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Political Legitimacy and Democracy*

Allen Buchanan

I. POLITICAL LEGITIMACY AND THE MORALITY OF POLITICAL POWER

Political Legitimacy, Political Authority, and Authoritativeness

The term 'political legitimacy' is unfortunately ambiguous. One serious source of confusion is the failure to distinguish clearly between political legitimacy and political authority and to conflate political authority with authoritativeness. I will distinguish between (1) political legitimacy, (2) political authority, and (3) authoritativeness. I will also articulate two importantly different variants of the notion of political authority. Having drawn these distinctions, I will argue first that political legitimacy, rather than political authority, is the more central notion for a theory of the morality of political power. My second main conclusion will be that where democratic authorization of the exercise of political power is possible, only a democratic government can be legitimate.

Another ambiguity is also a source of confusion. Sometimes it is unclear whether 'legitimacy' is being used in a descriptive or a normative sense. In this article I am concerned exclusively with legitimacy in the normative sense, not with the conditions under which an entity is believed to be legitimate. However, a normative account of legitimacy is essential for a descriptive account. Unless one distinguishes carefully between political legitimacy, political authority, and authoritativeness, one will not be clear about what beliefs in legitimacy are beliefs about.

Political Power and Political Legitimacy

According to the terminology I am recommending, an entity has political legitimacy if and only if it is morally justified in wielding political power, where to wield political power is to attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforce-

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ment of laws. The monopoly feature is important if we are to distinguish political power from mere coercion. A state not only uses coercion to secure compliance with its rules, it also attempts to establish the supremacy of those rules and endeavors to suppress others who would enforce its rules or promulgate their own rules. Note, however, that supremacy does not imply that there are no limits on state control. Supremacy refers to the lack of a rival for the state's making, application, and enforcement of law within an assumed jurisdiction (typically understood as a territory). This is compatible with the scope of the rules it imposes being limited, for example, by human rights principles that place constraints on how the state may deal with its own population.

It might be thought that this conception of political power is not sufficiently political—that it does not capture what is distinctive of political as opposed to other forms of power. For it seems that it would apply to the administration of a prison or mental hospital, assuming that the administration promulgates rules and enforces them within the institution and attempts to do so in a way that denies others in the institution the opportunity to make, apply, and enforce rules. This is not the case, however. The control exercised by the administration of such an institution is simply the delegated power of the state; it is the state that wields political power through a system of laws that permits or enables various institutional spheres of control. To the extent that institutions such as prisons or mental hospitals within society employ monopolistic coercive power within certain subdomains of the state's sphere of control, they do so as agents of the state or at least with the state's permission to do so. If something further is needed to distinguish clearly between political power and the power wielded within such institutions as correctional facilities or mental hospitals, one may add that political power is the attempt to make, apply, and enforce rules monopolistically over the broadest class of citizens, including what might be called the "unencumbered" population, not just those in a special class, such as convicted criminals, the mentally infirm, or minors, whose civil and/or political rights are subject to special restrictions.

This definition of political power offered is deliberately inclusive. It would cover not only the actions of, say, the government of the United Kingdom in Great Britain but also those of an occupying military force. Some might think that the fact that the definition encompasses the latter case shows that it is overinclusive. Recall, however, that the goal is to formulate a conception of political power, not a conception of a genuine or ideal political community, in which political power is wielded by a group of people over themselves. To object that the definition of political power offered here must be defective because it leaves open the possibility that a government of military occupation might satisfy the conditions for being legitimate, that is, for being morally justified

in wielding political power, is to beg important questions about the conditions under which political legitimacy is possible. In contrast, the definition of political power I am operating with leaves open the possibility that entities wielding political power can be legitimate even if they do not achieve an ideal of democratic governance or are less than morally optimal in some other respect. It also leaves open the possibility that entities wielding political power can be legitimate even if the individuals over which political power is wielded do not constitute a political community in some normatively robust sense according to which all members of the community are said to have significant special obligations toward each other. One reason to take this approach is to avoid conflating legitimacy with perfect justice (understood as requiring democracy) or with an ideal of political community at the outset of the analysis. Just as important, we need a conception of political power, and an account of the conditions under which wielding it is morally justifiable, that is not restricted to cases where a “genuine political community” already exists or where democratic government is feasible, because we need to know when it is morally justifiable to use monopolistic coercion to impose public order as one resource for building genuine political communities and developing democratic institutions under conditions of state breakdown.

I shall say that an entity has political authority if and only if, in addition to (1) possessing political legitimacy it (2) has the right to be obeyed by those who are within the scope of its rules; in other words, if those upon whom it attempts to impose rules have an obligation to that entity to obey it. To say that X has a right to be obeyed by P implies that if P does not comply with X’s rules P wrongs X.

Those who employ the term ‘political authority’ in this way are sometimes unclear as to whether the entity that is said to have the right to be obeyed is the state or the government; indeed one suspects that they use these terms interchangeably in some cases. However, there is a distinction and it is significant. The state is a persisting structure of institutions for the wielding of political power. Within this structure there are roles that empower their occupants to exercise power in various ways, and the government consists of the occupants of these roles or at least the more important of them. Governments can come and go while states remain. Given this distinction, the more coherent view is that obedience is owed to the government, not the state, since the idea of owing anything to an institutional structure, as opposed to those persons who occupy roles in it, is problematic.

Some who use the term ‘political authority’ do so in a different way. On this reading, the idea of the right to be obeyed is still crucial to the notion, but the subject of this right is not the government but, rather, one’s fellow citizens. Thus Locke is best interpreted as arguing

that it is not the government, but one's fellow citizens to whom one owes obedience (in a properly constituted polity). On this view, where political authority exists the right to be obeyed is owed to those in whose name and on whose behalf it is wielded, rather than those who actually wield power (except perhaps in the rather extended sense in which it can be said that the people wield power through the agency of the government). In the analysis that follows, I will distinguish, where it is relevant to do so, between these quite different conceptions of the subject of the right to be obeyed. What the two variants of the notion of political authority have in common is that they both include the idea that citizens have an obligation to obey someone, not just the idea that someone is justified in imposing rules on them. In the former variant the obligation is owed to the government, the actual (or at least proximate) wielder of political power; in the latter to one's fellow citizens.

I shall say that an entity is authoritative if and only if the fact that it issues a rule can in itself constitute a compelling reason to comply with that rule. The notion of authoritativeness has a much broader application that extends beyond the political (and, for that matter, the moral). An expert in auto mechanics or astronomy can be authoritative with respect to his or her relevant domain of expertise, without having the right to wield power over anyone. According to Raz's analysis of what I shall call authoritativeness, an individual or entity A is authoritative with respect to a class of persons P and a domain of activity D if and only if the members of P act better by taking A's directives about how to act in domain D as themselves constituting a compelling reason for acting (in domain D).¹ And if one has a compelling reason to comply with what A directs one to do, then one is obligated to do what A directs one to do. It does not follow, however, that one is obligated to A to obey him, nor consequently that if one does not do what A directs one to do, then one has wronged A.

To summarize: political authority and authoritativeness are distinct in three important respects. First, authoritativeness is not restricted to the political domain—auto mechanics and astronomers can be authoritative. Second, by itself the statement that an individual or entity A is authoritative with respect to some domain of activity does not imply that A is justified in imposing rules on anyone. Third, authoritativeness does not imply an obligation to the authoritative entity to obey it. In contrast, the notion of political authority, as I have defined it, is restricted to the political domain and includes both the right to be obeyed and the justification for wielding political power, that is, being justified in the monopolistic imposition of rules within a jurisdiction.

Many, perhaps most contemporary political philosophers have fo-

1. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

cused on political authority, understood as including the right to be obeyed.² In contrast, Joseph Raz has concentrated on what I call authoritativeness, though as already noted he has not restricted his analysis of this notion to the political context.³ Rawls has exclusively addressed political legitimacy; there is no discussion of political authority (understood as including the right to be obeyed), either in *A Theory of Justice* or in later work. One might conclude from this that neither Rawls nor Raz find the question of political authority (as including the right to be obeyed) to be of much consequence for political theory. For reasons that will become clearer as my analysis unfolds, I believe that the concept of political authority is not of much consequence for political philosophy, if it is understood as including the right of the government to be obeyed. Later I will argue that the notion that one has an obligation to one's fellow citizens to obey the law does add something important to the notion that an entity wielding political power is justified in doing so (i.e., has political legitimacy) and that only a theory of democratically authorized political power can supply it. To preview that discussion: a collection of people upon whom political power is being justifiably exercised may fall short of being a political community in any important sense, even if they also have sufficient reasons for complying with the laws; in contrast, where a particular entity's exercise of political power is justified by virtue of its being democratically authorized to do so, citizens owe it to each other (not to the government) to comply with the rules that are imposed by the democratically authorized wielder of political power, and here a genuine political community can be said to exist.⁴ Furthermore, where institutional resources are available to allow democratic authorization of the wielder of political power (the government), such authorization is a necessary condition for political legitimacy, that is, for the justified wielding of political power.

Theorizing the Morality of Political Power

My focus on political legitimacy and my skepticism about the significance of the idea that we owe compliance to the government are both based on a conception of what is required for a theory of the morality of political power. The chief objective of such a theory is to answer two questions: (a) under what conditions is it morally justifiable for some

2. A. John Simmons, *Moral Principles and Political Obligations* (Princeton, N.J.: Princeton University Press, 1979); George Klosko, *The Principle of Fairness and Political Obligation* (Savage, Md.: Rowman & Littlefield, 1992); Chaim Gans, *Philosophical Anarchism and Political Disobedience* (Cambridge: Cambridge University Press, 1992).

3. Raz.

4. Thomas Christiano, "Justice and Disagreement at the Foundations of Political Authority," review of *An Essay on the Modern State*, by Christopher Morris, *Ethics* 110 (1999): 165–87.

agent or agents to wield political power (the agent-justifiability question), and (b) under what conditions do those upon whom political power is exercised have sufficient reasons to comply with its demands (the reasons-for-compliance question)? As will become clear shortly, answering these two questions does not require an account of political authority, where this is understood as including a right to be obeyed on the part of the government. Nor does answering them require recourse to the notion that we owe our fellow citizens compliance with the laws, except in circumstances where democratic authorization for the exercise of political power is feasible.

Political Legitimacy and Authoritativeness

Political legitimacy does not entail authoritativeness. An entity could be morally justified in wielding political power and yet it might not be true that the mere fact that its agents say that something is to be done (or is forbidden) itself provides a good reason for those toward whom the pronouncement is directed to comply. Nevertheless, there is a connection: governments may attempt to convince those upon whom they impose rules that the mere fact that a rule issues from the government is a sufficient reason to comply with it, because achieving compliance through coercion alone is difficult, if not impossible, and very costly. If citizens habitually regard the government as authoritative, government's job is much easier. Moreover, it is not just the state who may benefit from being regarded as authoritative: if all or most citizens take the government as authoritative this may be of benefit to all so far as it achieves greater compliance and the mutual benefit that compliance enables. (Whether compliance with the laws produces benefit for all or even for most will depend, of course, upon the quality of the laws.) Thus it may be the case that the belief in or appearance of authoritativeness is, at least under some circumstances, necessary either for the effective exercise of political power or for maximizing its benefits.

So even if the two chief questions which a moral theory of political power ought to answer are the agent-justification question and the reasons-for-compliance question, a third question, under what conditions is an entity wielding political power perceived to be authoritative may also be of considerable interest, if it is the case that only those entities that are regarded as authoritative are likely to govern effectively or if their being regarded as authoritative increases the fruits of coordinated cooperation by enhancing compliance. If it turns out that the perception of authoritativeness is necessary for effective government or for maximizing the benefits of rule-governed cooperation, and if we care about whether effective government or optimal cooperation are based on a warranted belief that the state is authoritative, then we also need to know the conditions under which a wielder of political power is au-

thoritative. However, the thesis that effective or optimally beneficial government requires the perception of authoritativeness is not self-evident, and to my knowledge empirical evidence to confirm it has not been marshaled.

II. THE IRRELEVANCE OF THE IDEA THAT WE OWE COMPLIANCE TO THE GOVERNMENT

The Relationship between Political Authority and Political Legitimacy

Political authority, understood as including the right of the government to be obeyed, entails political legitimacy, but not vice versa. An entity may be morally justified in attempting to exercise a monopoly on the making, application, and enforcement of laws without it also being the case that those upon whom it enforces the laws owe it an obligation to obey. Whether an entity is politically legitimate depends only upon whether the agents attempting to wield political power in it are morally justified in making, applying, and enforcing rules (and doing so monopolistically). In other words, political legitimacy is an agent-justification notion, having to do only with the normative sufficiency of the justification for the act of imposing rules, not with whether those upon whom the rules are imposed have obligations to those who impose the rules.

Similarly, whether we have sufficient reasons for complying with rules does not depend upon whether those who impose them have the right to be obeyed but, rather, upon the quality of reasons to comply. Of course it is true that if one is obligated to obey X, then this gives one a reason to comply with the rules X promulgates. But being obligated to obey X is not necessary for having good reasons to comply with the rules. For as A. John Simmons and others have emphasized, we can have other good reasons and indeed we can be morally obligated to comply, in the absence of any obligation to those who wield political power.⁵ For example, we may have prudential reasons (we are likely to be punished for noncompliance) or religious reasons (we believe the scriptures and the scriptures say to render unto Caesar what is Caesar's) or we may have general moral reasons (the law codifies sound moral principles that prohibit killing, theft, etc.) to comply with the laws the government imposes. Yet none of these reasons need imply that we owe compliance to the government. So both the agency-justification and reasons-for-compliance questions can be answered without recourse to the notion that compliance with the laws is owed to the government. To that extent, the first variant of the concept of political authority,

5. Simmons.

according to which obedience is owed to the government, is irrelevant to the two main tasks for a theory of the morality of political power.

Political Authority and Authoritativeness

If the government or our fellow citizens as a collectivity have political authority, then we are obligated to them to comply with the rules they impose, and if we are thus obligated, then the fact that they say we are to do something gives us a reason to do it. So political authority seems to imply authoritativeness. However, authoritativeness does not imply political authority, because being obligated to X to do what X says is only one way of satisfying the condition that X's saying that one is to do something can provide a sufficient reason for doing what X says. As Raz argues, the fact that doing what X says results in one's doing better than one otherwise would can make it the case that X's saying that something ought to be done is itself a reason for one's doing it. So although political authority is sufficient for authoritativeness, it is not necessary. Moreover, as I have already noted, we cannot simply assume that even the perception that the government is authoritative, much less its being authoritative, is necessary for effective public order, even if it makes the task of governing easier.

III. EXPLAINING THE PREOCCUPATION WITH THE GOVERNMENT'S RIGHT TO BE OBEYED

In the past three decades there has been an extensive debate in political philosophy about political authority. Some of this literature has focused on the first variant of the notion of political authority, according to which we owe compliance to the government, but in some cases it may be that the second variant, according to which compliance is owed to fellow citizens, is assumed instead. I believe that the single most compelling conclusion to be drawn from the recent normative literature on political authority is that virtually no government possesses it, not because no government is morally justified in exercising political power or because we have no sufficient reasons to comply with the rules governments impose, but because the conditions for citizens having an obligation to their government to comply with the laws are not satisfied and are not likely to be satisfied.⁶ Given these disappointing results, there is all the more reason to ask whether analyses of the morality of political power should focus on, or even include, the issue of political authority. If the conditions for political authority appear to be unattainable, one ought to ask: why is political authority so important? I have argued that the answer cannot be "because without political authority, the wielding of political power is not justifiable," nor "because

6. For the most detailed criticisms leading to this conclusion, see *ibid.*

if the state lacks political authority we cannot have good reason to comply with the laws," nor "because a government lacking political authority cannot be authoritative."

Sometimes the conclusion that virtually no governments have or are likely to come to have political authority is equated with the thesis that the state cannot be "justified." But that is extremely unfortunate, because it either fails to distinguish not only between the government and the state but also between political legitimacy and political authority—or else wrongly assumes that the only "justification" for the state in which we should be interested is one that shows it to have not only political legitimacy but the more demanding characteristic of political authority.

Preoccupation with political authority overlooks the simple point noted earlier: we can have decisive reasons (prudential, religious, and moral) to comply with the law, indeed we can have weighty obligations to do so, without it being the case that we owe obedience to anyone, whether it be the government or our fellow citizens. So lack of political authority need not raise the specter of anarchy, if by anarchy we mean a condition of general lawlessness. One would only conclude that general lawlessness is the likely result of the lack of political authority if one assumes that most people will not find the other reasons for compliance (apart from being obligated to the government to obey it) compelling. But this assumption itself is dubious.

Once we recognize how demanding the notion of political authority is, and how unconnected it appears to be with the obviously important questions concerning the morality of political power (the agency-justification and reasons-for-compliance questions), it is puzzling that some recent political philosophers seem to have assumed that an account of political authority must be a centerpiece of a viable political theory. The explanation may lie in part in a failure to distinguish clearly between political legitimacy, political authority, having sufficient reasons to comply with laws imposed by a wielder of political power, and authoritativeness. In particular, some may have mistakenly thought that (a) only entities possessing political authority can be authoritative and that (b) authoritativeness is necessary for effective government or optimal co-operation. But as we have just seen, *a* is false and *b* is far from self-evident.

Perhaps a better explanation of the preoccupation with political authority has to do with the popularity of the theory of government by consent. The theory of consent flowered at a time when two key liberal notions were coming into their own: the idea that liberty is the proper condition of human beings and the idea of the fundamental moral equality of persons. If we are all equal, what can justify some persons (the government) making, applying, and enforcing rules on us? How

can the justified wielding of political power be squared with the fundamental equality of persons? And if liberty is our proper condition, how can the use of coercion, which government essentially involves, be justified? To both of these questions the theory of consent provides an elegantly simple, but flawed, answer: those who wield political power over us are justified in doing so if and only if we consented to their doing so.

Often it is assumed that the virtue of consent is that it takes the sting out of coercion, reconciling individual liberty with political power, and this is surely part of its attractiveness. But the justification of coercion as such is of paramount concern only if one assumes that liberty in the sense of freedom from coercion is the only or at least the most fundamental value. However, as Thomas Christiano has observed, quite apart from the question of liberty, the consent theory is enormously attractive simply from the standpoint of reconciling equality and political power. Consent theory has much to commend it from the standpoint of those who take equal consideration of persons to be the preeminent value, quite apart from any special preoccupation with the justification of coercion as such.⁷

Political power is problematic from the standpoint of equality (not just liberty) because it involves some persons imposing rules on others. In brief: if we are all equal, why should only some of us wield political power? The answer consent theory gives is that I have authorized you to do so by my consent. To the question, "How is the coercive nature of political power compatible with individual liberty?" the consent theory answers that we best preserve our liberty by the free choice of consenting to a political power to enforce a regime of individual rights. Even better, consent theory reconciles power with equality and liberty in a way that respects autonomy. For according to consent theory, it is not sufficient that the government secure my liberty for me by exercising coercion over me; rather, the state may coerce me only if I freely limit my own liberty by authorizing the state to impose rules on me.

Consent Theory

In fact, according to this venerable theory the answer to all four questions about political power is the same. (1) It is our consent that morally justifies the government in wielding political power (the answer to the agent-justification question). (2) In consenting to be governed by this entity we thereby obligate ourselves to obey it (the political authority question). (3) By consenting to government we incur an obligation to it to obey its rules, and if we are obligated to obey it, then the fact that the government issues rules is itself a reason for complying with them

7. See Christiano.

(the question of authoritativeness). Finally, the consent theory also provides an answer to what I described as being, along with the question of political legitimacy, the main concern of a moral theory of political power: under what conditions do we have sufficient reason to comply with rules issued by those wielding political power? (the reasons-for-compliance question). The consent theory answers: (4) when you have consented to it.

It may well be that the ability of the consent theory to answer all of these questions has led political philosophers to treat it as a kind of gold standard, to assume that any adequate account of the morality of political power would have to do what consent theory purports to do—not only solve the agent-justification and reasons-for-compliance questions—but also provide accounts of both authoritativeness and political authority. In addition, as I have already suggested, the consent theory is at first blush enormously attractive, at least within the broadly liberal tradition, because it seems to reconcile political power with the preeminent values of liberty and equality.

Consent as an Unsatisfiable Demand

Although the consent theory has the attraction of answering all these questions, it does so by virtue of a concept that is remarkably ill suited to the political world and so extraordinarily demanding as to be utopian in the worst sense. The objections to the consent theory are well known, so I will not rehearse them exhaustively here.⁸ A number of critics of consent theory have emphasized that nothing like what we now call a government satisfies or is ever likely to satisfy the conditions required for all or even most of its citizens to consent to its exercise of political power according to any conception of consent that would justify the exercise of political power. If consent is really necessary for political authority, then there are not and are never likely to be any entities that possess political authority. This dire conclusion should lead one to rethink the assumption that consent is necessary for political authority or, better still, to ask exactly why the existence or nonexistence of political authority is supposed to be so important. This last question is all the more pertinent given that the main questions for a moral theory of political power can be answered, as I have argued, without an account of political authority.

The Demand for Consent as a Denial of Politics

The idea of consent is ill suited to the political world in this sense: not only are there no existing entities or any that are likely to come about that will ever enjoy the consent of most of their citizens, but also politics

8. See Simmons, pp. 57–74, for what may still be the best critique of consent theory.

seems to be concerned, in some fundamental way, with how to get along when consent is lacking. Whether we assume that what is to be consented to is the system as a whole, its processes for generating laws, or all the particular laws themselves, some citizens, for good reasons or bad, will not consent even if presented with the possibility of doing so. Moreover, no existing states, including the ones we intuitively regard as the most legitimate, have developed mechanisms for even trying to obtain the consent of all their citizens.

The Nonconsensual Conditions for Consent

Unfortunately, when confronted by the fact that the consent requirement is utopian for any real political entity, instead of asking, "Why is political authority so important?" (given that we can account for political legitimacy, reasons for compliance, and authoritativeness of rules without it), some theorists, including Locke, have fallen back on the idea that a citizen tacitly consents by simply remaining within the state. However, the idea of tacit consent rapidly runs aground on two difficulties: first, as Hume observed, for many people in many states the costs of exit are so high or the prospects of a better situation elsewhere are so dim, that remaining in place cannot count as consent. This first objection by itself seems to doom the idea of tacit consent. Second, Simmons and Wellman have argued that to have the right to determine that a citizen's continued residence within the state counts as consent, someone would already have to have the authority or rightful power the consent theory is supposed to explain.⁹

The second objection can be elaborated as follows. The problem with taking continued residence as a sign of tacit consent is that there is no such thing as a natural act of consent to the exercise of political power, at least in a large-scale society. For some bit of behavior—for example, saying "Aye" in an assembly—to count as consent there must be certain conventions already in place. For example, establishing where and when groups must meet if they are to count as assemblies, who is qualified to participate, how something to be consented to must be stated, by whom, what noises or signs are to count as consent, how long consent will be regarded as binding, whether there are implicit exceptions to consent rooted in some conception of intent, etc. To think that there is some act that could count as consent prior to a collective process that establishes such conventions is as incorrect as thinking that an exchange of words between two people could count as a contract in the absence of a framework of legal institutions. So before maintaining residence in the state can count as consent, there must be some process

9. See A. John Simmons and Christopher H. Wellman, "Liberalism, Samaritanism, and Political Legitimacy," *Philosophy & Public Affairs* 25 (1996): 211–37.

by which these conventions are established. However, that process itself would have to be legitimate; otherwise, the problem of legitimacy would simply be pushed back to this earlier stage: who is justified in imposing the convention that such-and-such behavior is to count as consent? But this means that the problem of justifying the exercise of political power must already be solved before the consent theory can get off the ground.

The Simmons and Wellman argument may not be as conclusive as it first appears. For it might be objected that there can in fact be “natural” acts of consent. Thomas Scanlon has argued that in the absence of any institutions or social conventions whatsoever certain acts can count as promises to reciprocate. Scanlon asks us to imagine two strangers in a situation in which there is the possibility of an exchange of simple acts of aid and surmises that they could signal, by some simple gesture, an intent to reciprocate.¹⁰ Similarly, one might argue, there can be natural acts of consent.

However, Scanlon’s natural act of promising and the case of consent seem deeply dissimilar, mainly because just what one agrees to in the case of the exercise of political power is not only much more complex than what the two strangers agree to in Scanlon’s example, but disputable as well. To consent to the exercise of political authority, if this consent is to have normative force, presupposes agreement on some conception of the scope of political power—at least some rough idea of how and for what political power is to be used. Open-ended consent, agreement that someone, somehow, is to attempt to achieve supremacy in the making, interpretation, and enforcement of general rules, for wholly unspecified purposes, would be irrational. But quite apart from whether consent to an unspecified object of consent would be irrational, it is difficult to imagine how Scanlon’s strangers could by some simple act, in the absence of a common process or convention, signal such open-ended consent to the exercise of political power. (One can perhaps imagine a natural act of total submission—for example, prostrating oneself or kissing the other person’s foot—but this would be more like agreement to become a slave than consent to the exercise of political power.)

Presumably some sort of collective process would be needed to enable individuals to converge on at least a rough conception of the scope of the exercise of political power that is to be consented to. Without this, any gesture they might make would not succeed in indicating just what it is they are consenting to nor hence give any assurance that they were consenting to the same thing. And further, since what the scope of political authority should be is a contested issue, it makes

10. See Thomas Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998), pp. 295–302.

perfectly good sense to ask whether the process that identifies the proper object of consent (the scope of political power), and that designates some particular act as consent to that object, is itself legitimate. But if this is the case, then there can be no natural act of consent to the exercise of political power.

*Why Consent Cannot Be a Sufficient Reason to Comply
or for the Obligation to Obey*

Another difficulty is that even if it were true that consent is necessary for political authority (the right to be obeyed), it cannot be sufficient for having reasons to comply, nor for being obligated to obey the government. The fact that I have consented to government cannot itself show that I am obligated to comply with its demands, because there are some things that no government should require of anyone (namely, acts that are grossly immoral), and the fact that I have consented to government cannot change this. But once we hedge our consent-based obligations by appeal to independent moral principles, especially principles of justice, the question arises as to whether we can dispense with consent and simply argue that we ought to comply with a system of laws if it promotes justice and does so in ways that are themselves just. In brief, in its unconditional form the view that consent obligates us to comply is false, but qualifying it threatens to make consent superfluous as an account of reasons to comply with the law.

We can now summarize the critique of consent theory: (1) if nothing resembling a state (no matter how perfectly just and admirable the quality of its laws and its administration of them is and no matter how just the process by which it came into being) is ever likely to achieve the consent of all those it governs, if (2) consent is neither necessary nor sufficient for political authority, and if (3) consent is not necessary for political legitimacy, for having sufficient reasons to comply with the law, or for the laws being authoritative, perhaps it is time to abandon consent theory once and for all.

Once its flaws are appreciated, as well as its essential irrelevance in light of the fact that it is not important to show that governments enjoy political authority (as opposed to legitimacy), consent theory should no longer serve as the gold standard for a moral theory of political power. We should not assume that an adequate theory will do what the consent theory would do if successful, namely, articulate realizable conditions not only for the justification for wielding political power and an explanation of why we should comply with the laws and the conditions under which government is authoritative, but also an account of the obligation to the government to obey it.

However, one of the virtues of consent theory ought to be exemplified by a theory of political legitimacy: the reconciliation of the in-

equality involved in the actual exercise of political power—the fact that it involves the imposition of laws by some upon others—with the fundamental equality of persons. In the next section I develop the main outlines of a theory of political legitimacy and then explore the question of whether it successfully reconciles political power with the equal consideration for persons.

IV. TOWARD A THEORY OF POLITICAL LEGITIMACY

Political Legitimacy without Political Authority

My aim in this section is to develop a theory of political legitimacy that does not rely upon the notion of a right to be obeyed. The central idea is this: a wielder of political power (the monopolistic making, application, and enforcement of laws in a territory) is legitimate (i.e., is morally justified in wielding political power) if and only if it (*a*) does a credible job of protecting at least the most basic human rights of all those over whom it wields power, (*b*) provides this protection through processes, policies, and actions that themselves respect the most basic human rights, and (*c*) is not a usurper (i.e., does not come to wield political power by wrongly deposing a legitimate wielder of political power).¹¹

Legitimacy and the Robust Natural Duty of Justice

I have already argued against the thesis that consent is necessary or sufficient for political legitimacy. In contrast, the view I am offering grounds the three conditions (*a*, *b*, and *c* above) on what I shall call the Robust Natural Duty of Justice, understood as a general but limited moral obligation to help ensure that all persons have access to institutions that protect their basic human rights.¹²

The Robust Natural Duty of Justice figures in my account of political legitimacy in two ways. First, it supplies a weighty moral reason why citizens should support a wielder of political power that satisfies the three conditions *a*, *b*, and *c*: in doing so they are helping to establish or sustain just institutions in their own locale. Second, the Robust Natural Duty of Justice provides a justification for wielding political power (an answer to the agent-justification question), if it is combined with two relatively simple, intuitively plausible premises: (1) we do not have a right not to be coerced to do what we have an obligation of justice to do, at least if that obligation is implied by the principle that we are

11. My argument in this section draws on Allen E. Buchanan, "Recognitional Legitimacy and the State System," *Philosophy & Public Affairs* 28 (1999): 46–78.

12. The adjective 'robust' is intended to distinguish this duty from the weaker Rawlsian Natural Duty of Justice, which requires only that one support just institutions that already exist and apply to one. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

to treat all persons with equal concern and respect, and (2) the Robust Natural Duty of Justice is an obligation of justice that is implied by the principle of equal concern and respect for persons. Let me explain each of these two premises, before laying out the argument for the justice-based account of political legitimacy more explicitly.

Notice first that there is a conceptual link between justice and coercion: in principle the need to satisfy the demands of justice provides a powerful reason for coercion, perhaps the most powerful reason. Of course this does not imply that in any particular case coercion to achieve justice is justified all things considered, much less that where achieving justice requires coercion, anyone who chooses to use coercion to achieve justice is justified in doing so. But if the need to achieve justice does provide a weighty justification for coercion, then no one can have a right not to be coerced for purposes of achieving justice, at least in those cases in which the obligation of justice in question is a very basic one, that is, an obligation that is implied by the principle of equal concern and respect for persons. Thus, contrary to the philosophical anarchist, the exercise of political power cannot be ruled out *ab initio* as violating a right to liberty. And if no one can have a right not to be coerced for purposes of achieving justice, at least for those obligations of justice that are implied by the principle of equal regard, then it follows trivially that no one can have a right not to be coerced for the purpose of achieving the fulfillment of such obligations (when coercion is necessary to secure their fulfillment).

Now consider premise 2, which is clearly more controversial and in need of support. The Robust Natural Duty of Justice is a duty to help ensure that all persons have access to just institutions. I have argued elsewhere that this duty follows from the principle that all persons are entitled to equal regard (along with the premises that institutions are needed to ensure that persons' rights are respected and that respecting their rights is necessary for treating them as moral equals).¹³ Here I can only sketch that argument.

The Robust Natural Duty of Justice is not a rock-bottom moral principle but, rather, one that rests on two premises, one factual, the other moral. The factual premise is that ensuring that all persons are treated with equal regard requires just institutions and, more particularly, institutions that protect their basic human rights. The moral premise is that equal regard for persons requires helping to ensure that their rights are respected.

The factual premise is unproblematic. Few would doubt that just institutions, including institutions within which political power is

13. Allen Buchanan, *Justice, Legitimacy, and Self-Determination: International Relations and the Rule of Law* (Oxford: Oxford University Press, in press).

wielded, play a necessary role in ensuring that persons' rights are protected. To establish that there is a Robust Natural Duty of Justice one must make the case that equal regard for persons requires not only refraining from violating their rights but also doing something to help ensure that those rights are not violated. Perhaps the best way to make a case for this latter thesis is to reflect on the dubiousness of its denial.

Consider the implausibility of acknowledging that persons are entitled to equal regard while at the same time denying that one has any obligation to do anything that will ensure that their rights are protected. Suppose that I do nothing to violate your rights, stating that I do so out of equal regard for you as a person. But suppose also that someone else is bent on violating your most basic human rights and that I have it in my power to prevent you from being thus treated, without incurring any risk to myself or indeed any inconvenience or cost of any kind. All I need do is signal a nearby policeman who will intervene to protect you from being murdered. If I refuse to prevent you from having your most basic human rights violated under such circumstances, I could not reasonably expect you or anyone else for that matter to believe that I do in fact recognize you as entitled to equal concern and respect. Only a laughably anemic conception of what it is to show equal concern and respect for persons would count my merely refraining from violating your rights as sufficient.

Assertions of human rights signal that certain basic human interests are of such profound moral importance that they merit the extraordinarily strong protection that the recognition of rights accords. If, for example, there is a human right against religious discrimination, the implication is that the interest in being free to practice one's religion without fear of oppression is so important that even a significant gain in utility for society as a whole is not itself sufficient reason to allow discrimination. In other words, human rights principles specify fundamental constraints on actions, policies, and institutional arrangements; they are not merely assertions of worthy goals. And they do so on the assumption that certain interests are of great moral importance.

But surely if these interests are so extraordinarily important that the corresponding rights should not be violated even when violating them would produce more social utility, then recognizing their importance requires not only refraining from violating the corresponding rights but also doing something to ensure that these rights are not violated by others. How could it be the case that a particular interest is of such profound moral significance that we should not violate the corresponding right even to achieve a great deal of good for many people and yet it also be the case that we have no obligation whatsoever to help ensure that all persons have access to institutions that protect these interests? So a regard for the moral equality of persons sufficient

to ground the assertion that there are human rights also implies that there is a duty to help ensure that those rights are protected. And because the Robust Natural Duty is grounded in the same basic equal consideration for persons that grounds their rights as persons and the correlative obligations of justice these rights imply, it is not simply a discretionary duty of charity or an admirable moral goal. It is a duty of justice.

Of course not all obligations are correlatives of rights. A libertarian would contend that the obligation to help ensure that all persons have access to just institutions is only a duty of charity, not justice. However, to assume that the obligation in question is a duty of charity, without providing a principled account of the distinction between justice and charity, is to beg the question.¹⁴ Suppose that the objector replies that all we need ask is whether failure to fulfill the obligation wrongs anyone and if it does not then the obligation is not an obligation of justice. The difficulty with this response is that whether one believes the failure to fulfill a duty constitutes a wrong may depend upon whether one regards it as a duty of justice.

Without providing a detailed analysis of the distinction between justice and charity, how can one argue that the Robust Natural Duty of Justice is a duty of justice? My suggestion is that the answer lies in focusing on the explanation of why we regard the obligations that correlate with human rights as obligations of justice.

I noted above that assertions of human rights are grounded in the moral importance of the interests that respecting these rights protects and promotes. But this is only part of the story. Human rights are rights that all human beings have by virtue of their humanity. In other words, human beings have certain rights because they are the sorts of beings that they are. Moreover, the most plausible and coherent way to begin to spell out what it is about human beings that confers these rights is to articulate certain basic interests that they have in common. In addition, when human rights discourse links the protection of these interests to the inherent dignity or equal moral worth of all persons, this signals that the value of protecting these interests is not instrumental, not merely a means for promoting some good external to the individual. For example, in asserting that there is a human right to freedom from religious discrimination, we not only single out the interest in the free practice of religion as an especially important interest, we also signal that the source of the importance of this interest lies in the individual. In other words, the interest is important because of the role it plays in the welfare and freedom of the individual, not because it serves someone else's interest or because God commands us to respect it. It is this

14. Allen Buchanan, "Justice and Charity," *Ethics* 97 (1987): 558–75.

ultimate focus on the value of the individual who is said to have the right that grounds the assertion that when an obligation corresponding to a human right is not fulfilled, a wrong is done to the person in question.

In other words, assertions of human rights function not only to indicate the importance of certain interests human beings have but also to make it clear that their importance is grounded ultimately in the moral value of the human beings whose interests they are. We show equal concern and respect for persons by recognizing that their fundamental interests matter in their own right, quite apart from their contribution to other goods, and that is why failure to act in ways that protect those interests wrongs persons and is therefore a matter of justice.

Not helping to ensure that persons' rights are not violated, when one can do so without excessive costs, also wrongs persons, and for the same reason: it fails to accord them proper concern and respect by treating their fundamental interests, and hence themselves, as if they were not of great moral importance. A person whose human rights I violate can rightly accuse me of wronging him—I have failed to show proper concern and respect for him as a person by not taking his fundamental interests seriously—but so too can a person who suffers rights violations that I could have done something to prevent and without incurring unacceptable costs to myself. If this is so, then absent a convincing, principled account of the distinction between justice and charity capable of showing that the Robust Natural Duty is a duty of charity, it seems reasonable to conclude that it is a duty of justice. And it is a duty of justice that is implied by the principle that all persons are to be treated with equal concern and respect.

We can now state the argument to show that a wielder of political power that satisfies conditions *a*, *b*, and *c* is morally justified in using coercion.

1. Every person has a moral obligation to help ensure that all persons have access to institutions that protect their basic human rights (provided this does not entail excessive costs) (the Robust Natural Duty of Justice).

2. The Robust Natural Duty of Justice is an obligation of justice that is implied by the principle that all persons are to be accorded equal concern and respect.

3. If something is an obligation of justice, then at least in the case when this obligation is implied by the principle that persons are to be accorded equal concern and respect, no one has a right not to be coerced to fulfill it (when coercion is necessary).

4. Therefore, no one has a right not to be coerced to fulfill the

Robust Natural Duty of Justice (when coercion is necessary for its fulfillment).

5. Fulfilling the Robust Natural Duty of Justice requires entities that wield political power (that attempt to exercise a monopoly in the making, application, and enforcement of laws).

6. Therefore, wielders of political power violate no one's rights simply by virtue of acting to ensure that citizens fulfill the Robust Natural Duty.

Conclusion 6 leaves open the possibility that the wielder of political power's use of coercion might violate its citizens' rights in some other way, even though the use of coercion does not itself violate their basic human rights so long as it is used to ensure that they do what they have a duty of justice to do. Thus we need the additional premise that:

7. In wielding political power to ensure that its citizens fulfill the Robust Natural Duty of Justice the wielder of political power does not violate its citizens' rights, so long as it (*a*) does a credible job of protecting their basic human rights, (*b*) does so by processes and actions that do not violate their basic human rights, and (*c*) is not a usurper (i.e., does not come to wield political power by unjustly displacing an entity that is politically legitimate).

8. Therefore, a wielder of political power that satisfies conditions *a*, *b*, and *c* does not violate its citizens' rights.

This conclusion may seem to capture only a rather weak sense of moral justification for the exercise of political power. It merely says that if the state satisfies my proposed three conditions for internal political legitimacy, it does no injustice. The conclusion looks less anemic when this is added: the persons who wield political power, like all persons, have a Robust Natural Duty of Justice, and in our world, fulfilling this duty requires building and supporting institutions to wield political power. Therefore, those who wield political power not only do no injustice when they do so in a way that satisfies the three conditions, in addition they have a morally weighty reason to wield power, namely, wielding political power justly is a singularly effective way of acting on the Robust Natural Duty of Justice. This fact is especially significant if we assume popular sovereignty, that is, that the ultimate wielders of political power are the citizens themselves and that the institutions of the state are the agencies through which they act. For then it follows that citizens have a Robust Natural Duty of Justice to support (or create if necessary) institutions through which they can wield political power. This appears to be sufficient to show that a state that satisfies the three conditions (*a*, *b*, and *c*) is morally justified in doing what governments do, namely, attempting to exercise a monopoly on the making, application, and enforcement of laws.

The intuitive appeal of this argument can be stated quite simply:

the moral purpose of political power is, first and foremost, to achieve justice; given its coercive and monopolistic character and the fact that it necessarily involves inequality of power, nothing short of this could justify it. A wielder of political power that does a credible job of achieving justice is morally justified in wielding that power, at least if it seeks to achieve justice through processes that are themselves just, and if it came to be in a position to wield power in a way that was itself not seriously unjust. This conception of political legitimacy is founded on a liberal conception of what states are primarily for, namely, the achievement of justice.¹⁵

15. My argument's structure parallels to some extent that offered in Wellman, pp. 211–37. Wellman's argument can be outlined as follows: (1) Every person has a duty of justice to protect other persons from peril (so long as doing so is not excessively costly). (2) If one has a duty of justice to do X, then one has no right not to be coerced to do X. (3) Therefore, if the state coerces persons in order to protect other persons from peril (so long as this does not involve excessive costs to those who are so coerced), then the state does not violate anyone's rights. (4) Therefore, coercion by the state is morally justified. Wellman's argument has several flaws. First, it is only designed to show that state coercion need not violate anyone's rights, but this is not sufficient to capture the conditions under which a state is politically legitimate. Clearly the fact that the state is protecting citizens from peril by coercing others would not be justifiable if the policies or actions by which this is accomplished themselves involved serious rights violations. This point is captured in my argument above, which is designed not only to show that state coercion need not involve injustice but also to indicate the full conditions under which it is morally justified. This is the import of condition *b*, which requires that coercion to achieve the protection of rights must itself not be achieved by policies and actions that violate rights of similar importance. Similarly, because Wellman's argument does not include a non-surpartition condition, it implausibly counts as politically legitimate a government that comes to power by unjustly overthrowing a legitimate government. Second, and more important, Wellman's argument is vulnerable to a destructive dilemma. Either 'peril' as it figures in his argument is to be taken literally, as a threat to physical security, in which the argument only justifies a rather minimal Hobbesian state, not the even minimally liberal state that protects any other human rights as well as he claims; or 'peril' is a placeholder for a list of human rights. Presumably embracing either horn of this dilemma would be unacceptable to Wellman. He cannot accept the literal reading of 'peril' in his argument because that defeats his main goal of providing a justification for the liberal state. He cannot treat 'peril' as a placeholder for a list of human rights because he argues that a distinctive advantage of his view is that it requires only the intuition that we have a duty of justice to help other persons who are in peril, not a comprehensive account of rights. (He elicits this intuition by considering a standard example of rescue, a case where one individual can act so as to prevent another from suffering serious physical harm or death—a case of peril in the literal sense.) In other words, what he thinks is distinctive, and distinctively superior about his justification for political legitimacy is that it relies only on the intuition that justice requires us to act so as to prevent serious physical harm to other persons, not to ensure that their human rights are protected. If, in order to achieve his main goal of justifying the liberal state, rather than the minimal Hobbesian state that only provides physical security, he must substitute protection from human rights violations for protection from peril, then this putative superiority vanishes.

V. WHY SHOULD SOME PERSONS RATHER THAN OTHERS
WIELD POLITICAL POWER?

Democracy and Political Legitimacy

I observed earlier that a theory of political legitimacy must answer the egalitarian challenge to political power—it must explain why it is, if we are all fundamentally equal, that some of us should have the power to make, apply, and enforce laws on the rest of us. From the standpoint of a justice-based theory of political legitimacy that takes equal consideration of persons as fundamental, no justification for the wielding of political power—no conception of political legitimacy—can be complete unless it provides a convincing answer to this question.

It might be thought that the egalitarian challenge only applies to nondemocratic forms of political power. This is not the case, however. Even in democratic societies—including those that are much more democratic than what we now call democracies—some individuals (judges, legislators, police officers) wield power that ordinary citizens do not. So even in a democracy we can ask: is the wielding of political power compatible with a proper recognition of the fundamental equality of persons?

Democratic theory itself provides an answer to this question and does so without invoking the fiction of consent. According to what may be the most plausible versions of democratic theory, the inequality that political power inevitably involves is justifiable if every citizen has “an equal say” in determining who will wield the power and how it will be wielded, at least so far as the content of the most basic laws is concerned.

Notice the qualifications built into this view: the egalitarian democratic theorist acknowledges, as he must, that legislators, administrative officials, officers of the court, and the police wield powers that ordinary citizens do not. Even in a direct participatory democracy in which every citizen has an equal vote on every law, government officials will wield powers ordinary citizens do not. It is this asymmetry of power that raises the question of whether political power is reconcilable with the fundamental equality of persons. The egalitarian democratic theorist attempts to achieve the needed reconciliation, not by denying the asymmetry of power, but by arguing that it is compatible with equality if two conditions are satisfied: citizens have “an equal say” in (i) determining who will wield political power and in (ii) determining what the most fundamental laws are.

Whether such an egalitarian democratic theory succeeds in reconciling equality with the political power will depend, then, not only upon whether it can provide a cogent account of what it is for citizens to have an “equal say” (not a trivial task!) but also upon whether it can (1) distinguish between fundamental and less basic laws (and admin-

istrative rules and policies) and (2) demonstrate that restricting the “equal say” of citizens to deliberations about what the fundamental laws are to be constitutes an adequate acknowledgment of the fundamental equality of persons. It would be utterly unrealistic to require that every citizen have an equal say in deciding on all legal rules, including all those involved in the specification and execution of public policies, down to the detailed administrative laws of particular government agencies. It would be just as unrealistic to require that all citizens must have an equal turn at actually wielding political power, by rotating through all government roles.

Having an Equal Say

To my knowledge, no democratic theory has yet fully succeeded in these two tasks (1 and 2). In particular, it seems simplistic to say that the fundamental equality of persons is adequately recognized when all citizens have an equal say in determining fundamental laws understood as those that set the ends of social policies, while allowing for inequalities in determination of the means.¹⁶ Not only is it difficult to distinguish between ends and means in many cases in which public policies develop over time, but also it is not clear why equality demands only that each citizen has an “equal say” over ends, not over means, since the choice of means may not only be crucial for whether the ends are achieved but also can both express and have an impact on the most fundamental interests and values that persons can have.

One of the chief attractions of democratic theory is that it purports to do what consent theory claimed but failed to do but without the overdemanding requirement of consent: reconcile equality with the exercise of political power. Whether or not any form of democracy that could be reasonably approximated in something resembling a modern state can in fact achieve this reconciliation is perhaps not wholly clear. The more complex the system of laws and policies becomes, the more problematic it is to say that equality is preserved so long as all have an equal say in determining the “most fundamental laws,” or the “choice of ends,” even if we can make such distinctions.

Nevertheless, if we take the equality of persons seriously, then a political order that not only honors the commitment to equal regard by respecting all citizens’ human rights but also does so by political processes that themselves express this commitment to equality by being democratic would seem to provide the best answer available to the prob-

16. Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democracy* (Boulder, Colo.: Westview, 1996). For criticism of this point, see Henry Richardson, “Administrative Policymaking: Rule of Law or Bureaucracy,” in *Recrafting the Rule of Law: The Limits of Legal Order*, ed. David Dyzenhaus (Oxford: Hart, 1999), pp. 309–30, 320–22.

lem of reconciling political power and equality. In other words, if the wielding of political power is morally justifiable only if it is wielded in such a way as to recognize the fundamental equality of persons, and if democracy is necessary for satisfying this condition, then political legitimacy requires democracy, at least in circumstances in which democratic institutions are feasible.

However, one might question the assertion that legitimacy requires democracy as follows. It is true that to be morally justified, political power must be exercised in such a way as to manifest equal regard for persons. But this will be achieved if the content of the laws is sufficiently egalitarian, more precisely, if the regime of laws provides adequate protection for the human rights of all.

The difficulty with this reply is that it is unresponsive to the fundamental egalitarian challenge to political authority: if we are all equal, why is it that only some of us have control over the making, application, and enforcement of laws that others lack? The requirement of democracy at least goes some distance toward answering this challenge, even if it does not answer it fully due to the fact that even the most democratic society will still include inequalities in political power (because citizens only have an equal say in choosing legislators, vote directly only on “ends” not “means,” have no direct say over the determination of rules for administering policies, do not participate in adjudication and enforcement of laws, etc.). To put the same point differently: democracy does not actually achieve equality in political power, but it does take seriously the idea that inequalities in political power are problematic from the standpoint of a commitment to equal consideration of persons by offering an account of how majoritarian processes can contribute to equalizing power over the allocation of inequalities in political power (in particular by providing all with an equal say in determining who will occupy the highest government offices and who will make the laws). In contrast, a theory of legitimacy that does not include a democratic requirement faces an unanswerable objection: if the political system should express a fundamental commitment to equal consideration of persons, why shouldn’t this commitment be reflected in the processes by which laws are made and in the selection of persons to adjudicate and enforce the laws, not simply in the content of the laws?

Here an implicit but crucial assumption of the argument that democracy is a necessary condition for legitimacy must be noted. The argument assumes either that (a) democracy can produce laws that satisfy the requirement of equal regard for all persons’ basic interests or that (b) having an “equal say” in the making of rules for their lives together is such an important dimension of equal regard for persons that democracy is required even if a nondemocratic arrangement would better achieve the goal of equal regard for all persons’ basic interests.

If *a* is true, then there is no reason why those who are committed to equal respect and concern for all persons should settle for laws whose content or effect evidences equal regard; they will also insist on an “equal say” for all in the making of laws, since this is a further affirmation of equality and comes at no loss in terms of the protection of all persons’ basic interests. If *b* is true, then democracy is required even if, as non-democratic theorists sometimes argue, it can result in laws that do not treat all equally. Assumption *b* is clearly the more problematic assumption, since supporting it requires showing that having an “equal say” is such a profoundly important dimension of equality that it must be achieved even if doing so comes at the cost of losses in other dimensions of equality.

My aim here is not to advance a full-blown defense of democracy as being required by equal regard for persons. However, it seems to me that there is much to be said for the idea that having an “equal say” in the making of at least the most basic laws is presumptively required by equal concern and respect for persons and that opponents of democracy have not defeated this presumption by making a convincing case that democracy is incompatible with laws that achieve equal protection of all persons’ basic interests. If this is correct, then assumption *a* and with it the argument for democracy as being required by equal regard for all persons is plausible.

VI. DEMOCRACY AND MUTUAL OBLIGATIONS AMONG CITIZENS

Democracy, Political Authority, and Political Community

I have argued that democratic theory provides a more satisfactory answer to the question of how to reconcile the equality of persons with the exercise of political power than consent theory does. I also observed earlier that consent theory—if it worked—would answer the question of political authority as well: if I have consented to your exercising political power over me, then I am obligated to you to comply with your directives.

Democratic theory, in contrast to consent theory, does not provide an account of political authority if by this is meant an explanation of the conditions under which we are obligated to the government to obey it. It could not and should not do this, because the whole point of the doctrine of popular sovereignty upon which democratic theory is built holds that states are merely institutional resources for the people and governments are merely agents of the people, chosen to employ those institutional resources on the people’s behalf, and therefore do not themselves have a right to anything, including our obedience. Instead, democratic theory provides an account of the conditions under which

citizens have an obligation to one another to take compliance with the laws seriously. In other words, the same commitment to the equal consideration of persons that requires democracy as a condition for the morally justified exercise of political power also gives citizens a weighty reason to comply with the laws that emerge from democratic processes, because these processes are the best available way to express the fundamental commitment to equal consideration.

This is a great advantage of democratic theory. It makes sense of the idea of political association as a moral community, not a merely instrumental association of individuals, yet it does so without assuming that the basis of this community is ethnicity or nationality or religion or even ideology. And in so doing, democratic theory demonstrates that there is another important reason to obey the law, beyond reasons of self-interest (to avoid penalty) and even beyond the fact that the law includes (some) sound moral principles that we ought to obey anyway. In a democratic state, each citizen's recognition of the equality of all citizens supplies a reason for compliance with the laws. And it is a weighty reason because it is grounded ultimately in perhaps the most fundamental moral principle of all, the principle of equal concern and respect for persons.

A second attraction of democratic government is worth noting. Because support for democratic institutions is required by the principle of the moral equality of persons, the fact that a rule is the product of democratic decision making itself gives each citizen a reason to comply with it. Thus democracy achieves authoritativeness: the fact that a law was produced by democratic processes is itself a reason for compliance. (It does not follow from this, of course, that one has an unconditional obligation to comply. No one can be obligated to comply with a law that is itself a clear and serious violation of the principle of equal regard for persons, even if that law is the result of a democratic process.)

Democratic Theory and the Particularity Problems

In Section IV I argued that the Robust Natural Duty of Justice provides a key premise for an argument to show how a liberal order can enjoy political legitimacy. What I have not yet shown is exactly how we can reason from the highly abstract Robust Natural Duty of Justice to the legitimacy of any particular agent wielding political power. For from the premise that we have a duty to help make rights-protecting institutions available to all persons it does not follow that any particular agent is justified in coercing us in the name of protecting rights. Nor does it follow that honoring the Robust Natural Duty of Justice requires us to support the particular coercive agent that is the government of the state in which we find ourselves.

In other words, a satisfactory account of the morality of political

power must provide an answer to two distinct particularity problems: (a) what makes any particular wielder of political power justified in doing so and (b) why should we comply with the rules imposed by the particular coercive power that happens to be the government of our state? Any satisfactory account must solve the two particularity problems, but they seem to be especially pressing and difficult for an approach to political legitimacy founded on the highly abstract Robust Natural Duty of Justice.

It will not suffice to say that honoring the Robust Natural Duty of Justice requires us to support whoever happens to be effectively wielding political power in our locale. If institutional resources are available that allow for a way of choosing among aspirants for political power or for endorsing an existing wielder of political power, then we can and should demand more than mere effectiveness. Where institutional resources exist for democratic authorization of a government, proper respect for the fundamental equality of persons requires that they be utilized. For as I have already argued, proper recognition of the fundamental equality of persons requires a convincing answer to the question, "If we are all fundamentally equal, why should some persons enjoy the special control over our common life that the exercise of political power entails?" Democratic authorization of a wielder of political power answers this question.

If a wielder of political power can be chosen through democratic processes, then there is an answer to both of the particularity problems. First, this particular agent is justified in wielding political power over us—and in attempting to do so monopolistically—because it is this agent that has been chosen by our democratic processes. Once this selection is achieved, there is one and only one agent who can justify its efforts to impose rules on us, because any agent who attempts to impose rules on us without enjoying democratic authorization would not satisfy the requirement of reconciling the inequality that the exercise of political power necessarily involves with the fundamental equality of persons. Because democratic processes are required by the fundamental equality of persons, political power must be authorized by democratic processes, if institutional resources for the latter are available.

Second, when an agent has been authorized to wield political power over us by democratic processes in which we can participate, we have a weighty moral reason to comply with the rules this agent imposes on us, not just because it is capable of effectively protecting our rights (others may be equally capable), but because to fail to comply with the rules this agent imposes, in the absence of some weighty moral reason for doing so, would show a disregard for our fellow citizens as beings entitled to equal moral regard. The same act of democratic authorization that makes it justifiable for this particular agent to wield political

power over us gives us a weighty reason to comply with its rules, rather than the rules that some other coercive agent might supply.

Notice also that the democratic authorization solution to the second particularity problem avoids the unsavory conclusion that we owe compliance to the government as such. The idea of democratic authorization solves the second particularity problem without embracing the noxious idea that the government is itself a subject of rights, rather than simply the agent through which the people act.

I noted earlier that consent theory answers the second particularity problem by asserting that we are obligated to the government to obey the laws. The question arises, then, as to whether the idea of democratic authorization implies that we have an obligation to our fellow citizens to obey democratically created laws. This conclusion appears to be too strong if it means that whenever one violates a democratically created law one thereby wrongs one's fellow citizens. However, it is more plausible if it is taken only to mean that we wrong our fellow citizens—by failing to take seriously the fact that equality requires democracy—if we violate democratically created laws without some morally weighty reason. The obligation we owe our fellow citizens, then, would not be an obligation to obey every democratically created law but, rather, to show proper respect for them as equal moral persons by taking the fact that a law is democratically created as a weighty reason for complying with it. Notice, however, that to solve the second particularity problem, the account of democratic authorization need not even go as far as asserting this latter obligation to our fellow citizens. All that is required is the claim that the fact that this particular coercive agent has been authorized by democratic processes gives us a weighty reason—a reason grounded ultimately in equal regard for persons—for complying with its demands, rather than with those of some other, perhaps equally effective coercive agent.

Democracy as an Element of Justice

So far I have argued for an account of political legitimacy that is grounded in the Robust Natural Duty of Justice and which includes the idea of democratic authorization as a solution to the two particularity problems. For this approach to succeed, it is necessary to show that acting in fulfillment of the Robust Natural Duty of Justice requires supporting or helping to create democratic institutions, and this in turn requires showing that democracy is either an element of justice or a necessary instrument for achieving justice. This is clearly not the occasion to establish either of the latter large claims. Here I can only indicate the kind of argument that is needed and which is developed in detail by several current democratic theorists. The core idea is that whatever its instrumental value for achieving justice, democracy is mor-

ally required by the commitment to the same fundamental principle that grounds the Robust Natural Duty of Justice, namely, equal consideration for persons. If justice requires recognizing the fundamental equality of persons and if this in turn requires that persons have an equal say over the most important decisions that determine the characteristics of the public order under which they live together, then justice requires democracy. But if this is the case, then the Robust Natural Duty, the duty to help foster just institutions, requires support for democracy. Thus the same duty that requires us to support a coercive order for the protection of persons' rights also requires us to support a process of democratic authorization that singles out a particular wielder of political power, and this requires us to comply with the rules imposed by that agent because we owe such compliance to our fellow citizens, unless we have weighty reasons for not doing so.

The Limits of Democratic Authorization

There are two quite different situations in which the problem of political legitimacy arises, and the second of them reveals the limits of democratic authorization. The first is where people are already successfully organized as a democratic political society—where the state as a structure of institutions exists and where this structure already includes democratic processes for identifying a wielder of political power. Under these conditions the only question is who shall be the agent, and democratic processes are capable of yielding an answer. Once the agent is authorized, there will be a single answer to the question, “Who is justified in wielding political power?” and to the question, “Whom ought the people to support?” (in fulfillment of the Robust Natural Duty of Justice and in order to honor their obligations to each other).

In the second situation the institutional resources for democratic authorization are not available, either because the state has disintegrated or because the state exists but is undemocratic. Here there may at first appear to be an unbridgeable gap between the Robust Natural Duty of Justice and the justification of any particular agent's use of coercion to enforce the protection of rights. In such conditions, individuals who strive conscientiously to fulfill the Robust Natural Duty will find themselves in a painful predicament: it is necessary to establish and support some particular coercive agent that lacks the imprimatur of democratic authorization in order to achieve the modicum of order needed to develop the democratic institutions which alone make the exercise of political power fully legitimate. Reasonable persons may find themselves on opposite sides of the barricades, because they may make different predictions about which coercive agents to support and for how long.

However, as Jeremy Waldron has rightly noted, matters may not always be so grim. In some instances one particular potential coercive

agent may be salient—if only perhaps because it already enjoys more support than its rivals.¹⁷ If this is the case, then persons who strive conscientiously to act on the Robust Natural Duty of Justice will support the salient potential government. Waldron's point is that the situation here is similar to a simple coordination problem.

Mere Salience versus Democratic Authorization

The fact that a particular agent is salient among those capable of enforcing a regime of rights cannot legitimate it if institutional resources allow for democratic authorization. For if democratic authorization is not only possible but is also likely to be achievable without excessive risks to persons' basic rights, then the same Robust Natural Duty of Justice that requires us to work to ensure that all persons have access to a rights-respecting regime also requires us to achieve democratic authorization for a monopolist of coercion to protect rights and to support only that agent that is selected by the process of democratic authorization. On this view, the core of justice, namely, equal regard for persons, requires democratic authorization where this is possible.

This account does not provide a solution to the problem of how we are to converge in our support for a particular coercive agent when the institutional resources for democratic authorization are lacking. It is not clear that it should. What the account does tell us, and all that it can be expected to tell us, is two things: first, that we have a Robust Natural Duty of Justice to help develop institutions for the wielding of political power to protect individual's rights, and second, that we should do this in such a way as to support, or where needed to create, processes for democratic authorization of an agent to wield political power in the name of justice.

VII. CONCLUSIONS

I have argued for a conception of political legitimacy that is grounded in the Robust Natural Duty of Justice and in the liberal view that the protection of basic individual rights is the core of justice. I have also argued that although the notion of political authority, understood as including the right of the government to be obeyed, is not required to give an account of political legitimacy, the requirement of democratic authorization is necessary for political legitimacy if institutional resources are available for the democratic selection of an agent to exercise political power. According to this view, we may distinguish between what might be called minimal and full political legitimacy. Where institutional resources for democratic authorization are lacking, an entity can be

17. Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs* 22 (1993): 3–30.

politically legitimate—that is, can be morally justified in exercising political power—if it satisfies minimal standards for protecting individual's rights by processes and policies that are themselves at least minimally just and is not a usurper. But where democratic authorization is possible, it is necessary for political legitimacy. Moreover, where political legitimacy is achieved through democratic authorization, genuine political community among equal persons, not merely a rational association for mutual protection, can be attained.

For the most part political legitimacy and the justification for democracy have been addressed in two distinct literatures.¹⁸ If my analysis in this article is correct, this is a mistake. Much of the literature on the justification for democracy tends to assume that there are only two types of justification: one instrumental, on the grounds that democratic procedures tend to produce the best results, and one “intrinsic,” on the grounds that equal regard for persons requires democratic institutions. I have argued that where institutional resources are available for democratic authorization of a wielder of political power, political legitimacy requires democracy. If this is the case, then saying that democracy is required by equal regard for persons is correct but incomplete. Where democratic authorization is possible, democracy is justifiable on the grounds that it is necessary if the exercise of political power is to be morally justifiable.

18. Christiano, “Justice and Disagreement,” is an exemplary exception to this generalization.