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An Institutional Conception of Authority

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Abstract

The essay develops a conception of practical authorities that ties their legitimacy to the particular nature of the social practice or institution in which practical authorities invariably operate, and the terms of the subjects' participation in that practice. The main argument of the paper draws on the distinction between what it takes to have practical authority and what would make it legitimate. The general idea is that what it takes to have practical authority is always determined by a social or institutional practice, and thus the legitimacy of any given authority crucially depends on the nature of the practice and the terms of participation in it. One result of this argument is that there is no single general principle that determines the conditions of the legitimacy of authorities. In some cases, legitimacy depends on consent, in other cases, it does not; either way, it is the nature of the practice or institution in which a practical authority operates that crucially determines the authority's legitimacy.

The main argument of this essay is preceded by a clarification of the nature of authoritative directives and the obligatory nature of the reasons to comply with a legitimate directive. I argue that the obligation to comply is not directional (viz., owed to the authority), and that it does not involve the kind of moral accountability that we normally associate with directional obligations.

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An Institutional Conception of Authority

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The question of legitimacy has taken central stage in the philosophical debates about authority. Discussions typically begin with the normative question of what makes a practical authority legitimate. It is assumed that once we have a sound normative thesis determining the general conditions for the legitimacy of authorities, we can apply the favored condition to particular cases, examining the legitimacy of any given putative authority against the general conditions of legitimacy. As often happens in philosophy, however, at this stage counterexamples tend to come up. We are presented with cases which would seem to be instances of a legitimate authority not covered by the favored conception of legitimacy, or cases which would seem to be instances of legitimate authority that are not, actually, examples of practical authority at all. Now, of course, nothing is methodologically wrong about any of this; it is the normal way of conducting a philosophical enquiry. But I would like to suggest in this essay a different way of approaching the issue. Instead of beginning with the normative question of legitimacy, I will begin with the question of *what it takes to have* practical authority, whether legitimate or not, arguing that an adequate account of what it takes to have authority paves the way for a better conception of the conditions of legitimacy.

I start with the intuitive idea that practical authorities are not necessarily legitimate. This suggests that we can separate the question of what it takes to have practical authority from the question of an authority's legitimacy. My main argument is going to be that what it takes to have practical authority is determined by some social or institutional practice. And then the legitimacy of the relevant authority is bound to depend on the kind of practice it is, and the terms of participation in it.

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One notable result of the thesis I hope to establish here is that no single general principle determines the conditions of the legitimacy of authorities. In some cases, the legitimacy of a practical authority is, ultimately, a matter of consent; in other cases, it is not. Either way, the legitimacy of practical authorities depends on the nature and legitimacy of the particular social practice or institution which grants the authority the normative powers that it has.[1]

The argument proceeds in three stages: First, I will present the main argument for the institutional conception of authority, explaining why authorities are essentially institutional in nature. Second, I will explain how this institutional conception bears on the question of legitimacy, drawing on the distinction between voluntary and nonvoluntary institutions. Finally, I will try to answer some possible objections to the institutional conception, focusing on some of the normative aspects of authority-subject relations.

1.

My use of the term "practical authority" is going to be relatively narrow; its application, however, should be broad enough. My intention is to capture our ordinary, everyday notion of practical authorities, by which I mean the ability – normatively speaking and at some level of generality – of a person to change the normative situation of another. The main examples would be legal authorities, of course, the authority of employers over their employees, the authority of parents over their young children, the authority of a referee over the players in competitive games, and similar cases. Thus, as a first approximation, we can say that A has practical authority over B in matters C, iff A's directive that B φ in circumstances C_i imposes an obligation on B to φ in circumstances C_i, and (at least partly) because A has directed B to φ in circumstances C_i. In other words, we regard someone to be an authority when he or she is in a normative position to impose an obligation on another person by

[1] The main argument of this paper is a systematic development of some ideas I have sketched in "The Dilemma of Authority". A similar idea, in the context of debates about the moral obligation to obey the law, holds that political obligation cannot be subsumed under a single principle. See, for example, Klosko, "Multiple Principles of Political Obligation."

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expressing a certain directive that is taken to form at least part of the reason for the subject to do as directed.[2]

There are countless ways in which a person can create a situation, or say something, that obliges another person to act in a certain way. That would not be enough to indicate that one has authority over another person. Consider, for example, a case where A puts C in harms way, so that B is the only one available to rescue C; this may well impose an obligation on B to rescue C, but it is certainly not a case in which A has exercised authority over B. To begin with, authoritative directives have to be communicated as such. An authoritative directive purports to make a difference to the reasons for action that its subjects have by way of recognizing the directive itself as a reason to do as directed. Authoritative directives are speech acts, and of the kind which purport to motivate conduct by way of recognizing the utterance of the directive as a reason for action.[3]

But even if the speech act is of the appropriate kind, some conditions have to obtain to render the speech act authoritative. Consider, for example, a spectator in a tennis tournament, perhaps unhappy with the way his favorite player is doing, declaring out loud, "The game is over; stop right now!" It is the right kind of speech act but the wrong kind of standing. What is clearly missing in this case is the speaker's *normative power*: To have practical authority is to have the normative power to impose obligations on another. Power, as Hohfeld originally defined this type of right, is the power-holder's ability, in the normative sense, to introduce a change in the normative relations that had obtained between the relevant parties before the power was exercised.[4] A has power over B in matters C, iff B is subject or liable to A's decision about a change in the relevant

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[2] As Raz rightly noted, authorities do much more than impose obligations; they grant or withhold rights and powers of various kinds, etc. But all these normative changes are reducible to obligations imposed on some relevant parties. See Raz *Between Authority and Interpretation*, at 134, note 13.

[3] Some philosophers referred to this feature as the "content-independence" of reasons to comply with an authoritative directive. (See, for example, Hart, *Essays on Bentham,* 253-254; Green, *The Authority of the State*, 36-42.) Whether Darwall's conception of authority complies with this condition is questionable. Darwall regards as authoritative any second-personal demand a person can make on another's conduct. In this respect, his conception of what a practical authority is, is much broader than mine. (See, for example, his "Authority and Second-Personal Reasons for Action" and more generally, *The Second-Person Standpoint*).

[4] See Hohfeld, *Fundamental Legal Conceptions.*

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normative status quo that holds in the circumstances. Thus, power involves two main ideas: the ability to introduce a change in the normative situation that exists between the relevant parties, and the idea that the introduction of the change is unilateral, subject to the discretion or decision of the power-holder (within a certain defined range of options, of course). Therefore, notice that it makes no sense to speak of power without some normative background already in place – some division of rights and obligations that obtain between the relevant parties – that the power-holder is in a position to change.

None of this, I take it, is particularly controversial. But I would like to add two further points: First, I will argue that power – in the relevant sense, yet to be defined – can only be granted by *power-conferring norms* – that is, by some rules or conventions and, second, that power-conferring norms are practice based or institutional in nature. In other words, the argument here consists of three theses: (1) to have practical authority is to have normative power of a certain type; (2) power, in this sense, is granted or constituted by norms – that is, some rules or conventions; and (3) power-conferring norms are essentially institutional – they form part of some social practice or institution.

Notice that these three points pertain only to the question of what it is *to have* a certain practical authority: They establish nothing about the question of legitimacy. Whether any given practical authority is legitimate or not, or whether a particular authoritative directive is legitimate under the pertinent circumstances, is an additional and separate question. First, however, there has to be an authority, and then we can ask whether it is legitimate or not. But all this needs to be proved, of course.

Let us see why power, in the relevant sense, is the kind of right that must be granted by norms. The key idea here is to note a distinction between two types of normative power: *ad hoc* or singular power, and *systemic* power. A typical example of ad hoc power is the kind of power generated by a conditional promise. Suppose, for example, that you mention the fact that you need to be at the airport tonight by 7 p.m., and I suggest that I drive you there. My suggestion puts you in a position of power: You can decline my offer or accept it. And by accepting my offer

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you put me under an obligation to do as I suggested. My offer becomes a promise, as it were, by your acceptance of the offer.[5]

Granted, there is some controversy in the literature, both amongst philosophers of language and among moral philosophers, about the question of whether promises, in general, require some conventional practice at the background, and what is the exact role of such norms or conventions in rendering a locution promissory.[6] I wish to steer away from this debate. I am willing to assume that the utterance of a conditional promise, by itself, can grant the addressee normative power – that is, the power to introduce a change in the normative relations that obtain by accepting the relevant offer and thus putting the speaker under a promissory obligation. The essential point to realize here, however, is the very limited scope of the power. The addressee of a conditional promise does not get the right to determine anything beyond the acceptance (or not) of the offer; the content, scope and other details of the obligation are all determined by the promisor. The power is only one of accepting or declining the offer. In other words, what makes these cases ad hoc is the fact that the scope of the power is very limited, typically to a yes or no answer, and the fact that it does not originate with the power-holder. (I can invite you to make a promise, but that would not be an exercise of power on my part.)[7]

Practical authorities, on the other hand, typically have power in the *systemic* sense: To be a practical authority is to have the powers to choose from a range of options whether, and how, to introduce changes in the

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[5] In fact, a very wide range of speech acts amount to conditional promises. A marriage proposal is a typical example. A says to B: "Would you marry me?" Typically, the assumption is that, by making the proposal, A has made a conditional promise to marry B – that is, A promises to marry B if B is willing to marry A. Or take the example of an invitation: If you invite somebody to your house for dinner, the assumption is that you put yourself under an obligation if the invitee accepts; it is, again, a conditional promise.

[6] See, for example, Kolodny & Wallace, "Promises and Practices Revisited." In my *Social Conventions* I expressed some doubts about this conventional grounding of promises. (see pp. 120-127, 136-139)

[7] Whether there are other examples of ad hoc power, besides those created by conditional promises, I am not entirely sure. My guess is that if there are other cases, they would also involve instances of responding to an offer or a suggestion or such. Some philosophers assume that the making of a promise is also an exercise of power, albeit the power to impose an obligation on one's self. I am not sure that I agree with this, but this is not the place to go into this complicated issue; it does not affect my argument in the text.

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normative landscape that prevails in the area of one's authority. As opposed to ad hoc power, power in the systemic sense grants the initiative for introducing normative changes to the power-holder, and the range of changes, though typically circumscribed, is fairly wide. What makes such types of power systemic, however, is their inevitable complexity and structure. Practical authorities get to determine, within a certain range of options, what types of normative changes they can introduce, how to make those changes, who is subject to them, often also how to monitor compliance, and how to respond to noncompliance. In other words, systemic power is inevitably complex, constituted by a set of interlocking norms, defining who gets to have the power, the content and scope of the power, ways in which it can be exercised, and other auxiliary matters. And thus, unlike ad hoc power, systemic power is the kind of right people or institutions have that must be granted by a set of rules, conventions or, generally, some norms. Systemic power is essentially norm-regulated. None of this shows, of course, that the norms in question must be social norms, actually practiced in a given community. I will get to that shortly.

I take it that it would be relatively easy to concede the complex and systemic nature of the authoritative power in the paradigmatic cases, such as legal or political authorities, the authority of employers over their employees, the authority of various officials in voluntary associations or organizations, such as a political party or a university, and similar examples. One might suspect, however, that there is a danger here of generalizing from some cases to all. Perhaps some authoritative powers are systemic, in the sense defined here, while others are not. And perhaps this is just a contingent matter that bears little on what practical authorities, generally, are.

This objection might take various forms, but I would like to answer two main counterexamples here.[8] First, it would seem that parental authority is not the kind of practical authority that is granted by power-conferring norms. The authority of parents over their young children comes into existence by the facts constituting parenthood (biologically or otherwise); it does not seem to depend on any normative structure of authoritative powers.

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[8] An objection I cannot consider here would come from Darwall's perspective, claiming that the conception of authority I have assumed here is too narrow. (See note 3 above.) I argued elsewhere, in some detail, why I think Darwall's conception cannot be regarded as practical authority in the ordinary sense. See "The Dilemma of Authority", at pp. 134-137. See also Raz, "On Respect, Authority and Neutrality: A Response".

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It is certainly true that the authoritative relation between parents and their young children is something that comes into existence by the facts that constitute this unique relationship. But the parental relation to children does not fully determine the content and the scope of the authoritative powers that parents have – normatively speaking, that is. Of course parents typically have not just power in the normative sense that I have been using here, but also in the brute sense of power – namely, the actual ability to overcome resistance. Parents normally have the ability to compel their wishes on their children by various means. We should be careful, however, not to confuse might with right. Parents' rights to make certain decisions for their children must be determined by some norms that define those rights, their scope and their limits. The fact that a parent can compel his or her child to X does not mean that it is the kind of thing a parent has the authority to do. In the normative sense, the scope, limits and, generally, the kind of practical authority that parents have over their children must be constructed by some normative framework that determines what kinds of decisions parents can make for their children (at various ages), and what means they can employ to enforce them. Admittedly, however, it is plausible to maintain that the powers defining parental authority have a mixed source – partly natural, deriving from the essential needs of children and the caretakers' ability, and duty, to provide those needs, and partly constructed by social and legal norms. Thus, even if there is a natural grounding of parental authority, the precise scope and nature of parents' normative powers are defined and articulated differently under different social and historical conditions, and, to some extent, under different legal regimes. This mixed source of parental authority makes it, indeed, a special case. Presumably, parental authority is special in some other respects as well. This should not be surprising, given the unique nature of parent-child relationships.

The second objection concerns cases where a person just assumes a position of authority in virtue of her ability to coordinate the conduct of others. If such coordination is called for, and successfully carried out, the claim is that authority has been exercised without any normative power conferred. We can use David Estlund's example of a resourceful flight attendant who, in an effort to coordinate help for the injured after a crash, starts issuing instructions to surviving passengers to do this or that. So she tells Joe, "You! I need you to do as I say…."[9] Now let us assume that under the circumstances, Joe and others are obliged to comply. Would this

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[9] *Democratic Authority*, 124.

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not be a case in which authority is established without systemic power? After all, there are no rules here in the background that grant the flight attendant authoritative power. Her power is assumed, as it were, *ad hoc*, on the basis of need – that is, the urgency of the situation and her ability to coordinate the rescue efforts.

My response is twofold: First, this is not, actually, an example of practical authority, but one of leadership. Not every leadership position a person successfully assumes is an exercise of practical authority. There are many cases in which people undertake a position of leadership and instruct others in what to do; and, of course, there might be cases in which there are good reasons, perhaps even obligations, to comply with such instructions, as in the example of the resourceful flight attendant. Leadership, however, is not tantamount to practical authority; on the contrary, a leader is typically one who can deliberately influence others' conduct without having the requisite authority, or regardless of the authority one does have. Second, it is important to realize the very limited nature of the flight attendant's "authority" here. The authority she assumes is relative to the particular task at hand; it almost entirely depends on its successful execution, and it lasts only as long as the task is being performed. And that is so because the role of the flight attendant's instructions is entirely a coordinative one: People have reasons to follow the flight attendant's instructions only because she is the one others also follow, and only to the extent that her instructions serve this coordinative purpose, not because they are her instructions.[10]

No doubt, practical authorities are often there to solve coordination problems. But it is simply not the case that every solution that emerges to an existing coordination problem thus becomes authoritative. Coordination problems are often solved by some option that stands out as the salient one; salience does not make such a solution authoritative, however, even if it happens to consist in the instructions of someone who assumes a leadership position. Consider a very similar example: Suppose that there is a fire in a theater and panic all around. An automated system kicks in and a big sign lights up: "Exit on the left!". Presumably, following this instruction is the right thing to do, perhaps even obligatory; it would coordinate an orderly and safe exit. Still, the fact that, by following the automated signpost, a coordination problem is solved does not make the

[10] I take it that if her instructions are wrong on the merits, the coordinative rationale to follow her instructions is undercut or outweighed and no longer applies. Obviously, in this case, there is no reason to follow her instructions.

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automated system a practical authority. And the situation would not be different if, instead of the automated signpost, somebody happens to shout the instruction out loud.

Assuming, then, that systemic power (henceforth S-power) of the kind practical authorities have is the kind of power that must be granted by a set of interlocking norms, the crucial question that remains is what kind of norms might be in play here? The suggestion I put forward is that the norms in play must be actual social norms, followed by a certain community, forming part of a social practice or institution. The alternative would be to think that power-conferring norms can be norms required or determined by reasons – that is, regardless of practice. Call it the Abstract view of power. The Abstract view is not a plausible option, however. Reasons, whether in the realm of morality or elsewhere, can only determine that one *ought to have* a certain power, not that one actually has it. Reasons, I take it, are facts that count for (or against) doing (or refraining from doing, or having, etc.) something. There might be facts, of course, counting morally or otherwise in favor of granting S-power to someone under certain circumstances. It might be good, for example, or better given the alternatives, that A have certain S-power over B in circumstances C. And this would certainly entail that A *ought to have* S-power over B in C. But the *ought* here is just not the relevant type of normative concept we are after. The question of whether one ought to have S-power or not pertains to the normative concerns about legitimacy; our concern here is first to determine what it takes *to have* practical authority – that is, what it is to have S-powers, not what would make an authority good or legitimate in some respect. Before we can subject any putative powers to moral appraisal we need to know what those powers are and who has them.[11]

The Abstract view gains its apparent plausibility from the kind of considerations we often employ in justifying the existence of moral rights.

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[11] Note that power-conferring norms are complex: they determine the relevant authoritative role, constituting what the authoritative role is and its associated powers (such as the office of a dean, or the office of a president or a judge), and the ways in which particular individuals get to occupy those roles. From a moral (or any other evaluative) perspective, institutions can fail on either one of these dimensions. It is possible that the particular authoritative role in question is one that should not exist, or should be shaped differently, and it is possible that the authoritative role is constituted as it should be, yet the individual occupying the role is not the person who should have occupied it.

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It seems to be a perfectly sound form of reasoning to suggest that people have a certain moral right – say, a right to freedom of conscience, or freedom of speech – because they ought to have it. If there are compelling considerations that count in favor of people having a right to X, and no considerations that undercut it, then it makes sense to conclude that people have a moral right to X. But S-power is not a moral right. If there is a moral right to rule – that is, a moral right to have authority under certain circumstances – it would be a kind of moral right to have S-power. A moral right to rule, however, is not tantamount to having authority, it only means that one should have it or that it is good that one has it. Perhaps, all things considered, X should be in charge, not Y. But if the relevant powers are granted to Y, then Y is the one who has the relevant authority, even if Y should not have had it (morally speaking, that is). S-power, in other words, is a quasi-juridical concept; it stands for a set of interlocking norms that constitute and define the scope of one's powers to introduce changes in the normative situation that prevails. We can only identify the existence of S-power by observing the norms that actually prevail in a given context.[12] If you want to know what powers the president of the United States has, you need to consult the Constitution and observe the constitutional practices (of the courts and other agencies) that prevail in the US; and if you want to know the powers of the president of your university, you need to look into the university rules and regulations that define it, and the relevant practices in the university that actually shape those powers. This is a matter of social-institutional (and, in many cases, juridical) facts, not a matter of morality or reason.

2.

As I mentioned earlier, all this pertains only to the question of what it takes to have practical authority. We have not yet suggested anything that would bear on the question of justification or legitimacy. But, as I hope one can see, a direction emerges here: The more we recognize the dependence of practical authorities on social practices or institutions, the easier it becomes to realize that the legitimacy of authorities is bound to depend on the legitimacy of the practice or institution in which they operate, each authority's specific functions in it, and, importantly, the general terms of participation in the practice or institution.

[12] The notable exception is, again, is the case of mixed sources of parental authority discussed above.

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In order to make this idea a bit more precise, we need some distinctions and clarifications. I have used the terms social practice and institution rather loosely so far. Both cover a very wide range of cases. Generally speaking, practices are rule-governed activities. We have a social practice when a certain type of human activity is either constituted or at least largely governed by rules or conventions. These rules can be social norms, often conventional in nature, or they can be institutional, codified and much more structured. The distinction between social practices and institutions is not very sharp. Generally, two main features distinguish institutional practices from social ones: First, institutional practices have established mechanisms for change. As H.L.A. Hart famously observed, institutional practices have a set of *secondary rules* – that is, a set of rules about their rules, such as rules determining ways in which new rules can be enacted and old ones modified.[13] Social practices typically lack such formal mechanisms of change. Second, institutionalization typically involves the introduction of a mechanism for monitoring compliance with the rules and ways of reacting to noncompliance. Social practices typically lack such sanction mechanisms. Sanctions for noncompliance tend to be informal, mostly consisting in social pressure and the hostile reaction of other members of the relevant community.[14]

In any case, the distinction between social practices and institutional ones is not particularly important for our purposes. Practical authorities typically operate in institutional practices, rarely in social practices that have not become institutionalized to some degree. The reason is that practical authorities are constituted by S-powers that must be granted by a fairly complex set of interlocking norms. The existence of such a complex normative structure typically requires a certain level of institutionalization – that is, the existence of secondary rules and, typically, some sanction mechanisms.[15]

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[13] *The Concept of Law*, ch. 5. Hart was referring to law, of course, but there is no reason to assume that his point cannot be generalized.

[14] I have elaborated on this in greater detail in my *Social Conventions*, pp. 50-52.

[15] One can think of examples of authoritative positions in social practices that have not become institutionalized. Consider, for instance, some competitive games, conventionally practiced, that have a referee or an umpire position; or one can think of social practices, like an informal book club or some other recreational activity, where some authoritative positions evolve over time. Mostly, however, authoritative positions require a fairly elaborate set of secondary rules, which means that the practice in question is institutional.

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The important distinction, however – one that has a clear bearing on the question of the legitimacy of authorities – is between practices or institutions that are voluntary in nature, and those that are not. Many social practices, conventional and not, are such that we need to opt into them; one can either choose to participate in them or not. Attending a university, playing a game like chess or football, or even undertaking a professional career are typical examples of such voluntary practices. Other practices and institutions, however, are such that we all find ourselves participants in them by default, and, at best, we may have an option of opting out, or sometimes not even that. Law, of course, is one typical example. We all find ourselves subject to a legal system and the institutions it constitutes without having to opt in; in fact, most people have no option of opting out. Many other practices are of a similar nonvoluntary nature. Social conventions of civility, for example, are not the kind of practices one needs to opt into, they are there for us to follow, and, at best, we can try to opt out. And opting out is not costless. People tend to be criticized for failing to comply with conventions of civility and often find themselves under considerable pressure to comply.

The distinction between voluntary and nonvoluntary practices, however, is not a hard and fast one; it is more of a continuum, and very context-sensitive. Playing a game like chess, or becoming an astronaut, are the kind of activities one chooses to engage in, typically quite freely and without any external pressure; under normal circumstances, they are as voluntary as voluntariness gets. But when you consider employment that is less exotic than being an astronaut, the level of voluntariness involved is very context-sensitive. Unfortunately, the world being as it is, for many people (perhaps even most, if you think about it globally) the need to earn a living leaves very few choices about their employment. They need to take whatever they get. And then there are many intermediary or borderline cases. Even when people have options to choose from, often the options are very limited and choice heavily constrained. Voluntariness of participation in a practice or institution is a matter of degree, and varies enormously with particular circumstances.

In spite of all these complexities, however, we can make a generalization: The more participation in a given practice is voluntary – relative to an agent in the given circumstances – the more it is the case that justifying one's subjection to the rules or conventions of the practice is based on consent. Now, you might suspect that this is a tautology; after all, consent (in such contexts) is a voluntary undertaking of a commitment

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or obligation. So if we assume that one's participation in a given social practice is voluntary, we have just stated the fact that one consented – that is, undertook the commitments involved in participation voluntarily. Though generally true, this is far from tautological. Consent, *de facto*, does not necessarily entail consent as a form of moral justification, which is what we are interested in here. The level of voluntariness about participation in a given social practice or institution concerns consent *de facto*: It designates the fact that one actually opted to participate – for example, the fact that one applied for a given job. Whether this voluntary undertaking establishes a consent-based moral justification for the things one finds himself committed to remains somewhat open. Normally, we tend to condition the moral-obligatory force of (actual) consent on various requirements, such as adequate information, the mental capacity to understand the commitments involved, perhaps even some reasonable proportionality between the burden of the commitment and its expected benefit, etc. (e.g., is the job one applied for the only available employment? Are the employment conditions at least minimally fair? etc.) In other words, though it is certainly true that the more participation in a practice is voluntary for a given agent, the more we can ground his commitment on the moral force of consent, this is not a straightforward conceptual connection. Consent morally justifies a commitment only under certain conditions, and the consent's force and scope are sensitive to the realization of those conditions.

How is all this relevant? The simple answer is that many practical authorities operate within voluntary practices or institutions. Their role as authorities, and their corresponding powers, are defined by the rules or conventions of practices or institutions that participants need to opt into. And, normally, when participants opt in, they know in advance that participation involves subjection to the relevant authorities. Therefore, by opting in, voluntarily, participants undertake a commitment to obey the relevant authorities: It is something that they consent to. Paradigmatically, therefore, the legitimacy of practical authorities in such voluntary institutions can be grounded on consent. How far such consent goes, and the limits of the legitimacy it entails, are complex matters that are bound to vary from case to case. In particular, it is important to bear in mind that, even when participation is fully voluntary, one does not necessarily consent to just about every aspect of the practice or institution one joins. Consent is, as it should be, often partly reserved. It is also worth keeping in mind that practices and institutions change over time. Some of the changes are such that one can be expected to have consented to; after all,

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one cannot expect that an institution one joins will remain unchanged forever. But some institutional changes that occur can be such that they undercut one's commitment; it is sometimes appropriate to react to a change by saying that "this is not what I signed up for." And then, of course, the feasibility of opting out is crucially important.

Authorities, however, also operate within many practices and institutions that are not voluntary in any meaningful sense. Therefore, their legitimacy cannot derive from the fact that the subjects freely chose to participate, simply because participation is not optional; the authority's subjects have no choice but to participate. The lack of choice, however, does not necessarily mean that there are no good reasons to be a participant. Some nonvoluntary practices and institutions we find ourselves participating in – a decent legal system being one prominent example – are such that we may have good reasons to be participants. And those reasons typically determine the level of cooperation that is required with the various authorities that operate in the relevant practice or institution.

In other words, when the participation in a given practice or institution is not voluntary, the legitimacy of the authorities that such practices define depends on whether participants have good reasons to be participants in the first place. The reasons for participation and the level of cooperation with, or commitment to, the practice that such reasons entail, have a crucial bearing on the legitimacy of the authorities which operate within it. I do not believe that it is helpful to think about such reasons in quasi-consensual terms – such as the wrongness of withholding consent or some conception of hypothetical consent – but this is not a position I can undertake to defend here. I do assume, however, that the lack of choice about participation does not necessarily undercut the reasons to be a cooperative participant. Sometimes it may; for example, if my university enrolls me in some recreational program without my consent, I may have a very good point in refusing to see myself committed to this program even if I would have consented to enroll given the chance. But this is not always the case. The fact that nobody asked for my consent to some savings plan for my pension, for example, does not necessarily undermine the reasons for participation in such a plan – assuming of course, that there are good reasons to save for my pension, whether I realize it or not. Thus, the point I want to make here is general – namely, that the considerations that bear on the legitimacy of authorities are very closely tied to, and crucially depend on, the reasons for participation in the

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practice or institution in which the authority operates. And, of course, reasons to be a cooperative participant are bound to depend on the kind of practice or institution it is, the reasons for having the practice and the functions it fulfills, and the ways in which it actually operates.

I realize that this is not saying all that much. The legitimacy of social practices and institutions is a complex matter, depending on questions of social utility, fairness, justice and whatnot. Nothing that I suggest here purports to address these complex issues. Furthermore, it is not always entirely clear how to individuate institutional practices. Should we regard the entire legal system, for example, as an institutional practice? Or can we divide it up and consider various legal institutions and practices separately? I presume that the latter option is more plausible; after all, even decent and by and large legitimate legal systems may have problematic, even profoundly illegitimate, subparts that people have reasons not to take part in or to cooperate with. Either way, my point here is that the legitimacy of practical authorities cannot be detached from all these complex considerations that determine the legitimacy of the practices within which authorities operate. In other words, an authority is legitimate iff the particular practice or institution in which it operates is one that there are good reasons to have, all things considered. And the reasons to consider are very complex and context sensitive; they include reasons to have the particular institution or practice in question, and the ways in which those reasons are served by the authoritative powers it constitutes.

It might be helpful at this point to draw some comparisons between the institutional conception of authorities outlined here and one of the most influential theories about authorities, suggested by Raz's service conception. According to the service conception, an authority is legitimate iff the subjects of the authority are more likely to act on the right reasons that apply to them by following the authority's directive than by trying to figure out, or act on, those reasons by themselves. This is the gist of Raz's *Normal Justification Thesis* (henceforth NJT).[16] Notice that according to the NJT, the legitimacy of authorities entirely depends on responsiveness to reasons that apply to the subjects under the relevant circumstances: An authoritative directive is legitimate iff the subjects are more likely to act according to the reasons that apply to them by following the authoritative directive than by trying to figure out, or act on, those reasons by themselves. It might follow, then, that regardless of the nature of the

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[16] See Raz, *The Morality of Freedom*, 53.

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practice in which an authority operates and the terms of participation in it, the legitimacy of authorities ultimately depends on the reasons that apply to the subjects; the reasons to participate in the practice, whether voluntary or not, are just part of the reasons in play.

Perhaps at a very general and abstract level, this might be true. But this high level of abstraction misses some crucial aspects of how different types of reasons and considerations figure in the justification of authorities. Let me mention two cases. First, there is an important difference between reasons to do something because it is the right thing to do under the circumstances, and reasons to do something because one has expressed a commitment to do it. Commitments are binding regardless of the particular reasons one may have had for undertaking the commitment, or even if there were no particular reasons to commit.[17] Therefore, people are normally warranted in relying on another's commitment regardless of any other reasons in play. And thus, in those cases in which an authority operates within a voluntary organization, the kind of reasons that justify the legitimacy of the authority depend on the commitments that the subjects have voluntarily undertaken and can be held to. For example, the authority of my dean to instruct me on various matters concerning my role in the university does not directly depend on the soundness of his instructions.[18] I am bound to comply with the dean's instructions because I have agreed to do so; subjection to the authority of the dean is just part of the deal I made when I joined the institution. To be sure, I am not assuming here that the consent or agreement that binds me is one I have made with the dean or with any other particular official in the university. It is a commitment to the institution, its members and beneficiaries, on behalf of which the dean and other officials operate. Thus, it is true that the dean's authority refers to reasons, but those are, first and foremost, reasons to honor my commitments. They do not have to refer, at least not directly, to the likelihood that I will better comply with the right reasons that apply to me under the circumstances by following the particular directives the dean issues than by figuring out those reasons by myself. In other words, consent makes a difference, not in dispensing with reasons

[17] Unless, of course, the motivational reasons to commit are such that they undercut the moral significance of the commitment, such as commitment under duress or due to manipulation, etc.

[18] By soundness I mean exactly what the NJT refers to – namely, the likelihood that the subjects act on the right reasons that apply to them under the circumstances by following the authoritative directive.

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that apply to the subjects, but in changing the kind of reasons that are deemed relevant.

Second, I think that the practice dependence of authoritative power nicely explains the concept of jurisdiction. Practical authorities always have limited jurisdiction: Their authority binds only those who are participants in the practice or institution in which they operate. If you think about the legitimacy of authorities only in terms of responsiveness to the right reasons for action that apply to the subjects, no plausible concept of jurisdiction can be extrapolated. The conditions of the NJT might be satisfied, for example, if you follow Canadian law instead of the laws of the United States. But if you are not a Canadian resident, then the laws of Canada do not apply to you; you are not bound by them simply because you are not a member of the relevant practice, and thus not within the reach of its jurisdiction. In other words, authorities can only obligate those who belong to the practice or institution that grants them the powers they have. Admittedly, political authorities sometimes *claim* the power to obligate nonparticipants as well. Some legal systems, for example, claim extraterritorial authority, purporting to impose obligations on a variety of subjects who are not members of the relevant legal system or political community. It follows from the institutional conception that such claims are rarely, if ever, justified. [19]

To sum up: the legitimacy of practical authorities crucially depends on the nature of the practice or institution in which the authority operates and the terms of participation in that practice or institution. If this is generally true, it follows that there is a limit to how much we can generalize the conditions of the legitimacy of authorities. Practices and institutions vary considerably on numerous dimensions, and even good practices may have undesirable or problematic aspects which may bear on

[19] Another advantage of the institutional conception of authority that I cannot develop in any detail here concerns the role of *procedural fairness* in the conditions of the legitimacy of authoritative directives. One of the explicit results of Raz's service conception is that the fairness of the procedures authorities follow cannot have any intrinsic value. According to the service conception, procedures can matter only to the extent that they make it more likely that authorities comply with the NJT; the value of procedures is only instrumental. Many political philosophers deny this, however, mostly when considering the values we attach to democratic procedures. In some contexts, it is argued by many (e.g., Thomas Christiano, *The Constitution of Equality*), democratic procedures are intrinsically valuable, and in ways that clearly affect the legitimacy of the authorities in question. Though such a position does not necessarily follow from the institutional conception, it is certainly compatible with it.

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the legitimacy of some authoritative relations in it. It is impossible, I believe, to generalize the conditions which make authorities legitimate. There are just too many aspects that bear on this question in particular cases. Our reasons to cooperate with social practices and institutions of various kinds are too varied and context-sensitive to allow for a general formula that can apply to all cases.

3.

The institutional conception of authorities outlined above still faces a serious challenge. One might object to it on the grounds that it leaves some important normative aspects of authority-subject relations unexplained. In particular, it might be argued that the institutional conception cannot explain the accountability relations between legitimate authorities and their subjects. The idea is that the obligation to obey an authority is directional, one that is *owed to the authority*. And then the assumption is that by disobeying a legitimate authority, you somehow wrong the authority; you do (or fail to do) something that the authority can rightfully complain about and hold you accountable for.[20] Indeed, if this thesis is correct, the institutional conception is flawed. According to an institutional conception of authorities, the subjects' obligation to comply with a legitimate authority's directive is not owed to the authority in question. If the obligation is owed to anyone, most plausibly it would be owed to the members of the practice or institution on whose behalf the authority operates. And this is, I think, as it should be. Let me explain.

To begin with, the idea that the obligation to obey an authority is directional – namely, one that is *owed to the authority*, as such – generates some questionable results. Presumably, in a decent legal regime, we have an obligation to obey the laws, at least to some extent or with respect to some subset of laws. It would be a very strange result, however, if it follows that our obligation to obey laws is an obligation owed to the relevant legal authorities. People do not owe an obligation to obey federal laws to the Congress of the United States. And they do not owe an obligation not to park in no-parking zones to the city council that enacted

[20] The directionality thesis, and its connection with the idea of accountability, is explicitly suggested by Darwall, "Authority and Reasons: Exclusionary and Second Personal"; Margaret Gilbert, *A Theory of Political Obligation* at pp. 245-248; and Hershovitz "The Authority of Law".

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the ordinance.[21] The law is not the only area where we get rather strange results about directionality. Consider, for example, the case of an army commander – during operations in a just war, let us assume – ordering one of his soldiers to attack and thus risk his life to advance the military operation. Let us assume that the soldier is obliged to obey. Would it make sense to suggest that he owes this obligation – to risk his life, remember – to the commander who ordered him? Or consider a player in a soccer game, ordered "out" by the referee. Does he owe the obligation to comply with the order to the referee? In all these cases, it seems much more plausible to maintain – as the institutional conception entails – that the obligation to obey the authority, if there is one, is owed to the members of the community or the institution on behalf of whom the relevant authority operates.

You might think that if the authority *represents* those on behalf of whom it operates, then the distinction I draw here is not all that significant; owing a duty to the authority would be tantamount to owing it to those on behalf of whom the authority operates. I am not sure to what extent we can regard authorities as representatives of all those on whose behalf they are meant to act; but to the extent that we can, such a view would not necessarily pose a problem for the institutional conception.[22] If one wants to claim that duty to comply is owed to the authority *as, and only as*, a *representative* of those on behalf of whom the authority operates, directionality would not be inconsistent with the institutional conception.

The main debate here, however, is not about directionality per se. The philosophical motivation of the directionality thesis is to ground the accountability relations between the authority and its subjects. The suggestion is that if A has legitimate authority over B in matters C, and instructs B to φ in those matters, then *B is accountable to A* for not φ-ing or

[21] Alternatively, to suggest that the obligation to obey laws is owed to The Law, in some abstract sense, seems to me even more puzzling. The law is not an entity, and it is certainly not an agent.

[22] My doubts stem from a certain ambiguity concerning the idea of *acting on behalf of another*. In one sense, acting on another's behalf is to act as the other's representative. But in another sense, acting on behalf of another is to act on reasons that apply to the other or reasons that are good for her. In this latter sense, acting on another's behalf does not necessarily entail representing her. For example, I may order a book from the library for one of my students on the thought that it is good for her to have it; I do not represent her in this case. I suspect that it is possible for authorities to act on behalf of their subjects in this latter sense as well. But nothing about the institutional conception relies on this possibility.

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otherwise failing to comply. So the assumption here has to be that unless we maintain that B's obligation to obey is directed toward A, we have no grounds for holding B accountable to A.[23]

But this account raises more problems than it solves. Accountability relations would normally entail that if B is accountable to A for φ-ing, and B fails to φ (without adequate justification), then B has *wronged A*. For example, if I made you a promise, I am accountable to you for keeping it, and if I fail to keep my promise without adequate justification, I wrong you. That is, you certainly have grounds to complain that I did some wrong *to you*. Now, those who endorse the directionality thesis must assume that this is exactly how it works in the relations between a legitimate authority and its subjects: The subject is accountable to the authority, and by failing to comply, the subject wrongs the authority, which, presumably, gives the authority some right to rectification.

Let me start from the end of the chain. Normally, when X wrongs Y, X would be under an obligation to rectify the wrong; at the very least, I presume, we would expect X to acknowledge that he wronged Y and offer Y something to make up for it. What rectification consists in, and what forms of rectification are appropriate on different occasions, is a complex issue that we need not determine here. Now think about the relations between an authority and its subjects. Suppose the subject failed to comply with a legitimate authoritative directive without adequate justification. Does it make sense to maintain that the subject owes some rectification to the authority? Can she offer, for example, some compensation (or some other remedy) to make up for her disobedience? This is just not how we normally react to disobedience; the normal reaction to disobeying an authority is punitive. And whatever the right account of punishment is, we never think of punishment as a way of compensating the authority for some wrong committed against it. It is, in fact, quite the other way around: When someone disobeys a legitimate authoritative directive, it would normally be the wrong kind of reaction to apologize to the authority or try to offer the authority some compensation or remedy to make up for the disobedience. You do not wrong the authority by disobeying a legitimate directive; you wrong those whom the

[23] This idea is quite explicitly stated by those who hold the directionality thesis. See note 20 above.

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directive is there for – namely, those who are supposed to benefit from compliance with the directive (sometimes yourself included).[24]

To sum up my point here, the idea that by disobeying an authority you wrong the authority would normally entail that you need to rectify this wrong, which would normally entail that offering due compensation (or an apology, or something like that) is, at least potentially, an adequate response. I fail to see how this applies to the relations between legitimate authorities and their subjects. At the very least, the fact that the normal reaction to disobedience is punitive, not a form of rectification, should give us some pause here.

Now you might complain that I just confused the wrong done to the person in authority with the wrong done to the authority, as such. Yes and no. If you separate the authority, as a role or an institution, from persons occupying the authoritative role, you might find it even harder to explain how one can wrong the authority by disobeying it. Can we wrong institutions or institutional roles? Surely we can, but only *indirectly*, by somehow obstructing or harming the functioning of the institution and thus, indirectly, causing some harm or wrong to those who benefit from the institution and its smooth operation. That is perfectly consistent with the institutional conception. I do think that subjects, by and large, owe an obligation to obey legitimate authorities, but not to the authority; people owe this obligation to those who benefit from the existence of the relevant authority and its proper functioning – that is, to those who benefit from the practice or institution whose purposes or functions the authority is there to serve, assuming, of course, that the practice or institution in question is such that the subjects have reasons to support it.

But what about accountability? Even if we concede that one does not wrong an authority by disobeying it, we may want to hold on to the idea that subjects are accountable to the authority. Can we have accountability without directionality? I think that the answer depends on what kind of accountability we have in mind here. There is, presumably, a moral sense of accountability relations between persons that, I grant, must

[24] Children often apologize to their parents for disobeying them, and in many contexts it seems like the right kind of response on their part. But this is something of a special case. First, because parental authority is closely entangled with other, more personal and intimate aspects of the parent-child relationship, in ways which are often difficult to keep separate. Second, the idea of apology is a fairly complex one. Apology is, among other things, a form of expressed recognition that one has done something wrong; in the context of children's educational needs, often no more than that is required.

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be directional in nature. If I am morally accountable to you for my action, this must be closely correlated with something I owe you. I doubt, however, that there is a need for accountability in this moral sense with respect to authority-subject relations. It is certainly true that an authority, as such, has a special standing *vis a vis* the subjects to account for their disobedience to its directives. Others may criticize you for disobeying an authority, and they may have good reasons to complain, but only the authority is in a position to make certain additional demands on you in response to your disobedience. Notice, however, that this type of accountability that we normally associate with authority-subject relations is a formal-institutional one, whereby the issuing of a legitimate authoritative directive is taken to entail some additional rights of the authority to safeguard compliance. But these rights and powers vary considerably, as they should, in different practical contexts and institutional arrangements. Often there is a division of labor between those who have the power to issue authoritative directives and others who have the power to hold the subjects accountable and ensure compliance. A clear and obvious example is found in the context of legal systems. In a well-ordered legal system we find a division of labor – that is, separation of powers, between legislatures, the judiciary and other law-enforcement agencies. Those who have the power to make laws are kept separate from those who have the power to apply the laws to particular cases and enforce compliance. In other words, accountability in this second, formal sense – the one that is rightly associated with authoritative powers – is not directional in the sense we discussed above; it does not have to be based on the assumption that an obligation to obey the authority is owed to the authority in question.

Conclusion

The view I have tried to defend here is not a deflationary one. I am not claiming that the question about the legitimacy of a practical authority is misguided or that it cannot be answered. What I am suggesting is that it is always the nature of the institution in which authorities operate that, at least partly, determines their legitimacy. In order to determine whether an authority is legitimate or not, we need a normative account, for sure, but not about authorities in general; we need a normative theory about the legitimacy of social practices and institutions, what makes them good and just and worthy of our support.

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Let me conclude with a brief remark on the obligation to obey the law. Realizing that the legitimacy of practical authorities must be grounded on the specific features of the practice or institution in which the putative authority operates should help us to see that the debates about political obligation are precisely the kind of debates we should have about the legitimacy of any given practical authority. The arguments about the obligation to obey the law pertain to the kind of institution law is, its functions in society, and the moral obligations we may have in supporting those functions and the extent to which the support needs to be realized by an obligation to obey. These are exactly the kind of considerations that pertain to the legitimacy of any practical authority. They all depend on the nature of the practice in which the authority operates, the reasons we may have for cooperative participation, and the obligations such reasons entail.

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