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Authority and Justification

This article defends a certain conception of the nature of practical authority, that is, authority with power to require action. The explanation proceeds through normative theses of three kinds. One concerns the type of argument required to justify a claim that a certain authority is legitimate. The second states the general character of the considerations which should guide the actions of authorities. The last concerns the way the existence of a binding authoritative directive affects the reasoning of the subjects of the authority. The explanation and defense of the three theses is preceded by an introductory section defending the general approach to the analysis of authority adopted here, and introducing some of the themes which are explored in greater detail later in the article.

I. Authority and Reason

It is common to regard authority over persons as centrally involving a right to rule, where that is understood as correlated with an obligation to obey on the part of those subject to the authority. Robert Ladenson has recently challenged this common view. He agrees that political authority is a right to rule, but denies that it entails an obligation to obey. That political authority is a right to rule means, according to him, that "strong reasons can be advanced for holding that possession of the governmental power and acceptance by those one presumes to govern of its exercise jointly constitute a justification for coercive acts which would

I am grateful to R. M. Dworkin, J. M. Finnis, K. Kress, D. Miller, and to the Editors of *Philosophy & Public Affairs* for helpful comments on earlier drafts of this article.

otherwise be immoral."[1] Power over a person here is not normative power. It means "the ability to make that person do what one wishes."[2]

It is clear that not every power amounts to an authority. My neighbor can stop me from growing tall trees in my garden by threatening to burn rubbish by my border. He, therefore, has some power over me but no authority. Nor does his power turn into an authority just by the fact that I acquiesce and do not pick a fight with him. An authority, according to Ladenson, has a justification-right to possess and exercise its power. A justification-right is contrasted with a claim-right in not implying any obligations. My neighbor's justification-right to threaten me does not mean that I have a duty to obey him. It merely means that he does no wrong in threatening me and this is compatible with my having a right to resist him.[3]

Let us therefore assume that such threats are in general wrong because they interfere with a person's use of his own property. Let us further assume that my neighbor has nevertheless the right to threaten me either because my growing tall trees will greatly harm his interests, or for whatever other reason seems an acceptable justification, provided it is compatible with our final assumption, that is, that I have the right to resist him (both his and my rights being justification-rights). It seems clear that my neighbor does not have authority over me just because he can affect my behavior and would be justified in doing so. If this is authority, we all have authority over our neighbors. Nor is it clear whether Ladenson would deny that. He adds two further elements to his explanation of political authority. First, it is authority to use coercion. Second, it is justified by the fact that its possessor successfully exercises governmental power with the acquiescence of his subjects. It is tempting to say that these two conditions do not belong to an explanation of authority over persons generally. They simply establish which authorities are political authorities. But perhaps it is wrong to factor out the explanation of political authority into two separate parts, an explanation of authority and

1. R. Ladenson, "In Defense of a Hobbesian Conception of Law," *Philosophy & Public Affairs* 9, no. 2 (Winter 1980): 139.

2. Ibid., p. 137.

3. If I understood his meaning, Ladenson regards "having a justification right to do A" as meaning being justified in doing A. This is to confuse "having a right to do A" with "doing A is alright." But my argument does not depend on rejecting Ladenson's conception of rights.

of what makes it political. Let us therefore examine the two conditions that Ladenson requires.

It seems plain that the justified use of coercive power is one thing and authority is another. I do not exercise authority over people afflicted with dangerous diseases if I knock them out and lock them up to protect the public, even though I am, in the assumed circumstances, justified in doing so. I have no more authority over them than I have over mad dogs. The exercise of coercive or of any other form of power is no exercise of authority unless it includes an appeal to compliance by the person(s) subject to the authority. That is why authority is typically exercised by giving instructions of one kind or another. But appeal to compliance makes sense precisely because it is an invocation of the duty to obey.

Some, particularly those with Hobbesian sympathies, may think that there is an alternative and a better explanation of the fact that authority is usually exercised by issuing directives. These are, they will say, threats or coercive threats. There can indeed be no doubt that threats are another type of what may be loosely called "appeals to compliance." Nor do I doubt that all political authorities must and do resort to extensive use of and reliance on coercive and other threats. Yet all legal authorities do much more. They claim to impose duties and to confer rights. Courts of law find offenders and violators guilty or liable for wrongdoing. None of these or similar claims have much to do with threatening people. To threaten is not to impose a duty, nor is it to claim that one does. None of this shows that legal authorities have a right to rule, which implies an obligation to obey. But it reminds us of the familiar fact that they claim such a right, that is, they are de facto authorities because they claim a right to rule and because they succeed in establishing and maintaining their rule. They have legitimate authority only if and to the extent that their claim is justified and they are owed a duty of obedience. Ladenson's mistake is to think that since there can be political authority which is not owed a duty of obedience, there can also be one which does not claim that it is owed such a duty.

It should be clear by now that Ladenson's last condition—that the authority has a justification-right to use coercion because it regularly exercises governmental power with the acquiescence of its subjects—cannot retrieve the situation. Acquiescence seems relevant to the explanation of de facto authority rather than to that of legitimate authority. To

have effective political control requires, in the circumstances of our world, a high degree of acquiescence. Ladenson's conception of authority amounts to a claim that all de facto authorities are legitimate. It is a familiar Hobbesian view which will be challenged in the next section. But can it really be claimed to be faithful to the main features of the notion of political authority prevalent in our culture?

To test it, try to imagine a situation in which the political authorities of a country do not claim that the inhabitants are bound to obey them, but in which the population does acquiesce to their rule. We are to imagine courts imprisoning people without finding them guilty of any offense. Damages are ordered, but no one has a duty to pay them. The legislature never claims to impose duties of care or of contribution to common services. It merely pronounces that people who behave in certain ways will be made to suffer. And it is not merely ordinary people who are not subjected to duties by the legislature; courts, policemen, civil servants, and other public officials are not subjected by it to any duties in the exercise of their official functions either.

Two things stand out when contemplating a political system of this kind. First, it is unlikely that any such society ever existed. Societies we know about invariably are subject to institutions claiming a right to bind their subjects, and when they survive, this is in part because at least some of their subjects accept their claim. Second, if such a society were to exist we would not regard it as being governed by authority. It is too unlike the political institutions we normally regard as authorities.

The two points are related. The second is a conceptual point. But we have the concept of authority that we do because in our world societies are governed by institutions claiming and being acknowledged to have the right to bind their subjects. Ladenson's analysis is not merely not an analysis of the concept of authority which is part of our cultural tradition. It is an analysis of a concept that does not have much use in our world.

To conclude: Ladenson offers an explanation of legitimate authority in terms of de facto authority. It is justified de facto authority. De facto authority is then understood as some form of power over people. The analysis fails because the notion of a de facto authority cannot be understood except by reference to legitimate authority. Having de facto authority is not just having an ability to influence people. It is coupled with a claim that those people are bound to obey.

How is authority to be related to the nebulous notion of a valid re-

quirement for the obedience of one's subjects? As Richard Flathman disapprovingly remarked, "There has been a remarkable coalescence of opinion around the proposition that authority and authority relations involve some species of 'surrender of judgment' on the part of those who accept, submit or subscribe to the authority of persons or a set of rules and offices. From anarchist opponents of authority such as William Godwin and Robert Paul Wolff through moderate supporters such as John Rawls and Joseph Raz and on to enthusiasts such as Hobbes, Hannah Arendt and Michael Oakeshott, a considerable chorus of students have echoed the refrain that the directives . . . of authority are to be obeyed by B irrespective of B's judgments of their merits."[4]

But what is "a surrender of judgment"? H.L.A. Hart, who has recently added his voice in support of this kind of analysis, provides the following explanation. "The commander characteristically intends his hearer to take the commander's will instead of his own as a guide to action and so to take it in place of any deliberation or reasoning of his own: the expression of the commander's will . . . is intended to preclude or cut off any independent deliberation by the hearer of the merits pro and con of doing the act."[5] This explanation is, however, implausible. Surely what counts, from the point of view of the person in authority, is not what the subject thinks but how he acts. I do all that the law requires of me if my actions comply with it. There is nothing wrong with my considering the merits of the law or of action in accord with it. Reflection on the merits of actions required by authority is not automatically prohibited by any authoritative directive, though possibly it could be prohibited by a special directive to that effect.

Richard Friedman offers an explanation aimed at the same target which avoids this objection:

> The idea being conveyed by such notions as the surrender of private judgment . . . is that in obeying, say, a command simply because it comes from someone accorded the right to rule, the subject does not make his obedience *conditional* on his own personal examination and evaluation of the thing he is being asked to do. Rather, he accepts as

4. R. E. Flathman, *The Practice of Political Authority* (Chicago: University of Chicago Press, 1980), p. 90.

5. H.L.A. Hart, *Essays on Bentham* (Oxford: Oxford University Press, 1982), p. 253. I used to hold a similar view. See my comment on Chisholm in *Practical Reasoning*, ed. S. Korner (Oxford: Basil Blackwell, 1974).

> a sufficient reason for following a prescription the fact that it is prescribed by someone acknowledged by him as entitled to rule. The man who accepts authority is thus said to surrender his private or individual judgment because he does not insist that reasons be given that he can grasp and that satisfy him, as a condition of his obedience.[6]

Is this conception of authority correct? One point to remember (it is consistent with Friedman's account) is that a person may have limited authority (for instance, in matters concerning football only, or in military affairs, but not in the conduct of the economy). It should be noted that Friedman's explanation shows how misleading the metaphor of "surrendering one's judgment" can be. Unlike Hart's, Friedman's explanation shifts the emphasis from the subjects' deliberations to their actions. The subjects accept that someone has authority over them only if their willingness to do his bidding is not conditional on their agreement on the merits of performing the actions required by the authority.

This condition is open to two interpretations. The minimalist interpretation maintains that they are willing to obey if they have no judgment of their own on the merits of performing the required action. They will not then defer decision until they form their own judgment. The maximalist interpretation claims that the subjects accept that they should obey even if their personal belief is that the balance of reasons on the merits is against performing the required act.

The minimalist interpretation is too weak since it assumes that people are never bound by authority regarding issues on which they have firm views. The maximalist interpretation is more promising, and the views to be argued for in the rest of this article explore and develop it. Either way no surrender of judgment in the sense of refraining from forming a judgment is involved. For there is no objection to people forming their own judgment on any issue they like. Nor does one surrender one's judgment if that means acting against one's judgment. For an authority is legitimate only if there are sufficient reasons to accept it, that is, sufficient reasons to follow its directives regardless of the balance of reasons on the merits of such action.

There are more ways than one in which a metaphor can mislead. It

6. R. B. Friedman, "On the Concept of Authority in Political Philosophy," in *Concepts in Social and Political Philosophy*, ed. R. E. Flathman (New York: Macmillan, 1973), p. 129.

can sometimes mislead people who perceive clearly the fallacies the metaphor invites and therefore reject it altogether, turning a blind eye to the true insight it encapsulates. This happened to the many theorists who thought they had a simple explanation for the confusion of thought which led to the surrender of judgment metaphor. According to them, to accept the legitimacy of an authority is simply to accept that whatever other reasons there may be for a certain action, its being required by the authority is an additional reason for its performance. Inasmuch as that additional reason may tip the balance, one can perhaps overdramatize the situation by saying that an authoritative requirement is a reason to act against the balance of reasons on the merits of the case. This means no more than that the authoritative requirement is an additional factor. Much the same can be said of any reason for action. The fact that it will rain tomorrow, for example, may mean that I should not go to London, even though the balance of reasons on the merits of my going (that is, all the reasons pro and con but the rain) suggests that I should go.

This description of the relevance of authority to practical reasoning is profoundly misguided. It is wrong not in what it says, but in what it leaves out and implicitly denies. To be sure, if a person accepts the legitimacy of an authority then its instructions are accepted by him as reason for conforming action. But until we understand how and why the instructions are such reasons and how they differ from ordinary reasons, we will not begin to understand the nature of authority. Perhaps the point can be best brought out by considering authority first as it functions in one, not untypical, context.

Consider the case of two people who refer their dispute to an arbitrator. He has authority to settle the dispute for they have agreed to abide by his decision. Two features stand out. First, the arbitrator's decision is for the disputants a reason for action. They ought to do as he says because he says so. But this reason is related to the other reasons which apply to the case. It is not (like the rain in the example of my going to London) just another reason to be added to the others, a reason to stand alongside the others when one reckons which way is better supported by reason. The arbitrator's decision is meant to be based on the other reasons, to sum them up and to reflect their outcome. He has reason to act so that his decision will reflect the reasons which apply to the litigants. I shall call reasons of this character dependent reasons. I shall also refer to his

decision as a dependent reason for the litigants. Notice that in this second sense a dependent reason is not one which does in fact reflect the balance of reasons on which it is based. It is one which is meant to do so.

This leads directly to the second distinguishing feature of the example. The arbitrator's decision is also meant to replace the reasons on which it depends. In agreeing to obey his decision they agreed to follow his judgment of the balance of reasons rather than their own. Henceforth, his decision will settle for them what to do. Lawyers say that the original reasons merge into the decision of the arbitrator or the judgment of a court, which, if binding, become *res judicata.* This means that the original cause of action can no longer be relied upon for any purpose. I shall call a reason which displaces others a preemptive reason.[7]

It is not that the arbitrator's word is an absolute reason which has to be obeyed come what may. It can be challenged and justifiably refused in certain circumstances. If, for example, the arbitrator was bribed, or was drunk while considering the case, or if new evidence of great importance unexpectedly turns up, each party may ignore the decision. The point is that reasons that could have been relied upon to justify action before his decision cannot be relied upon once the decision is given. Note that there is no reason for anyone to restrain their thoughts or their reflections on the reasons which apply to the case, nor are they necessarily debarred from criticizing the arbitrator for having ignored certain reasons or for having been mistaken about their significance. It is merely action for some of these reasons which is excluded.

The two features, dependence and preemptiveness, are intimately connected. Because the arbitrator is meant to decide on the basis of certain reasons, the disputants are excluded from later relying on them. They handed over to him the task of evaluating those reasons. If the disputants do not then reject these reasons as possible bases for their own action, they defeat the very point and purpose of the arbitration. The only proper way to acknowledge the arbitrator's authority is to take it to be a reason for action which replaces the reasons on the basis of which he was meant to decide.

7. In the first chapter of *The Authority of Law* (Oxford: Oxford University Press, 1979), I explained some of the formal features of preemptive reasons. My analysis has been criticized by Flathman in *The Practice of Political Authority*, among others. It is not possible to reply to the criticism here.

II. The Dependence Thesis

The crucial question is whether the arbitrator's is a typical authority, or whether the two features picked out above are peculiar to it and perhaps a few others, but are not characteristic of authorities in general. It might be thought, for example, that the arbitrator is typical of adjudicative authorities, and that what might be called legislative authorities differ from them in precisely these respects. Adjudicative authorities, one might say, are precisely those in which the role of the authority is to judge what reasons apply to its subjects and decide accordingly, that is, their decisions are merely meant to declare what ought to be done in any case.

A legislative authority on the other hand is one whose job is to create new reasons for its subjects, reasons which are new not merely in the sense of replacing other reasons on which they depend, but in not purporting to replace any reasons at all. If we understand "legislative" and "adjudicative" broadly, so the objection continues, all practical authorities belong to at least one of these kinds.[8] It will be conceded, of course, that legislative authorities act for reasons. But theirs are reasons which apply to them and which do not depend on, that is, which are not meant to reflect, reasons which apply to their subjects. A military commander should order his troops in the way best calculated to achieve victory at a minimal cost. If he wisely orders his men to occupy a certain hill, it does not follow that they had reason to occupy that hill even before they were ordered to do so. Parliament is to distribute the burden of taxation in an equitable way, but it does not follow that the citizens had any reason to pay tax before the passing of the (just) tax law.

These are telling points. But the argument is by no means over. First, even if not all legislative authorities share the characteristics of dependence and preemptiveness we found in the arbitrator's case, it is plain that some do. Consider, for example, an act of Parliament imposing on parents a duty to maintain their young children. Parents have such a duty independently of this act, and only because they have it is the act justified. Parliament, of course, is not limited to the enactment of laws where there is a prior obligation on the subjects to behave in the required way. But

8. This would be a very wide interpretation indeed. It would, e.g., count my instruction to my son to be back by midnight as legislative, and the policeman's order to move on when a driver stops in a prohibited zone as adjudicative. But this liberality does not affect the argument.

there can be, and perhaps there are authorities which are so limited. Note that the decrees of such a body will be binding even if they in fact err as to what people's obligations are. The arbitrator's decision is binding even if mistaken and so are the decrees of our imagined legislator. Both are meant to decide on the basis of dependent reasons and therefore their decisions are preemptive.

The example shows that the objector's neat distinction between adjudicative and legislative authorities is mistaken. The mark of the adjudicator is simply that he is called upon to decide what parties in dispute should have done or should do in the circumstances of a particular case. Nevertheless, the objector may well remain convinced that many legislative authorities are not meant to act on dependent reasons and that their directives are not preemptive. So let us consider his examples with some care.

One simplifying assumption has to be explained before we proceed. We have been concerned with the authoritative imposition of duties. But authorities, even practical authorities, do much else besides. They can declare that a certain day shall be a national holiday, that a certain organization shall have legal personality, that a person shall be granted citizenship or shall be divorced or excommunicated, that certain land shall be dedicated to the public, or that some people shall have certain rights, and much else.

Concentration on the imposition of duties does not, however, distort our understanding of authority since all the other functions authorities may have are ultimately explained by reference to the imposition of duties. The possession of citizenship, for instance, is important because it confers rights (such as the right to vote in general elections) and duties (such as the duty of loyalty). Rights themselves are grounds for holding others to be duty-bound to protect or promote certain interests of the right-holder. Legal personality is the capacity to have rights and duties. In every case the explanation of the normative effect of the exercise of authority leads back, sometimes through very circuitous routes, to the imposition of duties either by the authority itself or by some other persons. It is therefore possible to explain "authority" by explaining the sense in which authorities can impose duties.

One difficulty is that prising apart the imposition of duties from other effects of the exercise of authority is far from straightforward. Consider

a tax law again. It not only imposes a duty to pay, but also sets up (not necessarily in the same statute) the machinery for collecting and distributing the money. When the imagined objector said that there was no reason to pay the money now due as tax before the tax law was passed, he was of course right. But is this because there was then no machinery for collecting and distributing the money or because there was no authority-imposed duty to pay it?

For the first two years of World War I there was no conscription in Britain, but there was machinery to recruit volunteers. So this may be the sort of case we are looking for, a case in which the effect of the duty can be separated from the effect of other aspects of authoritative action. In this case, at any rate, the conclusion is clear. By and large, those who approved of conscription when it came did so because they believed that everyone had a duty to serve in the armed forces in any case, or at least that everyone ought to have done so. They would have denied that the conscription law had imposed a completely new duty. It merely declared what people ought to have done. Because the doubters were bound by the fact that they acknowledged the authority of Parliament to follow Parliament's judgment as to what their duties were, its act is not merely dependent on those duties but also preempts them.

We are to imagine a situation in which the State provides all the services it currently provides, let us say roads and a sewerage system, free education and a free health service, social security and unemployment benefits, and the like. They are provided by raising money from the public for a state-run charity, contributions to which are voluntary, but which publishes guidelines for self-assessment for those who wish to use them. I hope it will be agreed that those who think that the tax law is justified do so partly because they believe that there is in the circumstances imagined a reason to contribute voluntarily a sum which is equivalent to a just tax.

Let us take stock of the argument so far. I am arguing for one main thesis claiming that authoritative reasons are preemptive: *The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.* It will be remembered that the thesis is only about legitimate authority. It is relevant for the explanation of de facto authorities because

every de facto authority claims or is acknowledged by others to be a legitimate authority. But since not every authority is legitimate, not every authoritative directive is a reason for action.

Furthermore, authoritative directives are not beyond challenge. First, they may be designed not to determine finally what is to be done in certain circumstances but merely to determine what is to be done on the basis of certain considerations. For example, a directive may determine that from the economic point of view a certain action is required. It will then replace economic considerations but no others. Or the authority may direct that the final decision must be based on economic considerations only, thus replacing all but the economic factors. Even where an authoritative decision is meant to settle finally what is to be done, it may be open to challenge on certain grounds, for example, if an emergency occurs, or if the directive violates fundamental human rights, or if the authority acted arbitrarily. The nonexcluded reasons and the grounds of challenging an authority's directives vary from case to case. They determine the conditions of legitimacy of the authority and the limits of its rightful power.

This point is worth emphasizing not only because of its importance in the developing argument to follow, but also because it marks the way in which my use of "the limit of an authority's rightful power" differs from some common uses (though it conforms with others including the legal usage). Sometimes authorities are understood to be limited by the kinds of acts they can or cannot regulate (given some restrictive ways of classifying acts). In this article authorities are said to be limited also by the kinds of reason on which they may or may not rely in making decisions and issuing directives, and by the kinds of reasons their decisions can preempt.

The argument for the preemption thesis proceeds from another, which I shall call the dependence thesis. It says: *All authoritative directives should be based, in the main, on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive.* Such reasons I termed above "dependent reasons." The examples of conscription and taxation were intended to give the dependence thesis some plausibility, and in particular to disprove the suggestion that dependence is the mark of adjudication. But doubts are bound to linger and further clarifications are required to dispel them.

A few preliminary points. The dependence thesis does not claim that authorities always act for dependent reasons, but merely that they should do so. Ours is an attempt to explain the notion of legitimate authority through describing what one might call an ideal exercise of authority. Reality has a way of falling short of the ideal. We saw this regarding de facto authorities which are not legitimate. But naturally not even legitimate authorities always succeed, nor do they always try to live up to the ideal. It is nevertheless through their ideal functioning that they must be understood. For that is how they are supposed to function, that is how they publicly claim that they attempt to function, and, as we shall see below, that is the normal way to justify their authority (that is, not by assuming that they always succeed in acting in the ideal way, but on the ground that they do so often enough to justify their power), and naturally authorities are judged and their performance evaluated by comparing them to the ideal.

Remember also that the thesis is not that authoritative determinations are binding only if they correctly reflect the reasons on which they depend. On the contrary, there is no point in having authorities unless their determinations are binding even if mistaken (though some mistakes may disqualify them). The whole point and purpose of authorities, I shall argue below, is to preempt individual judgment on the merits, and this will not be achieved if in order to establish whether the authoritative determination is binding individuals have to rely on their own judgment of the merits.

Nor does the thesis claim that authorities should always act in the interests of their subjects. Its claim is that they should act for reasons which apply also to their subjects, but these need not be reasons advancing their interests. A military commander, for example, should put the defense of his country above the interests of his soldiers. He may therefore order them to act against their own interests. But then soldiers are supposed to put their country above their personal interests, and only because of this should they obey their commander.

Much of the resistance to the dependence thesis comes from confusing it with a claim about what authorities do in fact, or with the view that requires authorities to act only in the interests of their subjects. But the most common confusion is between the dependence thesis and another which can be called *the no-difference thesis*, which asserts that *the exercise of authority should make no difference to what its subjects ought*

to do, for it ought to direct them to do what they ought to do in any event.[9] It may appear that the dependence thesis entails the no-difference thesis. But this is not the case. There are at least four ways in which authority acting correctly may make a difference to what its subjects ought to do, which are all consistent with the dependence thesis.

First, the dependence thesis does not exclude the authority from acting for additional reasons which apply to it alone, and not to its subjects. All it requires is that it shall act primarily for dependent reasons. The force of the qualification and the role other reasons are allowed to have will be explained below. Typical examples of considerations which affect authoritative decisions but do not apply to individuals acting on their own are considerations arising out of the needs and limitations of bureaucracies. They have to be considered alongside substantive considerations which do apply to the individual subjects of the law or any other authority. The intrusion of the bureaucratic considerations is likely to require a solution which differs from the one an individual should have adopted if left to himself. But since the right authoritative solution is also, we assume, based on some dependent reasons, it conforms to the dependence thesis.

Second, many aspects of every action we perform for a reason are not uniquely determined by reasons. I have a reason to buy a loaf of bread but, let us assume, no reason to prefer a sliced loaf to an unsliced one or vice versa. Since I have a reason to buy a loaf of bread, I have a reason to buy a sliced loaf, as well as a reason to buy an unsliced one. But I have no reason to get one rather than the other. Since there is no other kind of bread, inevitably if I do as I have reason to and buy a loaf, I will buy one or the other. That is, in acting for the best reasons I will also inevitably transcend reason and take a deliberate decision (e.g., to buy a sliced loaf) concerning some aspects of which reason is undetermined.

The same general considerations apply to directives issued by authorities. The legislator, for example, has reason to impose a certain tax. There are reasons showing that it is better to require that the tax be paid either in quarterly or in monthly payments. These intervals are superior to all others. But while some reasons favor monthly payments and others favor quarterly ones, neither is sufficient to establish the superiority of doing it one way rather than the other. In this situation the authority

9. The no-difference thesis is about what happens if authorities reach the right decision. Since their directives are binding even when mistaken, they do then make a difference.

may leave the choice to individuals, but sometimes there are decisive reasons against doing so. Then the authority has to decide on one of the two or more acceptable options.[10] When this happens the authoritative directive does make a difference. Without it individuals would have had a choice of which of the acceptable solutions to adopt. The authority quite properly denies them the choice and exercises it itself.

Third, one important function of authoritative directives is to establish and help sustain conventions, Conventions are here understood in a narrow sense in which they are solutions to coordination problems, that is, to situations in which the vast majority have sufficient reason to prefer to take that action which is (likely to be) taken by the vast majority. Where there is a coordination problem the issuing of an authoritative directive can supply the missing link in the argument. It makes it likely that a convention will be established to follow the authoritatively designated act. It is often the proper job of authorities to issue directives for this purpose. Such authoritative directives provide the subjects with reasons which they did not have before. They therefore make a difference to their practical deliberations, and serve to refute the no-difference thesis.

These cases are not only common (though they hardly ever occur in the much oversimplified form we have considered), but are also of some theoretical interest. Once the directive is issued, individuals have reasons to take the action it requires which they did not have before because now there is ground to expect that a convention will be formed. But while this shows that the directive made a difference, it does not refute the dependence thesis. The authority took the action in order to help generate a convention. In so doing it acted for a dependent reason, for the assumption is that individuals have reason to wish for a convention and hence reason to take action to help form one. Every person in the group concerned has, before the directive is issued, a reason both to form a convention and to follow it once formed. This is the reason for which the legislation is adopted and it is, for the legislator, a dependent reason.

Fourth, prisoner's-dilemma type situations are another class of cases where authorities make a difference while conforming with the dependence thesis.[11] In these cases while people have reason to act in a certain

10. It would be a mistake to think of them as exactly tied options. All that is assumed here is that reasons are insufficient to establish the superiority of one option over the others.

11. On the role of authorities in prisoner's-dilemma type situations, see Ullman-Margalit, *The Emergence of Norms* (Oxford: Oxford University Press, 1980).

way given the situation they are in, they also have reason to change the situation. It is this feature, shared by cases where there are coordination problems, which enables authorities to make a difference while acting on dependent reasons. It should be remembered that many moral theories may land their adherents in prisoner's-dilemma type situations. The problem does not arise merely through lack of moral fiber.[12]

The considerations adumbrated above do not prove the dependence thesis. They adduce support for it mainly by removing misunderstanding and a few possible objections. Implicitly the argument appeals to our common understanding of the way authority should be exercised. The argument gains much strength by considering the case of theoretical authority, that is, authority for believing in certain propositions. Nowadays it is not the fashion to talk of authorities in this context. Instead we have experts. But the notions are very similar, at least in all that matters to our concerns.

There is likely to be ready agreement that experts of all varieties are to give advice based on the very same reasons which should sway ordinary people who wish to form their minds independently. The experts' advantage is in their easy access to the evidence and in their better ability to grasp its significance. But the evidence on which they should base their advice to me is the same evidence on which it would have been appropriate for me to form my own judgment. It is possible that practical and theoretical authorities have little in common. But it is more likely that, while they provide reasons for different things, they share the same basic structure. If so, the fact that a dependence thesis is true of theoretical authorities is strong evidence to suppose that it holds for practical authorities as well.

III. The Justification of Authority

The dependence thesis, it will be remembered, is a moral thesis about the way authorities should use their powers. It is closely connected with a second moral thesis about the type of argument which could be used to establish the legitimacy of an authority. I shall call it *the "normal justification thesis."* It claims that *the normal and primary way to establish that a person should be acknowledged to have authority over*

12. For an analysis of the way prisoner's dilemma problems arise within the bounds of various moral theories, see D. Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), chap. 4.

another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.

This way of justifying a claim that someone has legitimate authority, that is, that those subject to his authority should acknowledge the authoritative force of his directives, is not the only one. It is, however, the normal and primary one. Consider the case of a person whose reason for accepting his friend's advice is that the friend will be hurt if he does not. This may well be a perfectly good reason for accepting advice, but it is not the normal reason. It is regrettable that the friend will be hurt if his advice is not followed after it was given due consideration, or at least it is regrettable that he will be hurt to a degree which justifies this reaction. The friend himself does not intend his advice to be accepted for that reason, and is likely to be doubly hurt if he finds out that his advice was judged mistaken on the merits but was followed in order not to hurt him. The friend will be hurt because even when this is a good reason to accept advice, it is not a reason to accept it as a piece of advice. It is a reason to accept it as a way of being kind to a friend.

The normal reason for accepting a piece of advice is that it is likely to be sound advice. The normal reason to offer advice is the very same. It will be clear that these judgments of normality are normative. But we can understand the very nature of advice only if we understand in what spirit it is meant to be offered and for what reasons it is meant to be taken. The explanation must leave room for deviant cases, for their existence is undeniable. But it must also draw the distinction between the deviant and the normal, for otherwise the very reason why the "institution" exists and why deviant cases take the special form they do remains inexplicable.

The example of advice is close to the case of authority. Indeed some, though not all, advice is authoritative advice. It is, for example, sometimes justifiable to accept someone's authority in order not to hurt his feelings. Many grown-up people feel obliged by such considerations to continue to acknowledge the authority of their parents over them. But just as in the case of advice, and for the very same reasons, such grounds for recognizing the authority of another, even though sometimes good, are always deviant grounds.

Slightly different considerations show that some reasons for recogniz-

ing the authority of another are secondary. To call them secondary means that they are valid reasons which are, in normal cases, sufficient only in combination with the primary reasons (whereas deviant reasons may validly replace the normal reasons). Accepting the authority of a person or an institution is, for example, a way of defining one's own identity as a member of a nation or some other group, though needless to say it is unlikely to be the only way any person will express his identification with such a group. Such a reason can be perfectly valid, but only (according to the normal justification thesis) if the normal and primary justification applies to the same case as well. The secondary justification serves to lower the burden of proof required to establish the primary justification, that is, they may suffice in conjunction in circumstances in which the primary justification will not by itself be enough to establish the legitimacy of an authority. But reasons of identification and self-definition cannot by themselves establish the legitimacy of an authority.

Identification is a common and often proper ground for accepting authority. It is therefore important to establish the reasons why it is no more than a secondary justification dependent on the availability, at least to a certain degree, of another justification. Acceptance of an authority can be an act of identification with a group because it can be naturally regarded as expressing trust in the person or institution in authority and a willingness to share the fortunes of the group which are to a large extent determined by the authority. But trust in an authority is trust that the authority is likely to discharge its duties properly. It therefore presupposes a principle which should govern its activities. Accepting the authority as a way of identifying with a group is justified only if the trust is not altogether misplaced. Otherwise the odd situation may result that a person will quite properly express his identification with a group by supporting an institution which grossly betrays its duties to the group. For the same reasons one cannot properly express one's willingness to share the fortunes of a group by submitting to an authority which grossly betrays the trust it owes to the group. Identification with the group in such circumstances calls for the rejection of that authority.

The dependence and the normal justification theses are mutually reinforcing. If the normal and primary way of justifying the legitimacy of an authority is that it is more likely to act successfully on the reasons which apply to its subjects, then it is hard to resist the dependence thesis. It merely claims that authorities should do that which they were appointed

to do. Conversely, if the independence thesis is accepted, then the case for the normal justification thesis becomes very strong. It merely states that the normal and primary justification of any authority has to establish that it is qualified to follow with some degree of success the moral principle which should govern the decisions of all authorities. Together the two theses present a comprehensive view of the nature and role of legitimate authority. They articulate the service conception of the function of authorities, that is, the view that their role and primary normal function is to serve the governed. This, to repeat a point made earlier, does not mean that their only role must be to further the interest of each or of all of their subjects. It is to help them act on reasons which bind them.

The service conception, that is, the two theses taken together, clarifies one point which the dependence thesis itself left vague. As we saw, the thesis requires authorities to act primarily for dependent reasons. But it left unexplained the place and possible importance of the others. The justification thesis, which explains that acting for the dependent reasons is the normal function of authorities, explains the point. Sometimes one has to act for nondependent reasons. Bureaucracies, for example, are almost invariably forced to embrace a *de minimis* rule in order to be able to achieve their tasks where it really matters. The justification thesis, in other words, establishes the subservience of the nondependent reasons which should guide authoritative action to the dependent ones.

It will be noticed that the normal justification thesis identifies the case that must normally be established to show that a person has authority. It is not a matter of showing that he is entitled to have authority, but that he has it, that he is an authority, with all the consequences which follow from this fact. The main objection to this point revolves around the feeling that a person can have authority, be an authority or in authority, only if his authority is recognized by some people whose identity varies with the nature of the authority. The difficulty in assessing this point is that in most cases the normal justification cannot be established unless the putative authority enjoys some measure of recognition and exercises power over its subjects. There is a strong case for holding that no political authority can be legitimate unless it is also a de facto authority. The case for the legitimacy of any political authority rests to a large extent on its ability to solve coordination problems and extricate the population from prisoner's-dilemma type situations.

These considerations explain why to say of someone that he is entitled

to have authority means that he should be in a position of real power, for then he will have legitimate authority. They may be sufficient to account for the feeling that as a matter of meaning, recognition is a condition of possessing legitimate authority. If I am right, then this is not a matter of meaning but of normative justification.

The normal justification thesis allows for deviant and secondary reasons. Apart from these it is meant to account for the reasons there can be for accepting authorities. But a complete justification of authority has to do more than provide valid reasons for its acceptance. It also has to establish that there are no reasons against its acceptance which defeat the reasons for the authority. Because the reasons against the acceptance of authority vary, it is not possible to discover in advance how strong the reasons for acceptance of the authority need be to be sufficient.

Some reasons against the acceptance of authority pertain, with varying force, to many situations. One recurring kind of reason against accepting the authority of one person or institution is that there is another person or institution with a better claim to be recognized as an authority. The claim of the second is a reason against accepting the claim of the first only when the two authorities are incompatible, as are the claims of two governments to be legitimate governments of one country. Sometimes there are two compatible authorities whose powers overlap, as is the case with the authority of both parents over their children.

Another cluster of recurring considerations concerns the intrinsic desirability of people conducting their lives by their own lights. This obviously applies to some areas of life more than to others, to choice of friends more than to choice of legal argument in a court case. The case for the validity of a claim to authority must include justificatory considerations sufficient to outweigh such counterreasons. That is one reason why the case is hard to make. But if anarchists are right to think that it can never be made, this is for contingent reasons and not because of any inconsistency in the notion of a rational justification for authority, nor in the notion of authority over moral agents.

IV. The Preemptive Thesis

From the dependence and normal justification theses it is but a short step to the preemption thesis. It turns on the general relation between the justification for a binding directive and its status as a reason for action,

and more generally the relation between rules as reasons for action and their justification. Consider the rule that when being with one person and meeting another, one should introduce them to each other. The fact that this is a sound, valid, or sensible rule is a reason for anyone to act in accordance with it. It is a sound rule because it facilitates social contact. But the fact that introducing people to each other in those circumstances facilitates social contacts is itself a reason for doing so. Do we then have two independent reasons for introducing people? Clearly not. When considering the weight or strength of the reasons for an action, the reasons for the rule cannot be added to the rule itself as additional reasons. We must count one or the other, but not both. Authoritative directives are often rules, and even when they are not because they lack the required generality, the same reasoning applies to them. Either the directive or the reasons for holding it to be binding should be counted, but not both. To do otherwise is to be guilty of double-counting.

This fact is a reflection of the role of rules in practical concrete decisions. They provide an intermediate level of reasons to which one appeals in normal cases where a need for a decision arises. Reasons of that level can themselves be justified by reference to the deeper concerns on which they are based. The advantage of normally proceeding through the mediation of rules is enormous. It enables a person to consider and form an opinion on the general aspects of recurrent situations in advance of their occurrence. It enables a person to achieve results which can be attained only through an advance commitment to a whole series of actions, rather than by case-to-case examination.

Most importantly, the practice allows the creation of a pluralistic culture. For it enables people to unite in support of some "low or medium level" generalizations despite profound disagreements concerning their ultimate foundations which some seek in religion, others in Marxism or in Liberalism, and the like. I am not suggesting that the differences in the foundations do not lead to differences in practice. The point is that an orderly community can exist only if it shares many practices and that in all modern pluralistic societies a great measure of toleration of vastly differing outlooks is made possible by the fact that many of them enable the vast majority of the population to accept common standards of conduct.

More directly relevant to our case is the fact that through the acceptance of rules which set up authorities, people can entrust judgment to

another person or institution which will then be bound, in accordance with the dependence thesis, to exercise its best judgment primarily on the basis of the dependent reasons appropriate to the case. Thus the mediation of authorities may, where justified, improve people's compliance with practical and moral principles. This often enables them better to achieve the benefits that rules may bring as explained above, and other benefits besides.

These reflections on the mediating role of authoritative directives and of rules generally explain why they are reasons for actions. Ultimately, however, directives and rules derive their force from the considerations which justify them, that is, they do not add further weight to their justifying considerations. In any case in which one penetrates beyond the directives or the rules to their underlying justifications one has to discount the independent weight of the rule or the directive as a reason for action. Whatever force they have is completely exhausted by those underlying considerations. Contrariwise, whenever one takes a rule or a directive as a reason one cannot add to it as additional independent factors the reasons which justify it.

Hence the preemption thesis. Since the justification of the binding force of authoritative directives rests on dependent reasons, the reasons on which they depend are (to the extent that the directives are regarded simply as authoritative) replaced rather than added to by those directives. The service conception leads to the preemption thesis. Because authorities do not have the right to impose completely independent duties on people, because their directives should reflect dependent reasons which are binding on those people in any case, they should have the right to replace people's own judgment on the merits of the case. Their directives preempt the force of at least some of the reasons which otherwise should have guided the actions of those people.[13]

13. A. M. Honoré pointed out that even if an (informal) arbitration concluded in my favor, if I later become convinced that my original claim was mistaken, I should acknowledge the claim of the other litigant rather than rely on the arbitrator's decision. Here it seems as if, contrary to the preemption thesis, the original reasons are not preempted by the arbitrator's decision. Nevertheless one's duty undergoes a complete change in such circumstances. I may rely on the arbitrator. I may say that we both agreed that our relations will be governed by his decision, that I would have gone along with it had he made a mistake which harmed me. I would be rather ungenerous and unfriendly but nevertheless formally correct. The situation is the same as in cases of agreement. I buy a chest from you and a price is agreed. It then transpires that the chest is a valuable antique and the price I paid is ludicrously low. If I ought to pay a fair price for what I buy, then I ought to come back and add to the agreed price.

The preemption thesis will be readily accepted inasmuch as it concerns successful authoritative directives, that is, those which correctly reflect the balance of reasons on which they depend. But, a common objection goes, the thesis cannot justify preempting reasons which the authority was meant to reflect correctly and failed to do so. Successfully reflected reasons are those which show that the directive is valid. They are the justification for its binding force. Therefore, either they or the directive should be relied upon, but not both, that is not if relying on both means adding the weight of the directive to the force of the reasons justifying it when assessing the weight of the case for the directed action. Reasons that should have determined the authority's directive but failed to do so cannot be thought to belong to the justification of the directive. On the contrary they tell against it. They are reasons for holding that it is not binding. The preemption thesis is wrong in claiming that they too are preempted.

So much for the objection. It fails because its premise is false. Reasons which authoritative directives should and fail to reflect are nonetheless among the reasons which justify holding the directives binding. An authority is justified, according to the normal justification thesis, if it is more likely than its subjects to act correctly. That is how the subjects' reasons figure in the justification, both when they are correctly reflected in a particular directive and when they are not. If every time a directive is mistaken, that is, every time it fails to reflect reason correctly, it were open to challenges as mistaken, the advantage gained by accepting the authority as a more reliable and successful guide to right reason would disappear. In trying to establish whether or not the directive correctly reflects right reason the subjects will be relying on their own judgments rather than on that of the authority, which, we are assuming, is more reliable.

These reflections suggest another objection to the preemption thesis. It says[14] that in every case authoritative directives can be overridden or disregarded if they deviate much from the reasons which they are meant to reflect. It would not do, the objection continues, to say that the legitimate power of every authority is limited, and that one of the limitations is that it may not err much. For such a limitation defeats the preemption thesis since it requires every person in every instance to consider the

14. This objection was first put to me by R. M. Dworkin who is not responsible for the way it is treated here.

merits of the case before he can decide to accept an authoritative instruction.

The objection does not formally challenge the preemption thesis. It does not claim that the reasons which are supposed to be displaced by authoritative instructions are not replaced by them but should count as additional independent reasons alongside the instructions. Its effect is to deny that authoritative instructions can serve the mediating role assigned them above. That role is to enable people to act on nonultimate reasons. It is to save them the need to refer to the very foundations of morality and practical reasoning generally in every case. But as the directives are binding only if they do not deviate much from right reason and as we should act on them only if they are binding, we always have to go back to fundamentals. We have to examine the reasons for and against the directive and judge whether it is justified in order to decide whether its mistake, if it is not justified, is large or small. The mediating role is unobtainable.

The failure of this objection stems from its confusion of a great mistake with a clear one. Consider a long addition of, say, some thirty numbers. One can make a very small yet clear mistake as when the sum is an integer whereas one and only one of the added numbers is a fraction. On the other hand, the sum may be off by several thousands without the mistake being detectable except by laboriously going over the addition step by step. Even if legitimate authority is limited by the condition that its directives are not binding if clearly wrong, and I wish to express no opinion on whether it is so limited, it can play its mediating role. Establishing that something is clearly wrong does not require going through the underlying reasoning. It is not the case that the legitimate power of authorities is generally limited by the condition that it is defeated by significant mistakes which are not clear.

The preemption thesis depends on a distinction between jurisdictional and other mistakes. Most, if not all, authorities have limited powers. Mistakes which they make about factors which determine the limits of their jurisdiction render their decisions void. They are not binding as authoritative directives, though the circumstances of the case may require giving them some weight if, for example, others innocently relied on them. Other mistakes do not affect the binding force of the directives. The preemption thesis claims that the factors about which the authority was wrong, and which are not jurisdictional factors, are preempted by

the directive. The theses would be pointless if most mistakes were jurisdictional or if in most cases it were particularly controversial and difficult to establish which are and which are not. But if this were so, then most other accounts of authority would come to grief.

V. Objections

I will conclude this article by considering a few objections to the account of authority suggested above which challenge its general orientation.

Three theses were presented as part of an explanation of the concept of authority. They are supposed to advance our understanding of the concept by showing how authoritative action plays a special role in people's practical reasoning. But the theses are also normative ones. They instruct people how to take binding directives. The service conception is a normative doctrine about the conditions under which authority is legitimate and the manner in which authorities should conduct themselves. Is that not a confusion of conceptual analysis and normative argument? The answer is that there is an interdependence between conceptual and normative argument.

The philosophical explanation of authority is not an attempt to state the meaning of a word. It is a discussion of a concept which is deeply embedded in the philosophical and political traditions of our culture. The concept serves as an integral part of a whole mesh of ideas and beliefs, leading from one part of the net to another. There is no, nor has there ever been, complete agreement on all aspects of the concept's place and its connection with other concepts. But there is, as part of our common culture, a good measure of agreement between any two people on many, though frequently not the same, points. Accounts of "authority" attempt a double task. They are part of an attempt to make explicit elements of our common traditions, a highly prized activity in a culture which values self-awareness. At the same time such accounts take a position in the traditional debate about the precise connections between that and other concepts. They are partisan accounts furthering the cause of certain strands in the common tradition, by developing and producing new or newly recast arguments in their favor. The very activity is also an expression of faith in the tradition, of a willingness to understand oneself and the world in its terms and to carry on the argument, which in the area with which we are concerned is inescapably a normative argument, within

the general framework defining the tradition. Faithfulness to the shape of common concepts is itself an act of normative significance.

How can the account of authority offered here be thought to represent important strands in Western thought? As John Bell pointed out to me, if there is a common theme to liberal political theorizing on authority it is that the legitimacy of authority rests on the duty to support and uphold just institutions, as, following Rawls, the duty is now usually called. But that duty is of course dependent on a prior understanding of which institutions are just. The account here offered is meant as a beginning of an answer to that question. Or rather it contributes by setting the question in a certain way. One has a duty to uphold and support authorities if they meet the conditions of the service conception as explained above.

To the extent that legitimate authorities have power over us, the preemption thesis governs our right attitude to them. The duty to uphold and support just institutions does not come into play. It is primarily an other-regarding duty. I have a duty to support just governments in foreign countries, even though they have no legitimate power over me and I have reason to support the authority of my neighbors over their children. In other words, the duty to uphold and support just institutions comes into play when the conditions of legitimacy implied by the service conception of authority are satisfied. It then supplements the preemption thesis by showing that we should be concerned not merely to have the proper attitudes to those in authority over us, but also to those in authority over others.

Finally, let us return to our starting point. What is wrong with regarding an authoritative directive as one additional prima facie reason for the action it directs, which supplements, rather than supplants, the other reasons for and against that action? The service conception established that the point of having authorities is that they are better at complying with the dependent reasons. Take a simplified situation. I regularly confront a decision whether or not to sell certain shares of stock in varying circumstances. Suppose that it is known that a financial expert reaches the "right" decision (whatever that may be) in twenty percent more cases than I do when I do not rely on his advice. Should I not, when confronting such decisions, carry on as before but take his advice as a factor counting in favor of the decision he recommends?

Perhaps I should always take the case for his solution as being twenty percent stronger than it would otherwise appear to me to be. Perhaps

some other, more complicated formula should be worked out. In any case would not the right course require to give his advice prima facie rather than preemptive force? The answer is that it would not. In cases about which I know only that his performance is better than mine, letting his advice tilt the balance in favor of his solution will sometimes, depending on my rate of mistakes and the formula used, improve my performance. But I will continue to do less well than he does unless I let his judgment preempt mine.

This way of reasoning is unrealistically simple even in the relatively straightforward circumstances of simple stock-selling decisions. But it helps to illustrate the general lesson. If another's reasoning is usually better than mine, then comparing on each occasion our two sets of arguments may help me to detect my mistake and mend my reasoning. It may help me more indirectly by alerting me to the fact that I may be wrong, and forcing me to reason again to double-check my conclusion. But if neither is sufficient to bring my performance up to the level of the other person, then my optimific course is to give his decision preemptive force. So long as this is done where improving the outcome is more important than deciding for oneself, this surrender of judgment and acceptance of authority, far from being either irrational or an abdication of moral responsibility, is in fact the most rational course and the right way to discharge one's responsibilities.