall be stressing—morally significant and although it may provide something like a default arrangement for settling how to direct one's fair share of effort, it cannot do more than that by way of specifying citizens' duties. For all sorts of contingent circumstantial reasons, it might turn out that my efforts would be much more cost-effectively spent helping the Rohingya in Myanmar than the victims of political injustice in the United States. An adequate solution to the particularity problem should be closer to being an in-principle solution, and less hostage to the contingencies, than this.

Division of Responsibility and Democracy's Authority

These considerations about the uselessness of appealing to urgent-task approaches in explaining authority or in solving the particularity problem may seem to suggest that an account of authority should give up appealing to urgent tasks altogether; but that would be an over-hasty

[39] Christiano, *Constitution of Equality*, 237. At p. 250, Christiano also appeals to a circumscription of the duty to treat others as equals in order to address the particularity problem: in a democracy, he suggests, one has a duty to treat "one's fellows" as equals. Here, it seems to me, Christiano has named another aspect of the particularity that is to be explained, rather than providing an explanation of it.

generalization from the conclusions just reached. The arguments that I have just rehearsed suggest that it will not work to explain democratic authority by reference to citizen *duties* that arise from an urgent task. That conclusion is overdetermined, for we have independently seen that it is ill-advised to explain democratic authority by reference to citizens' duties of any kind. In the solution to the problem of political authority that I would like now to lay out, I appeal to urgent tasks instead in order to establish citizens' *liabilities.* To be sure, that is just a way of labeling the goal at which the argument aims, for the liabilities in question are just the special moral powers we are interested in, seen from the other direction. It will take me a little while longer to explain why this focus on citizen liabilities has more than a merely tautological significance. It is somewhat easier to signal in advance how the solution to the particularity problem that I propose, though referring to urgent tasks, differs from the ones just canvassed. I will pick up Estlund's point about "districted solutions," but rather than using it in an attempt to circumscribe the duties of citizens to do their fair share, I will be using it to circumscribe the duties of state officials. Both citizens and officials, proper, hold offices in the state; but officials, proper, I will suggest, have a deeper reason for having special responsibilities to those in the district. This deeper reason goes back to the notion of entrustment that John Locke invoked when speaking of civil government; but before we can properly understand how this connection works, we need to set things in the more modern context of democratic deliberations and the complexly institutionalized division of deliberative labor that they require.

Democratic Legitimacy

What makes democracy such a radical, promising, and important idea is its fundamental resistance to a dichotomy between the ruler and the ruled. In this respect, there is to be no fundamental distinction between "us" and "them." This resistance is normative, not

metaphysical: It is not the claim that there *is no* difference between the ruler and the ruled, let alone the objectionable Rousseauvian corollary claim that obedience to the state is perfect freedom since it is obedience to oneself.[40] Rather, it is the claim that, in order to be legitimate, a democracy should be set up so that, in a realistic sense, we can correctly say that the people rule. This is a demanding normative requirement. For its satisfaction to be realistically possible in any modern democracy, as I argued at length in *Democratic Autonomy*, some way must be found of accommodating the fact that law-making power is widely and diversely delegated to a specialized array of governmental agencies. That democracies rely on such is as it should be. Modern governments face many different urgent tasks.[41] Most of these call for specialized expertise. Democratically elected legislatures and chief executives are not capable of coming close to settling the important issues themselves. So the challenge posed by the existence of such agencies cannot be shucked off by saying that we ought to return to the simpler days of the Greek *polis*.

A proper appreciation of this fact is crucial to understanding the possibility of governmental authority. Thomas Christiano is one leading democratic theorist who comes close to such an appreciation, but then backs off, apparently because of his adherence to the traditional claim that "[a] properly constituted democratic assembly is the institutional embodiment of the unified body of the people as a collective decision maker in a political society" (246). This is in part because a properly constituted democratic assembly will, by definition, be properly representative of the views of the citizenry (247). Accordingly, we can say that "the citizens determine what the assembly aims at by choosing the basic overall aims of the assembly" (248). Working from that starting point, the democratic assembly will further "determine broad aims

[40] Jean-Jacques Rousseau, *The Social Contract and Discourses*, trans. G.D.H. Cole (N.Y.: Dutton, 1973): I.viii, p. 178.
[41] Christiano agrees: *Constitution of Equality*, 257.

and principles." The many government agencies then are "charged with the tasks of finding ways of specifying and achieving the aims of the democratic assembly" (257). Having spelled out this complexity to this extent, Christiano reaffirms his earlier conclusion—using the term "authority" differently than I have been here—that "[t]he authority of democracy consists in the right of the democratic assembly to rule by means of law and policy and the duties of citizens to obey the assembly's decisions" (243). The specifying and implementing powers held by the agencies represent a type of authority that is, by contrast, merely "instrumental," in that citizens' duties of obedience are not owed to them (257-8). In labeling this view "traditional," what I have in mind is the way it singles out the legislature as the privileged mouthpiece of the people.

Bruce Ackerman calls the singling out of any agent as the mouthpiece of the people a "monism"—a view he goes on to subject to devastating criticism.[42] I have seconded that criticism.[43] A sufficient reason why it is inadequate to see rule by the people as expressed simply in the decisions of the democratic assembly is that these represent but the tip of the iceberg of governmental decisions having the force of general law. Now, suppose we did not care about this fact. In that case, we should still ask: If it is the people, in their role as voters, who set the basic aims, why not say directly that, given the existence of a properly constituted democratic assembly that will heed those aims, it is the voters who have the right to rule? If, as we should, we do care about the vast practical and legal import of the agencies' decisions, we should note that because *both* the democratic assembly and the specialized agencies do practically important work in specifying a public's aims, *both* need to be seen as part of the complex democratic sovereign, together with the people in their role as voters. What we need to try to conceive and realize, in other words, is what I have called an "institutionally distributed

[42] Bruce Ackerman, *We the People, Vol. I, Foundations* (Cambridge: Harvard University Press, 1991).
[43] Richardson, *Democratic Autonomy*, 68.

popular sovereignty."[44] A democratic *we* cannot meaningfully form its will, except via institutions that divide its deliberative labor by stages and by subject-matter, while making adequate provision throughout for citizen input and correction.[45]

I have a special reason for stressing this point here. Seeing this division of deliberative labor as being institutionally embodied within the democratic sovereign is, I believe, crucial to solving the problem of democratic authority, conceived not in terms of a right to rule but rather as involving the moral power to impose new duties. As I will now argue, authority, in the sense of the moral power to impose new moral duties, arises from the division of deliberative labor. It does so, however, only on the condition that the exercise of this moral power arises from exercising legitimately assigned responsibilities. In politics, such an assignment can be legitimate only if this division of labor is incorporated within a complexly embodied democratic sovereign with an adequate claim to be fashioning the will of the people.

This "populist" requirement that a legitimate democracy count as a form of rule by the people is thus fundamental to my argument. In my view, however, there are a number of other necessary conditions of democratic legitimacy that are of co-equal importance. One is that constitutional mechanisms must be so designed, and conditions of background justice sufficiently met, to secure citizens the basic liberties and to see to it that citizens can enjoy a sufficient equality of political influence.[46] I also agree with Christiano that it is necessary that the political system must secure a form of political equality in which citizens can and do affirm and recognize one another as equals. Here I would add—casting a glance ahead to how my account of authority will attempt to meet the objection from autonomy—that the system must be

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[44] Richardson, *Democratic Autonomy*, 70-72.
[45] On the inability of polls, including deliberative ones, to articulate a public's will, see my "Public Opinion and Popular Will," in D. Kahane, et al., eds., *Realizing Deliberative Democracy* (Vancouver: University of British Columbia Press, 2010): 177-193.
[46] Richardson, *Democratic Autonomy*, chap. 7.

so set up that citizens therein express respect for one another as equally autonomous beings. As I see things, this abstract requirement implies that a legitimate democracy must be deliberative: that its lawmaking must proceed through-and-through on the basis of the giving and considering of reasons. (An appeal such as Rainer Forst's to the fundamental right to justification would support the same conclusion in a not dissimilar way.[47]) These requirements of legitimacy also bear on agency decisionmaking, for the specialized agencies often, inevitably, engage in lawmaking. For instance, in the U.S., they write many "regulations" with the force of law. In Germany, such administrative regulations are called *Rechtsverordnungen.* Being laws, to be legitimate, these administrative rules, too, must arise from a participatory and fair process that centrally involves the exchange of reasons.

Authority Arising from Divided Responsibilities

These brief remarks just scratch the surface of the rich topic of democratic legitimacy, but are enough to allow me to proceed with my argument for democratic authority. Let me now fold in some urgent tasks, to play their advertised, oblique role. In a way, any urgent task would do; but I would like to focus on the many tasks comprised by securing the citizens their basic human rights. I choose these tasks for three reasons: first, these tasks have an obvious moral significance and content. Second, in making my points I would like to draw on Henry Shue's and Thomas Pogge's insightful discussions of these tasks. Finally, third, it is important to my account to emphasize that democratic decisions often change citizens' rights, duties, and liberties by generating new specifications of their rights. When the task at hand is to secure basic rights, this feature is front and center. What we need to understand is the moral structure of a serious division of deliberative labor in carrying out a morally urgent task.

[47] Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (N.Y.: Columbia University Press, 2012).

As I have indicated, my account will assert that government officials in a legitimate democracy have significant moral powers. We have seen that a "privilege" or permission to do something, if not simply impersonal, can correlate with another's lack of a right that one not do it, and that one's claim-right that another do something correlates to the other's having a duty to one to do it. I take it that these correlatives, in fact, provide two ways of stating the same moral fact.[48] Setting aside the case of God, moral powers are always powers over some specific range of people. Using Wesley Hohfeld's terminology, we can say that what correlates to governmental moral powers are citizens' liabilities to having their rights, duties, and liberties changed. In focusing on the state's moral powers, I am not focusing on citizens' duties towards the states, but on citizen's liabilities. As Hohfeld explained, however, each of these correlative pairs—rights and duties, privileges and no-rights, moral powers and liabilities—shares a similar structure, involving a bilateral "directedness" that links one party's moral status to another's.[49]

As I have indicated in criticizing urgent-task accounts, they fall at the first, fundamental hurdle posed by the particularity problem because they fail to build in this element of directedness. In now proceeding to discuss the morally urgent task of securing the basic human rights, then, I seek to build a different, more oblique sort of account by highlighting how such directed correlativities can arise therein.

In the arena of human rights, where it is quite dubious whether the Hohfeldian correlativity of rights and duties generally holds as a conceptual matter, there is nonetheless an important pragmatic reason for focusing on such directed rights and duties.[50] Henry Shue's treatment of the human rights that fall under the rubric of rights to subsistence well brings this

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[48] If you like, you can take this claim to reflect a stipulation about these directed (or "relational" or "bilateral") deontic terms. The stance I'm taking, here, was, I think, Hohfeld's in *Fundamental Legal Conceptions*.
[49] This is not to say that all duties, rights, or permissions are directed or relational.
[50] This paragraph and following one are adapted from my "Directing Rights: A Liability Theory," in progress.

out. The second chapter of his book, *Basic Rights*, is entitled "Correlative Duties."[51] In that chapter, he is concerned to rebut the view that there is an important contrast between security rights, which are negative, and subsistence rights, which are positive. I take no position on this view, here.[52] What interests me is how, in making his arguments, Shue there discusses which duties "correlate" to these rights. His is no exercise in the logic of relations, like turning over the "A's child" coin to find "B's parent" on the other side. Rather, taking a social point of view both in the case of security rights and in the case of subsistence rights, Shue is effectively asking what sort of duties need to be assigned to people in order for rights of either kind to be meaningfully guaranteed to individuals. "[I]n an organized society," he suggests, "insofar as there were any such thing as rights to physical security that were distinguishable from some other rights-to-be-protected-from-assaults-upon-physical-security, no one would have much interest in the bare rights to physical security" (38). This is a moral-practical question, not a conceptual question. As he points out (37-8),

> it is impossible *to protect* anyone's rights to physical security without taking, or making payments toward the taking of, a wide range of positive actions. For example, at the very least the protection of rights to physical security necessitates police forces; criminal courts; penitentiaries; schools for training police, lawyers, and guards; and taxes to support an enormous system for the prevention, detection, and punishment of violations of personal security.

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[51] Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton: Princeton University Press, 1996)

[52] One basis for distinguishing negative and positive rights that Shue does not consider is the fundamental Kantian distinction between interfering with another's setting and pursuit of ends and refraining from taking on the ends of another. See, e.g., Arthur Ripstein, "Three Duties to Rescue: Moral, Civil, and Criminal," *Law and Philosophy* 19 (2000): 751-79. There, building on Kantian assumptions that he explains more in full in *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, Mass.: Harvard University Press, 2009), Ripstein argues that the distinction between private law (tort, contract, property) and public law implements and reflects the fundamental Kantian distinction just mentioned. The upshot is that the private law codifies moral relations between individuals (under the constraint of maximal freedom for each), and hence is the home of directed rights and duties, while public law institutes useful and legitimate collective arrangements and does not involve directed rights or duties. I find the contrast overblown. I find more plausible the kind of Kantian view sketched by Japa Pallikkathayil in "Deriving Morality from Politics: Rethinking the Formula of Humanity," *Ethics* 121 (2010): 116-147. Pallikkathayil emphasizes that—just as in the public-law cases—the law must settle crucial features of property, tort, and contract law in order for rights in those domains to have any determinacy.

There is no pretense, here, that the necessity in question is conceptual. Indeed, the institutions in this list, while now quite common around the world, are quite contingent, historically evolved ways of carrying out functions that might conceivably have been organized quite differently. To observe this does not damage Shue's point, which is that such social means are, for us, indispensably necessary for meaningfully protecting security rights. On this way of talking, then, the duties that "correlate" to rights are the ones that experience has shown to be reasonably necessary, in circumstances like ours, to assign and enforce in order meaningfully to protect and secure those rights. We are here a long way from Hohfeld.

Seeing social institutions, such as the police or national health insurance, simply as means to the protection and securing of human rights does indeed seem to leave behind the idea that there are duties correlating to those rights, in any simple sense. Consistently with recognizing these institutions' contingent but helpful support, however, we can also view them in another way, one that provides us something intermediate between strict Hohfeldian correlativity, on the one hand, and mere instrumental, contingent indispensability, on the other. We can see the relevant human rights as being addressed to social institutions and, through them, in a "second-order" way, to the duties of individuals. This is the approach Thomas Pogge has taken in his "institutional" understanding of human rights.[53] On this understanding, Pogge insists, "human rights (conceptually) entail moral duties—but these are not corresponding duties in any simple way."[54] Rather, human rights correspond to duties held by governments and individuals "to help ensure" that an institutional order adequate for realizing these rights comes into being and is sustained. What Pogge's institutional understanding of human rights well sustains, then, is not yet a Hohfeldian directedness of the basic claims that those rights name, but

[53] Thomas W. Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103 (1992): 48-75, p. 50.
[54] Thomas W. Pogge, "How Should Human Rights Be Conceived," repr. in his *World Poverty and Human Rights*, 2nd ed. (Cambridge, England: Polity Press, 2008), p. 72.

rather the need to firmly establish what Estlund calls a "districted solution" of the problem of realizing human rights, one that is adequately institutionalized. The claim is not that it must as a conceptual matter be clear to whom citizens are in the first instance to direct their claims for having their basic rights protected, but that as a pragmatic matter it must be clear.

I am not concerned, here, with whether or not Shue or Pogge has demonstrated that securing basic human rights is a morally important task for governments. Assuming that it is, I turn to them, instead, for the ways that they usefully elaborate what is involved in undertaking this task. The conclusion along these lines that their discussions well support is that seriously undertaking this task requires getting in place an institutionally complex division of labor, one that assigns specific duties to a wide range of government officials, such as policemen, judges, lawyers, and prison wardens. Only once a society has attempted to do this, in the various different ways required by each basic right, Pogge insists, can we even meaningfully ask whether basic human rights are satisfied by a society.[55] In conditions like ours, then, a complexly institutionalized division of morally important labor is necessary to adequately honoring and protecting human rights.

It is here that the idea of entrustment comes in. Consider Locke's fundamental law of nature, the universal prohibition on harming another's life, health, liberty, or possessions. If the only urgent task faced by government were to see to it that the fundamental law of nature was consistently enforced in a way that does not generate too many new disputes, then it might be reasonable to imagine this urgent task being entrusted once-and-for-all, and *en bloc*, to the civil sovereign, and onwards to a government that must live up to the terms of that entrustment; but not even Locke held such a reductive view of the purposes of government. Recognizing that there are many distinct basic rights that need to be secured and that many different sets of

[55] Pogge, "Cosmopolitanism and Sovereignty," 55.

governmental institutions are needed to secure them, depending on what they are, it is more realistic to think of these urgent tasks—among others— as being variously entrusted, via various processes, to diverse agencies of government and to some of the officials therein. Insofar as we are talking simply about a national government's responsibility to honor and protect basic human rights within its jurisdiction, it strains credulity to insist on any historical moment of entrustment. Rather, nations are entrusted with honoring and protecting basic human rights within their jurisdiction just in the sense that their doing so is a necessary condition of their legitimately wielding the temporal power that, as it happens, has fallen to them. The more specific responsibilities of agencies and officials, however, will often result from legislative or executive actions that explicitly charge them with these responsibilities. This is a crucial aspect of the process of institutionalizing rights that Shue well describes.

One reason that the language of entrustment is reasonably apt, here, is that the basic human rights do not represent rules to be fetishized. Rather, each speaks to an important, underlying human concern, such as the concern with security or—as in the case of privacy rights—the concern with shielding one's fragile sense of autonomy from society's interferences. If agencies and officials could simply be asked to follow a set of rules blindly, there would be no place for talk of entrustment. In the case of urgent moral tasks such as securing the basic rights, however, there is no question of agencies or officials somehow being provided with a final set of rules. Instead, in addition to coming to be assigned some specific sub-task relevant to securing some basic right, agencies and their officials are assigned the responsibility to look after the underlying concern from some special point of view or another. Further, if my account of democratic legitimacy is on the right track, they are to carry out these responsibilities, not

mechanically, but via an ongoing process of giving and considering reasons—one that allows ordinary citizens adequate and equal opportunities for input.

We have already seen that relying on agency deliberation to help us specify our public aims is a practical necessity. We can understand the moral aptness of this reliance via the idea of entrustment. In carrying out deliberations about the discretionary decisions left to them, the agencies, which should be adequately informed by a public give-and-take of reasons—are called upon to rethink the specifics of their tasks in light of the underlying concerns entrusted to them. In doing so, they will generate new interpretations of how best to carry out these tasks. In the case of the urgent tasks of securing the basic rights, these new interpretations will often make a material difference to what it means, exactly, for this or that basic right to be satisfied. We know that some societies satisfy them in one way, some in another. Here, what I am out to explain is that this variation can have a significance that is not merely conventional. If it legitimately results from a democratically endorsed division of labor, all down the line, then it can make a real moral difference to what specific moral rights the citizens of that country enjoy. That is because, if the agency's discretion resulted from a democratically endorsed delegation of decision-making tasks that did not violate rights or moral principles, then it has a strong claim to legitimacy. Legitimately held discretion in carrying out moral responsibilities carries with it (in a wide variety of domains, I would argue) the moral power to introduce, in good faith, new specifications of how those responsibilities are aptly carried out.[56] This presumably works only within constrained limits, of course, set by morality itself. One of these limits, presumably, is that the new specification must be pragmatically well-supported as a way of satisfying the underlying moral responsibility that it specifies. Sometimes, there will be alternative specific

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[56] See, e.g., my "Beyond Good and Right: Toward a Constructive Ethical Pragmatism," *Philosophy & Public Affairs* 24 (1995): 108-141. I am grateful to Stefan Gosepath for having pressed me to clarify my point, here.

ways of carrying out a morally important task such that it is obvious that neither is better than the other—reprimanding the elder child before the younger one for a jointly committed fault or vice versa, say. In such cases, there is no important pragmatic basis for supporting a general specification that goes one way rather than the other. In the case of the urgent governmental tasks I have chosen as an example—and this was one of the reasons, as I have indicated, that I chose them—it is particularly obvious that there is a practical need for a regime of law that specifies how basic human rights are to be protected.[57] Similarly, in those cases, it is clear how specifying what is to count as an adequate way of fulfilling the responsibilities in question can have the effect of modifying, in potentially important detail, the moral rights and duties of citizens. The democratic delegation of decision-making tasks has given the agencies and officials the moral power to modify citizens' basic moral rights, interpreting what they will mean, concretely, in their society. This moral power is not autarchic, of course, but is subject to public oversight and contestation—and perhaps ratification, as well—but it is morally significant, nonetheless. In particular, it constitutes the kind of moral authority I have been seeking here to explain: power to modify citizens' moral rights, duties, and liberties, a power correlative to citizens' liabilities to having these moral rights, duties, and liberties so shaped.

My talk of specific moral rights that vary from one place to another should not confuse you. The basic human rights, considered in the abstract, are universal and, in the relevant respect, invariant. The coherent possibility of locally variant moral rights entered the picture together with the agencies' and officials' moral duties, which they specially owe to the citizens of the state for which they work, to generate an adequate system for securing the basic rights.

[57] Thus, the cases on which I am focusing are not simply ones in which there is a permissible range of discretion, but the sub-class of those in which there are significant pragmatic reasons for specifying a way of proceeding that applies to more than one case. I am grateful to Thomas Christiano, whose question prompted me to clarify this point.

Once these enter the picture, at the same time, as a conceptual matter, we get correlative moral rights by the citizens as against the officials of their country. It is these special, directed rights that can coherently and unproblematically vary from place to place.[58] Thus, I am not denying that there is a place for invariant and even, possibly, *a priori* principles of morality—albeit, presumably, epistemically contingent ones that we have to work to grasp in their abstraction, the owl of Minerva opening her wings only late in the day. I am asserting, however, that invariant, *a priori* principles cannot do all the important and interesting moral work, for to some extent the shape that morality takes must depend on the shape that suitable social institutions take.

These considerations, by the way, provide a solution to first, fundamental aspect of the particularity problem,[59] which inevitably trips up views that ultimately rest—as urgent-task views do—on generating reasons of a general and agent-neutral kind. As we saw, it being an urgent task that justice or basic rights be secured in this or that jurisdiction does not suffice to solve the particularity problem, for it gives reasons to everyone who can help. What makes the decisive difference, though, is the entrustment of relevant aspects of such an urgent task to the agencies and officials of a particular jurisdiction. They then come under special, directed duties to the citizens of that jurisdiction. That point suffices to address this aspect of the particularity problem in the abstract. Now conjoin this simple point with the conclusion I have just reached that entrusting morally urgent tasks to government agencies and officials gives them the moral power to affect the interpretation of citizens' moral rights. Doing so shows that this abstract

[58] I tackle more problematic cases of historical and local variability in "Revising Moral Norms: Pragmatism and the Problem of Perspicuous Description," in Carla Bagnoli, ed., *Constructivism* (Cambridge University Press, forthcoming).

[59] I am grateful to Robin Celikates for bringing to my attention the need to make this qualification. As to the second aspect of the particularity problem, which is the demand that one justify the claims to power of a particular state, as opposed to other actual and possible rival states that claim or might have claimed to rule the territory in question, I am inclined to think that all theories of governmental authority face this problem equally and to hope that some contingency of origin can be tolerated, consistently with recognizing (Razian) authority.

answer to the particularity problem is an answer that comes in defense of a conception of democratic authority.

Concluding Remarks

This account of democratic authority explains why I said that if one writes off the decision making of subordinate agencies as merely of instrumental importance to democratic authority, one makes it difficult to give an adequate account of democratic authority, understood as involving the moral power to alter citizens' rights, duties, and liberties. Authority, in this sense, arises from the moral discretion of government officials that is concomitant with having been entrusted a significant sub-task addressed to fulfilling one of the urgent tasks governments face. The importance of these tasks underwrites their moral power to exercise that discretion, within bounds, to specify citizens' duties. And that kind of moral power, I have argued, is that in which the authority of legitimate democracies consists.

I have explained how the moral authority of democratic governments can arise from the way that they otherwise legitimately undertake, via a complexly instituted division of deliberative labor, various morally important tasks. I have also argued that because the officials of democratic governments have special obligations to the citizens whose rights and interests they serve, this way of explaining the basis of democratic authority addresses the first, fundamental aspect of the particularity problem. But what about the objection to the very idea of a government's moral authority that arises from the idea of autonomy? As I mentioned early on, this objection casts suspicion on any assertion of such authority.

In briefly sketching an answer to this objection, I will again draw on my broader conception of democracy. My answer draws on four ideas, three of which I have already

introduced. The first is the populist commitment: the assertion that government is legitimate only if it is a form of rule by the people. The second is that adequate respect for one another's autonomy requires that citizens govern one another via a deliberative process in which they offer reasons and consider the reasons offered by others. The third is the necessity of institutionally distributed popular sovereignty: the fact that the process of deliberative governance can reasonably count as generating a form of rule by the people only if the deliberation is widely dispersed across a variety of institutions answerable to the public. This being so, my answer to the objection from autonomy, while drawing on some additional background ideals, is directly relevant to the account of authority here under challenge. The one further idea that needs to be added in order to answer this objection is the Kantian thought that the most that a citizen may demand in the name of autonomy as it is affected by the laws (or in the name of what Kant called "external freedom") is *equal* respect for his or her autonomy. To ask for the privilege to set aside the results of fair procedures of democratic self-governance simply in the name of better promoting one's own autonomy is, as Scott Shapiro has recently reminded us, criticizably arrogant.[60] For this reason, on good Kantian grounds, we must give up the idea that autonomy is flat-out incompatible with being subject to the will of another. A democracy that achieves popular self-rule through a fair set of institutionally differentiated deliberative procedures satisfies what it is morally defensible to demand in the name of autonomy.

[60] Scott Shapiro, "Authority," in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. Jules Coleman and Scott Shapiro (Oxford: Oxford University Press, 2002), 382-439, 437. I build on Shapiro's argument from arrogance in "Estlund's Promising Account of Authority," 328-34.