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Associative Obligation and Law's Authority

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Abstract. Most attempts to explicate the authority of law dismiss the possible analogy of such authority with the less pretentious authority of parents, professional bodies, academic faculties, and other similar groups. This article explores that analogy, drawing on discussions of related themes by Ronald Dworkin and others. If agents are sometimes bound without their consent by such limited authority, the authority of law, though broader, may have similar features. Law’s claim to peremptory obedience would fail, but the more modest account could still satisfy some long recognized desiderata.

I. Introduction

Political philosophers used to assume that states have peremptory moral authority over all or most aspects of their citizens’ or subjects’ lives. On this view, if the state orders a subject to act in accordance with some standard of behavior, the subject is morally bound to obey or at least to defer to the standard as a morally relevant reason in itself for acting accordingly. If this were correct, duly constituted states would have more or less boundless discretion to alter the set of reasons their subjects should take into account in choosing among courses of action.

Those who defend the thesis just described also usually believe that political authority has little in common with other kinds of authority, which are not peremptory. ¹ They appear to think that when a duty to obey the law exists, it rests on reasons of a different sort from the duty some feel towards parents, clubs, academic faculties, arbiters of professional ethical standards, and similar bodies that regulate behavior. ² Political theorists generally seem

¹ For the tacit assumption that the existence of political obligation entails the existence of a special kind of authority that belongs only to states see, e.g., Hurd 1990, 1991; Soper 1989, 211. I shall use the term “political obligation” to mean the obligation to obey or to treat as a practical reason for action the imperatives issued by a state to which the obligee is nominally subject.

² For philosophers and political theorists, to recognize the authority of law is to believe “that a powerful reason (possibly the principal, if not the only, reason) that we should obey a law is
to assume that more modest kinds of authority are based either on consent or on delegated political authority. The failure to inquire whether legal or the less pretentious counterparts of political authority may be comparable to it weakens these assessments of the duty to obey the law.  

This article examines the possibility that mere membership in a group or pursuit of a collective activity may give rise to what Ronald Dworkin has called “associative obligations” (Dworkin 1986, 190–202). These, according to Dworkin, are “special responsibilities social practice attaches to membership in some biological or social group, like the responsibilities of family or friends or neighbors” (ibid., 196). Dworkin claims that most people recognize that they have special responsibilities by virtue of belonging to groups, although the obligations of membership dissolve if the benefits of membership are denied or otherwise fail to materialize (ibid.).  

Importantly, associative obligations cannot be said to arise by consent, express or implied. Family membership and even friendship are, in relevant respects, nonconsensual. The obedience members of other communities sometimes owe community authorities is, in Dworkin’s view, also nonconsensual. I shall use Dworkin’s term “associative” for both the obligation and the authority that arise from belonging to a group, and I shall provisionally stretch the denotation of group in this context to include those classes of people who engage in any enterprise. The instances of associative obligation Dworkin himself recognizes support this extension, as the sequel will show.  

Hence, the question I will examine is whether, by belonging to a group, participating in an activity or pursuing a collective enterprise, one may come under the authority of others, so as to be bound by their commands or at least bound to consider these commands morally relevant reasons for action.
This is to say that the agent should follow someone else’s orders or take that person’s commands seriously into account in deciding what to do; it is not to say merely that he or she should feel obliged to do so. In brief, if anyone ever has such an obligation, his or her moral horizon is changed by it. The associative obligation is an addition to the individual’s moral obligations. Just by entering into the relationship or getting involved in the collective activity in question, whether consenting to be bound or not, he or she is bound in new ways.

On Dworkin’s account, associative obligation arises largely out of respect and concern for other people with whom one is joined in some group. If this were not just generally true but were a prerequisite of associative obligations, it would be hard to see how they differ from the supposedly consensual duties political theorists have so often hypothesized as the model for political obligation. Elsewhere Dworkin seems to have in mind the stronger, nonconsensual thesis, which in any case I wish to examine. Dworkin himself points out that associative obligation cannot often be said to be “chosen” or “assumed,” and he disputes “the principle many philosophers have found so appealing, that no one can have special obligations to particular people except by choosing to accept these” (Dworkin 1986, 197).

I will sketch a broader conception of the source of associative obligation. Associative obligation, as I conceive it, may arise from the circumstances into which one is thrust by choices other than the choice of voluntary association with a group or community. I will argue that associative obligation may arise from the interdependence of participants’ expectations for the development of their shared activity or project, the need for rapid coordination of efforts within such evolving enterprises, the necessity of mutual support among the participants, and other contingent factors. At this point, however, I want only to suggest that something other than antecedent respect, sympathy, or benevolence, can provide an interesting source of associative obligation. Nor is associative obligation a creature of law. If, for example, the law of contract could account for all moral obligations to associative authority, or if consent always created the moral obligation in question, the existence of associative authority would not be interesting. I shall argue, instead, that authorities other than states do not invariably need either the backing of states or the consent of the “governed.”

5 Others have sought to explain political authority and the normativity of law as either based on conventions of a certain type or as systematic misinterpretations of such conventions (Bix 1996; Coleman 1989; Coleman and Leiter 1996, 246–9; Lagerspetz 1989, 1995; Postema 1986, 113–34; 1996, 104–12; 1995). My argument is not that the need for cooperation and coordination with respect to foreseeable matters either actually or apparently gives certain decision-makers the authority to enhance participants’ moral obligations—which would be a form of conventionalism akin to those discussed by these authors—but rather that the need for rapid coordination as the shared enterprise evolves, hence the need for evolving coordination, rationally trumps participants’ autonomy, whether they like it or not.
The existence of associative obligations may seem easy for consequentialists, especially for rule consequentialists, to acknowledge. Utilitarians can presumably accept that we are in some circumstances morally bound to obey or defer to authorities, even nonpolitical ones. The utilitarian criterion of moral obligation focuses on the welfare consequences of either actions or rules of action. Acting as if out of respect for someone other than a political authority may have compelling welfare consequences. For the utilitarian, the tendency to maximize welfare is what gives law (and rules announced by nonlegislative decision makers) their authority, not the relationship of law to any state structure.

Whether consequentialism can explain the normativity of law, even of some laws, is controversial (Coleman 1989, 1991), and in any case, what consequentialism can or cannot explain is beside the point. By definition, the consequentialist believes that what gives value to a course of action is the good it engenders, understood in collective welfare terms. If a course of action includes the agent’s pretending to defer to someone’s authority or attempting to arouse in himself or herself some feeling of respect for the supposedly authoritative dictates, the attitude or behavior of respect is only instrumental to producing the consequences, it is not of value in itself. Consequentialism’s easy compatibility with authority structures of all sorts is irrelevant to the purpose of this discussion, which is to see whether we can account for potentially rival authorities, a phenomenon consequentialism cannot admit to occur (because it recognizes no authorities, properly speaking). If a utilitarian moral agent obeys the command of a soi-disant authority, she does so because the content of the command is or is likely to accord with the utilitarian choice principle, not because of who the authority is or what community or enterprise set this authority up. Hence, the consistent utilitarian theorist should recognize no qualitative difference between the plenary authority claimed by a traditional legal system and the limited authority claimed by a small community’s referee. More importantly, critics of traditional consequentialist views of moral obligation (Nagel 1979, chaps. 3, 9; Nussbaum 1986, 312–7, 333–42; Williams 1981; Williams 1985; Wolf 1982; Flanagan 1986; contra Brandt 1989) may recognize the associative obligation...
in connection with collective human projects, even though they reject consequentialist justification of that obligation.

The phenomenon of associative obligation could explain how law is authoritative, that is, how law can compel obedience, even in stateless societies, like those of medieval Europe or “politically unstable” communities today. Even more interestingly, this account of the authority of law would be compatible with strenuous skepticism about the philosophical importance of states. Nationalism is of course a relatively recent feature of our intellectual environment, and the rise of nationalism is suspiciously and embarrassingly accompanied by philosophical defenses of the prerogatives of the state and of the state’s importance for an understanding of other philosophical problems (Hobsbawm 1990, 3–13). Simpler approaches to the problems now dominated by theories involving the state would therefore be intellectually pleasing.

On the view to be explored here, the field to which political or legal authority extends may well be too modest to accommodate the typical claims of modern legal systems. It may turn out that the authority of law does not extend to such comprehensive spheres of public concern as those covered by the law of contract or taxation. Instead, law may draw what validity it has from its subservience to appropriate collective projects. When law is suitably tailored to group projects, only the most resolute and consistent of rebels can escape a moral obligation to obey or at least treat legal mandates as reasons for action. Rebellion apart, the law would then be entitled to deference without regard to the various expertise, strength of character, practical wisdom, and talent of the public.

Broader political and legal authority may yet be justifiable on grounds other than the demands of particular collective projects. General governmental functions, like providing protection for members of the public from certain kinds of violence, may ultimately find support in the same moral considerations that make these kinds of violence morally reprehensible. Liberal and even libertarian political theory have tried to show that this is so, and their arguments are interesting. Yet since no such argument convincingly explains why even consistent rebels should accept the state’s monopoly on violence, this discussion concludes more cautiously that

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7 Finnis 1971, 1980 argues that the ability to explain the continuity of law through the collapse or dissolution of a sponsoring state is a desideratum for a theory of law, which favors a natural law theory. The same claim of support can be made for a theory of law’s normativity based on associative obligation.

8 There are of course respectable attempts to explain precisely this, but they are correctly regarded as problematical, in my view (Locke 1967; Nozick 1974). In recent years a surprising majority of writers have disputed the principal justificatory strategies of non-deontological liberalism. (Deontological liberalism, to use Michael Sandel’s phrase, acknowledges no problem concerning the justification of political authority, on the grounds that all regulative principles must—in some very strong sense of “must”—conform to the ideal of right that imposes an obligation of obedience or deference to political authority.) The critics of the traditional foundations of non-deontological liberalism have broadly argued that no realistic political structure

while *some* of the traditional scope of political authority is readily justified, at least as that authority is exercised by good and responsive governments, the failure of liberals so far to solve the problem of inclusion—the problem of showing it to be irrational for marginal members of society to knuckle under to the state’s monopoly on violence—renders the patchy model of political authority more probable than any species of liberalism that admits the existence of a problem of justifying authority.

A number of interesting consequences follow. The language in which law is normally phrased and interpreted seems to presuppose that the authority of law is independent of the particular goals of society. This would have to be regarded as a legal fiction, if the conclusions to be defended here are right. In addition, it would have to be recognized that the authority of national legal systems is not automatically higher than the authority of associations of the “subjects” of these legal systems, even for the limited purpose of determining whether the state should use sanctions to favor or hinder certain types of behavior. Moreover, it becomes even more bewildering to try to justify certain traditional forms of governmental interference in the lives of citizens and transients within the territorial jurisdiction claimed by a state—income taxation, for example.

II. Justifying Political or Legal Obligation: The Background

The kind of justification to be examined here stands in contrast to that which underlies otherwise similarly restrictive views of political authority canvassed by some philosophers of law. Hardly anyone now champions the demand of states, even that of relatively just states, for general obedience. Experience notoriously teaches that the best governments must be watched and often resisted. Theory concurs for a variety of reasons. Legal positivists, for example, think that morality does not give us a general reason to obey the law, because the validity of law is logically independent of moral or other rational standards as such. But the supposed authority of law has also been thought to pose a general paradox for moral philosophy. The required autonomy of the moral agent seems incompatible with blind obedience. If legal rules deserve deference whatever their content, legal duties must over-

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9 “The claim of authority [law makes] is remarkably resistant to, one might even say blissfully oblivious of, the debates within political theory about whether law obligates just in virtue of its existence. Insiders continue to claim that law always morally obligates, whatever political theorists say” (Soper 1989, 211).

10 The influence of positivism and of attempts to solve its theoretical problems accounts in part for the shift towards rejection of the hypothesis of a general obligation to obey the law. See Raz 1981, 233, 240, defending a skeptical position on the authority of law as, in part, a corollary of legal positivism; Simmons 1981, arguing that the voluntarism on which liberal theory is based exacerbates the problem of legal obligation and indeed points the way to skepticism.
ride moral duties and hence violate that autonomy. Authority as a subordinate means to morally valuable ends thus seems deserving of exploration as at least compatible with intuitions and theoretical demands.

Positivists and others may thus countenance a sort of anarchism, but many of them still believe that the efficiency and expertise of governmental institutions backed by popular consent provide a broad, if not perfectly general, justification for political authority. Joseph Raz, for example, has forcefully emphasized, on behalf of critics of liberalism, the role of the justification of authority in the very formulation of liberal doctrine (Raz 1986; Green et al. 1989). He elaborately argues that the normal justification for one person’s authority (or legitimate sway over another with respect to reasons for action) is a “showing that the alleged subject is likely better to comply with reasons that apply to him (other than the alleged authoritative directives) if he accepts” the commands of the alleged authority than if he deliberates without taking these commands as pre-empting alternative courses of action (Raz 1986, 53). Other independent justifications, he concludes, are inevitably too narrow to justify authority for any diverse group of people.

Like many others Raz thinks that the normal justification cannot alone sustain the authority even of relatively just governments. In general, he holds, following orders is not likely to lead one to comply better with relevant reasons for action, even if the orders derive from an exemplary government. Governments have no monopoly on expertise in the factual and moral matters about which they make law (Raz 1986, 78). Although only a common authority can regulate some aspects of communal life to the advantage of all—certain rules of the road, for example—legal systems invariably go beyond these matters of common convenience, and so neither the expertise nor the convention-setting efficiency of the state validates its broad claim to our obedience.

Raz nevertheless believes that our consent to be governed by a relatively just government can bind us fairly generally (if not unconditionally) to obey its commands. Consent appropriately given, and given by an appropriate person, extends the authority of the government even to matters about which it is not strongly probable that following the government’s commands will lead to a person’s complying with reasons for action that apply to him or her. Such consent is binding beyond the usual reach of authority because it enables the person in question to achieve a particular kind of end that is desirable for that person and that is not otherwise achievable, namely, identification with the society whose government otherwise has more limited authority over this person.11

In Raz’s view (1986, 92), consent has, perhaps as a matter of conceptual necessity, only a secondary role in the justification of authority: “I assume that consent to obey the laws of an unjust government is not a morally appropriate expression of identification with one’s society.” He therefore rejects accounts of authority that go beyond the normal justification by relying on the supposed intrinsic desirability of respect for law. Respect for law, on his view, is either another
Raz’s account of the extent of political authority may serve to indicate a trend among recent accounts of authority (Woozley 1979; Simmons 1981). Sartorius, for example, holds similar views, ameliorating his anarchism with the claim that governing officials may nevertheless have the right to use sanctions against disobedient citizens who have no obligation to obey (Sartorius 1981, 12–3). His suggestion that a government’s right to command and the subject’s obligation to comply need not be correlative has been criticized for the puzzle it creates about the point of saying that the commands are legitimate (Simmons 1981, 22). It has been suggested that such a puzzle is inherent in all contemporary versions of positivism (Soper 1989, 211–3), and indeed the puzzle also arises, but is more easily resolved, for the type of justification to be considered here.

All recent anarchists overlook the apparent fact that belonging to communities and associations formed for limited purposes can carry with it a moral subordination to the commands of persons whose expertise in factual or practical matters is not necessarily superior to one’s own; that this phenomenon is of the same genus as that which sometimes renders de facto political authority legitimate; and that this source of authority and of a duty of respect is at least as important as that provided by Raz’s normal justification of political authority and its extension through consent. Indeed, it seems that what some theorists refer to as consent in this context is a compulsory acceptance of authority.

III. How Limited Authority Arises

Consider the relationship between a professional athlete and his employer. The athlete may well have no alternative but to accept employment from some employer within a league of athletic teams if he is to exercise his talent in the most challenging and lucrative way. Merely deciding to accept employment as an athlete of the sort he compels him to accept rules of conduct that are effectively laid down by his employer. Assume for the sake of this example that the athletic activity in question is the playing of a game. What counts as playing the game properly may have to be subject to a central decision-maker if the sport is to develop in the best way. Because of the employment relationship, the participating athlete may not be able to escape the predicament of taking orders from the employer; in this respect,
his predicament is like that of other kinds of employee. But not every employee need take to heart the rules laid down for him or her by the employer.

Compare the athlete with a shop assistant. We may agree that the shop assistant’s employer has the right to let his assistant go for imagined insubordination, but we consider it blustering if the employer announces to all the world that the assistant is evil, and we do not think the assistant should feel guilty or blameworthy just because the employer disapproves of his conduct. More precisely, we do not ascribe to the employer any special right to criticize the assistant’s deviations from a standard of conduct established by the employer. The employer is of course free to say what he pleases and to take his own views about the assistant seriously; this is implicit in our recognition of the grocer’s (nowadays qualified) right to terminate the assistant’s employment. The grocer, however, has no special authority over the assistant beyond the employment relationship. In particular, the grocer is not thought to have the authority to create new moral duties for the assistant or to interpret existing duties of the assistant in new ways. The employer’s only prerogative is to terminate the employment relationship.

Contrast the situation of the shop assistant with that of the professional athlete. As an employer, the team owner normally has the same right as the assistant’s employer to criticize his employee for insubordination. In addition, most people would recognize other respects in which the team owner or, more commonly, an association of team owners should have legitimate authority to pass judgment on the conduct of the athlete and even to purport to impose rules on participating athletes more demanding than those of our shared morality.

For example, the regulatory authority of the team owners’ association might properly assume the authority to regulate aspects of team members’ conduct, while playing the sport or otherwise, that could reflect on the fairness of the organized sport. It would be odd to say that this sort of authority only exists if participating athletes consent to it. An athlete who consciously withholds consent, perhaps regarding the terms of his employment as unconscionable and coercive, is just as subject to the rule-making authority of the organized sport, and as properly subject, as an athlete who willingly accepts that authority. It is stretching the concept of consent uselessly to describe his form of subjection to authority as resulting from implied or hypothetical consent. Accepting this sort of role in the sport simply carries with it subordination to a certain limited authority. But, as the contrast with the case of the shop assistant shows, the element of authority present in this setting is not characteristic of all employment settings. What grounds it?

The existence of a tradition or practice associated with the athletic activity—a tradition that combines the custom of the activity with perhaps broader social values which the athletic activity has come to embody—may
seem to be the obvious foundation for the authority in question. We find it natural to say of such socially significant athletic activities that participants know they are subjecting themselves to this kind of authority when they accept the honor of participating. That of course does not make their acceptance of the authority voluntary, though it may make our understanding of the situation plausible to us. As voluntariness is usually understood in the law, the acceptance of the authority is not voluntary because the contract is one of adhesion: The athlete has no choice in the matter if he or she is to enjoy the privilege of exercising his or her athletic talent.

It cannot plausibly be said, either, that a central authority for the game or sport is justified because the individual athletes will not be as likely to act in accordance with reasons that apply to them if they do not have the benefit of the authority’s judgment concerning those reasons. It may well be that even an authority that is known to be corrupt still deserves the respect of the participating athletes for the sake of the sport or game. This might be so if an arbitrary decision by officials will insure the appearance of impartiality concerning some aspect of the game. Thus, nothing like what Raz calls the normal justification of authority fits this situation.

Professional athletic organizations are not the only sources of these imminent authority relations. Many collective activities whose participants are not genuinely free to choose each other also give rise to obligations that go beyond those of ordinary morality. Monastic orders, clubs with special goals like flower hybridization or bird watching, computer billboard organizations, political parties, the medical and legal professions, and academic faculties are among the examples.

If such authority exists, those subject to it will be bound in a stronger sense than they would be by most promises and contracts to act at the behest of another. If one enters into a contract to do as someone else dictates, there is no legal wrong in breaking the contract so long as the breach is not concealed and the appropriate penalty under the contract is paid. Similarly, it seems to me that we do not consider it morally wrong to break a promise to follow another’s orders unless the promise was effectively a promise to do one of a specified range of actions; that is, we consider such promises binding only if the promise closely resembles a promise to do a certain thing. So neither contracts nor promises usually subject one to authority in the sense under discussion.

For the moment, we may put off further inquiry into the grounds of authority within such small-scale associations or group efforts. The relevance of the justification of authority in such humdrum settings deserves modest elaboration. If the foregoing account of what may happen in the peculiar setting of socially important sports and games is correct, what lessons does this hold about political authority? Primarily, it is not implausible to suppose that political authority exists, when it does, in the same way as authority of the kind just described. We consider people who want to
leave a country to be just as subject to the criminal and civil laws of the
country, and just as deserving of criticism for violations of the law, as people
who are there voluntarily. Mere presence within the territory governed by
the civil authority (which I take to be the counterpart of membership in other
sorts of communities and associations) subjects one to an otherwise legiti-
mate political authority for that jurisdiction.

On the other hand, membership in an association or presence in a place
does not always subject one to authority. The organizers of a bathing beauty
contest may well have the contractual right to lay down rules of conduct for
participants in the contest. They may also have the right to revoke a winner’s
title for breach of these rules. I doubt, however, that we would normally con-
sider the officials of the beauty contest entitled to ask us to join in their
approval or disapproval of a breach, beyond acknowledging the officials’
right to enforce their contract with the participant—including the right
to revoke a title, etc. (see Esther Fein, Vanessa Williams Relinquishes Her
Miss America Title, New York Times, Section B 1, July 24, 1984). A settler
in a previously desert place is under no obligation to obey the commands
of a majority of his or her fellow settlers, just by virtue of being in the
same geographical neighborhood as they or by virtue of agreeing to vote
on some range of issues of common concern. The development of a
political community takes time and involves more than a ballot to adopt
legislation.

Custom sometimes accounts for the difference between an association in
which no authority is recognized and one in which morally compelling
authority plays some part. That is, as a sociological phenomenon, custom
can persuade numbers of people to recognize the authority either of cus-
tomary rules or of a customary lawgiver. Custom also seems justifiable and
hence binding in some contexts—those contexts, I would suggest, in which
something about the group enterprise demands an authority. Section 4
below develops the theme of the proper setting for authority. For the
moment, however, it will be helpful to notice that custom is not the only suf-
ficient condition for valid authority in a cooperative venture. The circum-
stances in which people cooperate to some end can be such as to justify the
recognition of an authority even before sufficient time has passed to allow
any custom to get going. It may be immoral for the occupants of a lifeboat,
for example, to resist the command of the only one among them competent
to bring them all to safety, provided that the project is realizable and that

13 A case study that draws attention to a borderline example of settlers in a desert place is con-
tained in an Old Norse saga that illustrates unsettled social preferences for law-abiding and
lawless approaches to property and personal integrity issues (Pálsson 1971).
14 It may need to be emphasized that not all collective practices that have achieved the status
of custom give rise to authority. Table manners get along perfectly well without authorities of
the sort we are concerned with. (Factual experts about what table manners are observed and
pundits who propose revisions of table manners do not constitute authorities in our sense.)

the scope of the authority is limited to choosing the means of saving lives without deliberately sacrificing any.

IV. Morality, Autonomy, and Obligation

Before considering these examples further, it is useful to see in a little more detail how the problem of political authority arises. Raz believes that within the liberal tradition the problem is just whether and to what extent we are morally bound to obey de facto political authority. De facto political authorities exist. They speak through the established legal systems of recognized nation-states. These legal systems claim for themselves a right to the obedience of all people within a certain geographical area. Yet it is a commonplace of ethical theory, and arguably a presupposition of any reasonable view of individual morality, that people should take personal responsibility for their actions in a manner that at least includes making their own choices among alternative courses of action. Call this the principle of personal autonomy. Valid political authority and personal autonomy therefore appear to conflict.

Theorists in the liberal tradition virtually all agree that absolute political authority, especially if it is not constrained to respect some array of individual rights, is never justified. Accordingly, they consider the problem of political authority to be primarily one of justifying a limited form of political authority. But reconciling even limited political authority with personal autonomy is difficult. If each person is supposed to take responsibility for his or her actions, at least in circumstances permitting deliberation, it cannot be reasonable for one to surrender to another the right to decide how one shall act in those circumstances. Obedience to law cannot be reconciled with personal autonomy because obedience is doing what someone tells you to do just because they tell you to do it (Wolff 1976, 9).

Raz’s acceptance of the relevance of the normal justification presupposes that political authority conflicts with personal autonomy in this sense: Raz accepts that personal autonomy requires defensible choices of action, including the choice to obey a de facto political authority. He suggests plausibly that the primary way in which de facto political authority can figure in such choices is as a proxy for one’s own best deliberations about the reasons that apply to one’s choices. Hence, he does not try to show that de facto political authority as such deserves obedience, without regard to whether it efficiently does for one what personal autonomy requires.

This presupposes that personal autonomy is preserved if individuals do as they ideally would in the morally responsible exercise of autonomy. Another version of the problem is generated if we stress that aspect of personal autonomy that amounts to freedom of choice rather than mere responsibility for one’s choices. If it is good to be free to choose one’s actions for oneself, whether one does so intelligently or not, then surrender to political
authority may be wrong to some extent, even though the political authority is better able than oneself to determine what reasons for action apply to one. On the other hand, the partial surrender of one’s freedom may gain for one, and for others, greater aggregate freedom of action—more autonomy, if autonomy can be a matter of more or less—than could an unchanneled and hence more absolute freedom.\textsuperscript{15}

The greater-though-imperfect-autonomy justification of political authority fails if personal autonomy means personal responsibility and if personal responsibility is nothing, if not exclusive. Justifications like those advanced by Raz and Sartorius are designed to vindicate personal autonomy in this all-or-nothing sense. Their approach presupposes that the moral agent is free to accept or reject the legitimacy of the political authority; hence, something akin to consent must play a part in the solution to their version of the problem, although whether consent provides a sufficient reason for accepting political authority is troubling for them.

If the examples I have adduced suggest a different solution to the common problem, it must be a version of the problem that does not by its terms require the unconditional and informed consent of the would-be subject of authority. On the contrary, I am suggesting that membership in communities and associations sometimes gives others legitimate authority over one, without allowing any real choice in the matter.

Nonvoluntaristic accounts of political authority exist in other versions. Most call attention to the role authority can play in defining human tasks or functions. Unfortunately, most are also too broad to satisfy a contemporary audience. Characteristically, they assert that every collective enterprise (or even every enterprise tout court) requires the existence of authority. It is argued that where rules are necessary to the accomplishment of a goal, the right and power to identify violations, issue new rules, and so forth must lodge somewhere. Yet obviously no such assertion about the practical need for authority can be made true by definition. The world is crowded with illustrations of rule-governed behavior that goes on quite successfully without the intervention of a legislator or intervention of a judge. Language and the arts are obvious examples. No more need be said to dispose of the broadest claims of functionalism. Setting aside religious accounts of secular authority, functionalism as a genus appears to exhaust the range of possibilities for nonvoluntarism. Because functionalism has usually tried to prove too much, it has seemed that only voluntarism holds much promise.

If the examples considered above are what they seem, nonvoluntarism contains an element of truth, or the line of demarcation between voluntarism

\textsuperscript{15} It is implicit in some versions of a liberal theory of justice that the ideal of autonomy can validly anchor even a moral code in which individual choice is constrained by deference to the social choices of a decision-maker whose moral authority is established at best by custom and at worst by lot. This is perhaps true of some, if not all, recent neo-Kantian accounts of justice (Rawls 1971, 513–20; Raz 1986, 369–95).
and nonvoluntarism is not as sharp as has been thought, and in any case,
something like functionalism provides a grounding for authority closely
resembling that claimed by the state. The variety of functionalism that holds
promise, however, differs from those considered in the past: It appears to
justify authority at most with respect to only some, but certainly not all,
enterprises.

The special functionalism we are exploring alone avoids the difficulties
that beset voluntarism and those varieties of functionalism that purport to
justify authority for all human activities. Unlike voluntarism, functionalism
does not have to claim that we are bound by our consent (sometimes at best
implicit or conditional) to accept governmental action that is not related to
our actual goals in life. A plausible form of functionalism cannot and need
not purport to find a higher obligation than the obligation to consult one’s
own interests.

V. “Accepting” Group Governance

Consider what is implicit in belonging to a group or association like those
which dominate some professional sports. The athlete or player “accepts”
the de facto authority of a team owner as a condition of employment but is
not free to reject this authority and is not given specific notice of the scope
of the authority to be exercised. The team member thus buys into a collective
venture without knowing the full price. The team member’s subjection
to authority is not voluntary because it may be impossible for anyone to
foresee how the authority will be exercised and because the athlete has no
choice but to take part in this enterprise or one like it if he is to be this kind
of athlete. (In contrast, the players of certain games, like chess, do not subject
themselves to any collective authority apart from that of the unchanging
rules of the game.)

Recognition of the collective decision-maker is forced on the players by
the nature of the organized sport. It cannot be what it is unless some author-
ity regulates appropriate aspects of the activities involved; for example, the
sport may require flexible monitoring of the devices by which participants
achieve physical readiness because drugs and other conditioning devices are
constantly being invented. It may also raise problems about the rules of the
sport that cannot effectively be foreseen and that must be resolved rapidly
if the interest of participants and spectators is not to be undermined.

Contrast this type of sport with chess. You can excel at chess and even
participate in formal chess competitions without considering yourself
bound to obey chess officials (though you may have to accept their legal
right to exclude you if you do not comply with their rules, etc.). What seems
to be involved here is that the rules that define the activity of chess are suf-
ficiently precise for the purpose of determining all that is relevant to excel-
ence in the game. The physical condition of participants does not have to
be regulated (at least so long as pharmacology does not come up with intelligence-enhancing drugs). In all important respects the conduct of players is self-regulating or needs no regulation.

The comparison of athletic games with chess suggests that the matter of authority depends on the precision with which the enterprise can be defined in advance. In sports rules of play sometimes have to be adjusted in the light of new playing techniques and strategies, the availability of improved equipment, or the simple recognition of defects in the original rules that curtail competition or lessen the interest of the game. Rules for admissible conduct on and off the field may have to be sensitive to the commercialization of the game, the level of civility of the population from which players are chosen, the extent to which players can control their ability to play the game by artificial means (drugs, etc.), and even possible public misperception of players’ conduct relating to the game. Chess players’ conduct need not be regulated in these ways because unfair conduct is either easily detected or cannot be deterred by the oversight of officials, and because improved rules of play could easily evolve by the slow but relatively simple means of communication that have always supported the development of the game—chess columns, experimentation in chess clubs, and so forth.

The contrast between football and chess, however, also points up a fact that appears to limit the relevance of the phenomenon of authority in games with which we are concerned. Some games of physical performance—dressage, for example—require authoritative officials to determine whether a relevant physical feat has been accomplished. Let us call such officials “judges of accomplishment.” Not all games of physical skill are like this. Tennis, for example, though played with the help of referees in professional competition, does not require them; players can resolve boundary and fault disputes by agreement. Similarly, ill-defined human enterprises like language use and artistic creation rest on conventions for which no reigning authority is recognized. Games or other activities that require judges of accomplishment do not inevitably give rise to authorities in an interesting sense for our inquiry. Judges of accomplishment as such do not have the right or power to set novel standards for the relevant activities. Judges in dressage competitions, like line referees in professional tennis, do not set rules for competitors. Their approval or disapproval of the competitors’ conduct has no legitimate claim on the competitors’ way of judging their own conduct.

The lessons to be learned from authority in games may be limited in another way. If officials must police some games in a variety of respects merely to maintain the confidence of the paying public in the fairness and hence in the reality of the apparent competition, no broad range of human endeavor is interestingly comparable. An athlete who wishes to excel in a chosen sport may have to go along with, and admit the moral force of, rules restricting possibly anti-competitive conduct: the athlete’s betting on games in which he participates, drug use related to performance, and so forth. It
can be said to be wrong, just because an official has declared it wrong, to violate such rules. Yet the prerogative of officialdom in this regard may arise only because of the need to convince an audience that the game is fair. It might well be that the game really could not be controlled or sabotaged by the varieties of conduct subject to restriction.

It may seem that we recognize authority in other group activities for weightier reasons than maintaining public confidence in the reality of the commitment and effort of the participants. The medical and legal professions, for example, set up and generally respect nongovernmental authorities on professional ethics in order to foster public confidence in their services and to protect members of the profession from each other in a variety of ways. Lawyers perhaps benefit more than the public does from “ethical” limitation of competition in legal practice and delineation of confidentiality obligations towards clients, and the benefit to the profession may (though in some instances clearly does not) promote better practice. In this respect, the conspicuous concern of some organized sports for the public perception of fair play illustrates only one of the purposes for which group authorities are recognized.

In order to draw any moral from examples of narrow authority, it is important to answer two questions: (1) What is the genus of which athletic enterprises, sports, beauty contests, and employment as a shop assistant are species? And (2) within that genus, what distinguishes those activities that give rise to legitimate authority over the participants? Part of the answer to the second question is the degree of precision with which excellence in the activity can be specified in advance. But if human activities other than games give rise to authority, this answer can serve only as a starting point: Not all of the apparent examples need admit of definition in the way games do. On the other hand, our preliminary distinction may also help with the first of the two questions: Knowing that precision of definition matters may help us to specify the relevant genus.

Relevant projects must obviously be somewhat open-ended. A goal that can be reached easily or not at all is, perhaps by definition, one that does not raise questions about standards and qualifications for proper performance. So the goals of getting high on cocaine, of buying only products of one’s native country, of saving string, of reading all the works of Balzac, of always having change for parking meters, of having a pleasant evening, and of selling one’s house in order to buy another are not the right sort to be compared with sports, chess, and beauty contests.

The projects in which we are interested may also have to specify in some way the kinds of performance required. Are there any projects so broad that they do not do this? Ethical theorists have sometimes spoken as if very general goals could be adopted as life projects, goals like the maximization of the happiness of the greatest number of people. Since such goals contain no hint as to the type of performance permitted or required for their satis-
faction, they cannot, apart from detailed factual assumptions that in effect limit these goals, give rise to specific standards of conduct of the sort that require an arbiter, as the standards of conduct associated with some games require arbiters, umpires, league officials, and so forth. So broad goals of this sort are not among the projects with which we are concerned.

Projects that are open-ended and sufficiently specific to suggest standards of achievement include: playing a sport, living up to the demands of a religion, helping people with a particular illness, learning to play the piano, enjoying fast cars, surfing, playing chess, being a good Marxist, collecting stamps, becoming a philosopher, having children, not having children, staying fit, amassing a fortune, and distancing oneself from one’s past. Some of the listed projects are associated with types of authority, e.g., living up to the demands of a religion. Others are not, e.g., collecting stamps.

A property common to the authority-ridden projects is interaction with other people. But not all projects that involve one with other people are linked to authority. Games like chess are collective enterprises in as thorough a sense as games of physical skill and yet do not seem to require that someone be in charge.

Perhaps the distinguishing feature of games that require a designated judge and rule-maker is just that the terms of play cannot be so clearly specified in advance as to rule out conduct we would regard as unfair when it presents itself or deal with unforeseen gaps or defects in the rules that impress those concerned as calling for repair if the games are to retain their interest for the players or the public.¹⁶ The games may attract participants and spectators by virtue of characteristics that render them capable of evolving. Some games—chess is again a good example—may have evolved by consensus among the players. The ways in which some games evolve, however, are not so leisurely or so easily apprehended as to become settled by implicit agreement. Such games invent a role for authority. Of the sense in which the inevitability of authority justifies it, more will be said in a later section.

Beyond this, the exact characteristics that make the recognition of a central authority a necessity for a game or other collective project are not easily circumscribed. That does not matter for our purposes. What is important is the availability of illustrations of valid authority that can be understood without

¹⁶ As has been noted, it may also be that these games are susceptible of abuse in other respects. For example, a game with very clear rules may need the protection of rules against betting by professional players of the game in order to forestall mistrust by the public of the authenticity of competition in the game; the game may be incapable of taking on heightened significance within the community unless such public confidence is maintained; and without the heightened significance of the game, it may be impossible for it to attract the best players and thus to develop to its highest form. These “public image” concerns surely argue in favor of purported political authority. At this point in the discussion, however, it is perhaps as well to emphasize the need for regulation and policing that go beyond the need to preserve the integrity of cooperative efforts and contribute to their very definition.
resort to extrinsic justifications, and examples like those broadly encompassed by the foregoing discussion provide just this.

VI. The Nature of Obligation to Limited Authority

The justification of authority in our examples is so simple that it is hard to put into words. It resembles the moral compulsion to embrace a means when one has already chosen an end that can best be achieved by that means. Two things are peculiar here: First, the more encompassing course of action served by the means chosen is not necessarily fully defined in advance. The means is probably, but not certainly, the only or the best means of achieving the vaguely defined goal. Accordingly, the linkage between that further end and the means chosen is at best contingent. For example, it may be customary but not legally required that an academic faculty elect a chairperson and an executive committee for certain purposes. That things could be done otherwise does not relieve a faculty member from respecting the decisions of these officials, except in cases of gross misconduct or dereliction of duties on their part. Second, the choice of means is not entirely free even in the sense that the decision to pursue the end in question is free. The blurriness of the goal prevents fully informed consent, and even the reasonably foreseeable aspects of the project need not be entirely clear to the person who becomes involved. Typically, one knows roughly what one wants to achieve and what that entails, but submission to authority and the scope of that authority will be the least obvious prerequisites. So it is, certainly, with the examples given above.

It may be useful to contrast this with the supposed justification of authority that is sometimes offered for authority within any rule-governed practice. Authority within our open-ended cooperative projects is not justified by the putative fact that the mere effort to live up to some standard of performance for a project implies the existence of an authority entitled to judge whether that standard is met. It is not the case that “[a]ll characteristically human activities involve a reference to an established way of doing things [. . . ] [and that the] idea of such an established way of doing things in its turn presupposes that the practices and pronouncements of a certain group of people shall be authoritative in connexion with the activity in question” (Winch 1958, 208). This begs the question whether every standard must be policed by a special arbiter. Obviously, the use of language and the practice of the arts among other rule-governed human activities get along without official umpires. Standards do not make arbiters inevitable. Some types of standard, however, are unable to provide guidance at all unless someone has the job of interpreting them with finality. These are the rules or standards inherent in the projects with which we are concerned. Nor is authority within our open-ended projects justified exclusively by the expectations of those who participate in them. That many people think certain sorts of
conduct impolite does not compel those who think so, much less anyone else, to recognize someone as the community’s authoritative judge of good etiquette.\textsuperscript{17}

Some writers (Honore 1981, 57–61; Anscombe 1988, 130–55) have suggested that moral principles of fair play may require that one follow a recognized authority when one participates in a certain collective activity. The idea is that one benefits by inducing others to rely on the regularity of one’s conduct in obedience to the authority, with resulting estoppel: The participant is bound to obey the authority in order not to reap a benefit without paying the implicitly agreed price. But this leaves out an important feature of the examples we are considering.

Bad or worthless projects do not require or justify their participants’ acceptance of a presiding authority, even if a de facto authority for the projects is available. This is so by virtue of the badness or worthlessness of the projects. Since we are concerned with how moral principles allow or compel the autonomous moral agent to submit to another person’s sway, immoral or morally valueless projects must be weeded out. Morality cannot require the moral agent to become committed to such projects, much less to accept another person’s authority concerning the proper manner of their realization.

The restriction of morally justified authority to activities that are at least blameless, and perhaps to those alone that are positively valuable, is vital for identifying the error of the estoppel analysis. Estoppel, occurring whenever one induces others to provide a benefit in exchange for an implicitly promised performance, would operate to impose moral duties of fidelity on members of an evil gang. Obviously, unqualified estoppel of this sort does not provide moral justification.

An important element in the project-oriented justification of authority for a particular collective activity is the choice of the good end to be pursued collectively. Once the end is chosen, it does not make sense for one to withhold recognition of the arbitrarily chosen but generally recognized authority unless it becomes clear that the authority is hindering the activity or the activity itself is rejected as morally reprehensible.

It is perhaps useful therefore to analogize the roughly defined duty to obey the authority accompanying a collective project with the contractual duty to bargain in good faith. The duty is far from absolute and represents nothing like a renunciation of thought by one on whom the duty falls. Constant comparison of the authority’s dictates with the rationale for respecting the authority in the first place is normal and perhaps required.

\textsuperscript{17} I distinguish these two conceptions of the justification of authority by reference to the existence of a practice in order to make it plain that I do not have in mind justifications like those Green associates with a concentration on inherent features of social practices (Green 1988, 44–51; Hart 1958, 100–10; Winch 1958).
It is therefore always the particular participant’s purpose in joining the particular enterprise that ultimately justifies the imposition of a duty to defer to customary or otherwise indicated authority. If the purpose is a bad one to start with, deference is not justified. If the purpose is good but optional, the decision to participate may be revocable only by an appropriate procedure, so as not to frustrate those who wish to continue. To this extent, something like estoppel applies, and its justification is that of preventing unjust enrichment. Yet what triggers a duty to accept an authority in the first place is not a sort of contract with others, since the terms of the contract are often too vague to be consented to, but the partly uninformed decision to participate. Some perfectly reasonable human endeavors could not go forward on any other terms.

VII. Political Authority on a Smaller Model

The world of the average moral agent is filled with projects of the sort that put the agent under authorities of a very limited and everyday sort. There is no reason to suppose that the most appealing instances of de facto political authority we are likely to encounter are of a different genus. There is no reason to suppose, in other words, that valid political authority is ever as all-encompassing as the conventional rhetoric of national legal authorities would have it. A general project shared by all people living in a large geographical area for which implicit standards of performance could realistically be posited is patently implausible. Presumably, even in Plato’s time no one seriously entertained such political functionalism, even though the Republic patiently rebuts it. Recent theoretical skepticism about political authority, however, has canvassed the idea that the fullest form of political authority may not be justified and that no single justification may be adequate to all the ways in which political authority is exercised. The justification of political authority for purposes of establishing conventions for air safety may be different from the justification of political authority in fostering the institution of marriage. The hypothesis under discussion is that aspects of political authority emerge as natural aspects of open-ended collective projects in which the people subject to the authority are swept up by their involvement in these projects, an involvement that is not necessarily fully voluntary.18

18 Much of Dworkin’s analysis in Law’s Empire of the contrast between conventionalism and “law as integrity” can be read as a fundamental analysis of the contingent link between means and ends within the practices of a community (Dworkin 1986, 225–75). Dworkin’s analysis, however, presumes the continuity of citizens’ (or residents’) associative obligation to obey the law, so as to give society ample opportunity to match its law-giving efforts to their ends. In effect, Dworkin explains how political authority comes to be dependent on the unfolding integrity of the law; but he does not seem to require that citizens or residents continue to need the resulting legal system. On my analysis, the authority of law depends step by step on the service it provides in implementing the goals of law’s subjects.
Aspects of political authority whose only justification is the sort under scrutiny are limited to goals reasonably related to the projects from which they arise. This justification gives appropriate subjects of the authority an “internal” reason for submitting to the authority in question, i.e., a reason that is also a motive for submitting (Williams 1981). But it is the overarching project to which the subject is committed that supplies the motive, and the link between the project and the details that give authority an unavoidable role may be more or less obscure, depending on how clear-sighted the participant is. One can fail to see that one should obey, even though as a matter of fact one should.

A limitation on this form of justification follows from its connection with particular projects that are worthwhile in themselves and not morally reprehensible. It is that sweeping authority cannot be justified unless it is perhaps a concomitant of all collective projects. Since some collective projects that conflict with state-held authority are not patently reprehensible—e.g., civil disobedience in agitation for more responsible environmental measures by governments in power—it is not easily argued that political authority to establish ground rules for the pursuit of all other collective ends itself serves collective ends. Governmental claims to a monopoly on violence, a right to use violence to police and enforce the law, and to exclude others from using violence to accomplish collective ends, must have a different sort of foundation, if they have any at all.

VIII. Social Projects and Associative Authority

It seems plausible to trace the justification for certain types of political authority to projects less comprehensive than the common welfare. Not all authority of this sort merely establishes convenient terms of elementary cooperation. For example, food and drug safety regulation is not as straightforward a matter as setting up rules of the road—more is at stake in the former than mere conventions that facilitate communal life—and yet our acceptance of these forms of regulatory authority do not imply an acceptance of other aspects of the political authority that is typically asserted by modern states. Without food and drug regulation, consumers could not feel safe about ingesting products from untraceable producers, markets would collapse or at least shrink to smaller geographical areas, and consumers would in turn suffer from the unavailability of the broad range of food and drugs with which we are familiar. It seems not unreasonable to say that by selling food or drugs through regulated markets one comes under the legitimate authority of any beneficial regulator (or regulators) that may be established. This authority, however, is extremely limited. If consumers of drugs in a country are injured by the excessive severity of drug testing by regulators, or if drug regulation is corrupt (for example, so as to benefit big or tax-exempt drug companies at the expense of other producers and the con-
sumer), the authority of the regulatory authority can be forfeit. These are commonsense propositions, but they are able to support a broad understanding of the foundations of much political authority.

Authority over education is more difficult to justify, since the goals of education are hard to spell out and since people can reasonably view these goals in incompatibly different ways. On the other hand, if education is to be available to a large segment of society, it seems essential that those who are to benefit accept some social mechanism for achieving economies of scale. It seems reasonable to suppose that most people put up with governmental systems of education, including the coercive rules that require children’s attendance of schools in some “jurisdictions,” out of commitment to a variety of projects—everything from making a living to equipping oneself (or one’s children) to participate more fully in the nonutilitarian side of private and public life. It also seems reasonable to suppose that most people consider themselves in some way bound by the attempts of educational authorities to impose certain obligations on them, because this is part of the larger project of educating themselves and their children.

In some countries, students and parents or other guardians remain constantly involved in the development of some local aspects of educational policy. While this suggests something like consent to be governed in these regards, it is also some evidence that the projects really are those of the people who respect the educational authority. This, it seems to me, weighs in favor of educational authority to mandate school attendance and to collect taxes to support schools. The authority to dictate what education children will receive could not be justified by their happening to live in a particular place if that authority were abused, even if a majority of the population tolerated the abuses. Nor is the implicit consent of a broad population to be inferred from the active participation of a small segment of the public in devising educational policy. Most democracies do not purport to provide the means of correcting such abuses by educational authorities, and the authority in question is to that extent not justified as related to the projects of the public. The frequent instances of rebellion by the public against shortcomings of the educational establishment provide a good deal of evidence that they do not think educational authority to be very far-reaching, much less a strand of an otherwise absolute political authority.

It is an interesting fact about some of the more common exercises of governmental power that they cannot be justified in this way. Asserted authority to impose taxes without regard to benefits conferred, such as is normally associated with modern income taxation, appears to fly in the face of justification by reference to the projects of taxpayers. It is obvious that the goal of supporting identifiable governmental programs may figure among the projects of a wide portion of the public; if it did not, the government that pays for these programs with tax revenue would presumably fall. Small gov-
ernmental expenditures from general tax revenues would not undermine a justification by reference to the primary programs. Having said this, the ultimate effects of the tax system often cannot be foreseen even by tax experts.

Indeed, it is impossible to relate the extremely broadly based tax systems characteristic of the more prosperous Western democracies to specific governmental projects, even though we might otherwise suppose that the public must agree with much of what the government does with their money. For one thing, it is a commonplace of tax policy that taxation is not necessary merely to finance government spending, since that might within certain limits be achieved as effectively by government borrowing or the printing of new money as by the exaction of existing money from taxpayers (Utz 1993, 163–5). Hence, only a more subtle range of citizens’ projects to which the goals of the tax collection system relate can account for the need for the taxing authority asserted by the governments with which we are familiar, and that subtler range of projects is lost in a mist of tax policy controversy—even the least partisan of tax policy experts cannot agree on the purposes served by our immensely complex tax systems. The two most often cited purposes of general taxation—avoidance of inflation and balance-of-payments problems—are among the goals that would justify a government’s decision to impose taxes rather than to borrow or merely print more money, but these have been beyond the ability of the great twentieth-century taxing authorities.

The tolerance shown by the public for taxes, though only occasionally broken by outrageous tax policy, proves nothing in particular. A plausible causal explanation is that the public simply loses sight of much that governments do. Life is too complex for many of us to aspire to even a dim awareness of the content of national legislation. The work of administrative branches of government is obscure even to those most directly affected by it and to those who do the work itself.

Much of the political authority claimed by the familiar sort of government never comes to the attention of the public in the first place. A project-oriented justification of limited political authority would be entirely out of place with regard to such marginal de facto authority. I find confirmation in our commonsense reaction to this contemporary phenomenon of invisible government activity. When the public becomes aware that the government is acting secretly or so quietly as to disguise its activities, there is often an outcry. And the content of the complaints made is to the effect that the secret activity has nothing to do with the concerns of the people.

In further illustration of this point, even a small governmental program that is constantly supported by general revenues may be so obnoxious as to undermine project-related reasons for accepting the government’s taxing authority. Ordinary citizens sometimes criticize, for example, the espionage
expenditures of their governments on the grounds that espionage, as conducted, is not reasonably related to any defensible community goal. These arguments are intelligible, although they seem to be grounded on the erroneous assumption that revenues raised by taxes are necessary for all governments.

IX. Broad Authority and Marginal Voices

In most societies, a majority of the population would like to be protected against private violence and looks to the state for that protection. Can it be argued that this is an ineluctable project of people in communities that justifies the recognition of a state monopoly on violence and certain other forms of coercion?

Several points seem obvious. First, there is a gap between asserting the right of the state to use force for some end and asserting the duty of those who might be affected by the state’s coercive activities in this regard to do as the state would have them do. A project-oriented justification of the state’s authority to command obedience in some respect is not necessarily a justification for state enforcement of the duty of obedience. Obviously, the state’s entitlement to use force depends on the importance of the project that gives the state the authority to give orders. Conversely, the state, like individuals, may have the right to use force when it is not entitled to command obedience. Surely, anyone is morally permitted to destroy property in order to avert physical harm to a great number of people, yet no one may be authorized to command others, even the owner of the property, to destroy it.

Given this distinction, a project-oriented justification of the state’s supposed monopoly on violence is not to be expected, but the lack of such a justification is also not much of an argument against that monopoly or the legitimacy of any aspect of the traditional coercive role of the state. Since we are primarily concerned with authority to command obedience, the matter may be left to other discussions. It is to be noted, however, that the paradox some writers have found in a dichotomy of the sort just presented—a dichotomy between the state’s authority to command obedience and its right to use force—is a paradox only if one supposes that the former sort of political authority must be justified by reference to putatively timeless and universal human needs, such as might justify the state’s monopoly on coercion. If it makes sense to entertain a project-sensitive duty to obey the commands of the state, if political authority need not be seamless in this regard, then the state’s coercive role need not coincide with its right to command.

Once this is noted, the justification of what has often been thought to constitute a minimal state begins to seem more difficult. It is obvious that the right of the individual to protect himself or herself from physical violence or fraud, if there is such a right, does not imply the right of any agency, even one voluntarily chosen by the individual, to protect and enforce that right.
by preventing other individuals from using coercive means to protect themselves and their rights. The task of liberal political theory has generally been conceived as that of getting over this hump (at least), and the array of available strategies is familiar. Aspersions have already been cast in this article on accounts that hypothesize universal consent to the state’s monopoly on violence. More subtle accounts, such as Nozick’s, inevitably import doubtful premises like his premise of compensation, according to which coerced free-riders or conscientious objectors to a protective agency would simply have to accept compensation in the form of equal protection (Nozick 1974, 113–18). Yet people patently have lived outside such arrangements and have fought to remain outside them.

There is, moreover, an interesting argument against the possibility of justifying the minimal state in the fashion attempted by the liberal tradition. If the protective-agency aspect of the state were legitimate in the sense that individuals owed it ultimate deference to that extent, as long as the protective function continued effective, then rebellion would never be morally justified, no matter what further considerations argued in its favor, including criticism of the process by which the monopoly of violence had been achieved by this particular state. Aggrieved minorities could not plausibly throw off the yoke of a majority that had simply forced them to submit to its otherwise even-handed power. Reasonably well administered colonial regimes would morally deserve to go on forever. While it is not clear that this result is absurd, it is likely to be one that neither libertarians nor less restrictive exponents of the liberal tradition today can happily accept.

I submit that the problem of legitimacy for the monopoly on violence is actually far greater than the problem of legitimacy for governmental functions that accord well with the projects of the governed population. That this

19 Nozick has helpfully made out the case for this proposition by considering how far private agencies that sell protection to individuals in a “state of nature” could approximate the role of the state. He concludes (1974, 113) that: “[A] necessary condition for the existence of a state is that it (or some person or organization) announce that, to the best of its ability (taking into account costs of doing so, the feasibility, the more important alternative things it should be doing, and so forth), it will punish everyone whom it discovers to have used force without its express permission. [. . .] The protective agencies [that might arise by seemingly ordinary commercial arrangements among individuals], it seems, do not make such an announcement, either individually or collectively. Nor does it seem morally legitimate for them to do so. [. . .] To examine the question of the monopoly element, we shall have to consider the situation of some group of persons (or some one person) living within a system of private protective agencies who refuse to join any protective society; who insist on judging for themselves whether their rights have been violated [. . .]” (Nozick 1974, 113)

20 Nozick 1974, 131 acknowledges that his justification of the minimal state is powerless to bring such resisters into the fold: “We must restrict our claim that a state would arise from a state of nature, so as to exclude these special psychologies which thwart the operation of the invisible-hand process we have described. For each special psychology, we may insert a specific clause in the claim to exclude it. Thus: in a territory containing rational individuals who also are willing to use force in self-defense and are willing to cooperate with others and to hire them [. . .].”
has not become a theme in political theory may only reflect the origins of modern political thought in the development of the nation state, and the fact that primordial political thinkers have been on the payroll of those who could not imagine life without the nightwatchman state at least. Whatever the merits of this “critical” jibe, the more important fact remains that people are more easily said to owe respect and compliance to authorities who are instrumental in defining and realizing goals they really have than they can be said to owe respect and compliance to a mere preserver of the status quo.

X. Conclusion

The foregoing sketch of a view of political authority that is supported locally by the projects of those under that authority obviously does not account for the full extent of political authority claimed by current governments of modern industrial countries. It does, however, account for the respect paid to de facto political authority, and that is probably enough to account for the de facto absoluteness of state-wide political authorities. The full sweep of this de facto political authority obviously cannot be justified by reference to the plurality of changing, nonuniversal goals of the societies in question. That is perhaps why most theorists of political authority direct their attention primarily to such unlikely ways of validating our respect for law as our feelings of gratitude towards the state for its benefits, our need to identify with a community, or our need to share moral commitments with others even if these commitments are arbitrarily selected. It seems to me that most of us are really anarchists in this regard, that few people really believe that government should have absolute or even prima facie authority to do what it pleases without regard to our concerns. Furthermore, no one asks whether we consent, and there is no need for them to do so; we can reasonably consider ourselves bound by our commitments, many of which are widely shared, even though these are not communally chosen or immune to change.

Perhaps the most important consequence of regarding political authority in this way is that it implies that subjects of political authority retain the right to question that authority as corrupt or beyond the scope of the projects that justify the authority for them. The traditional “problems” of civil disobedience and of other justified breaches of the law turn out not to be problems at all, because the law and everything else that flows from de facto political authority has neither an absolute nor a prima facie claim on us. Political authority, as should seem plausible to any but self-interested apologists for the rights of governments, must justify itself at every turn and rarely succeeds in justifying its self-image as entitled to our respect regardless of how it is exercised.

Another attractive consequence of this account is that it leaves room for transnational projects of individuals to conflict with assertions of national political authority. Examples are inevitably controversial because the
national political authorities with which we are familiar are after all generally accepted; if they were not, they would probably fail to be de facto authorities; since they are generally accepted, dissidents are overwhelmingly likely to be judged wrong in principle by the majorities who do not dissent. For example, some environmental activists today consider their project of preserving the environment to override their commitment to existing political authorities. It is not that they reject all political authority. They reject only those exercises of political authority that seem to them radically inconsistent with their environmental goals. On my account, we need not regard the environmentalists as lacking some basic understanding of the way in which political authority arises. Nor do we have to consider them practitioners of civil disobedience. The disrespectful stance of the most radical environmental dissidents may make perfectly good sense, even though it is inconsistent with any account of appropriate civil disobedience.

Not everything about the present view of political authority jibes with a comfortable mainstream liberalism. The absence of a presumption in favor of the validity of political authority obviously has the disturbing consequence of making intelligible the general rejection of political authority by disenfranchised and other mistreated citizens of prosperous countries. None of the projects in which reasonably well-to-do members of society participate are open to those who cannot climb out of a life cycle of poverty. How can they consider themselves bound, and how can we consider them bound, by authority that exists to advance projects in which they have no part? But then, why should those who do benefit from the way in which social power has been used expect the chronic disadvantaged to respect the asserted authority of society, much less to consider such obedience a requirement of rationality?

On the other hand, the view advanced here explains why people may be thought reasonably to respect law even though they consider governments corrupt or incompetent in many respects and even though they reject governmental pretentions to absolute authority. That is, the foregoing argument justifies a limited respect for political authority. The justification does not vary with the intellectual abilities or character of those for whom political authority is valid. It does, however, depend on the shared projects of the people who are subject to de facto political authority and on the subject matter of the laws made, or other governmental action taken, by the political authority. It should not be surprising that the justification accounts for a sufficient range of political authority to validate how most people actually think about these things. No broader justification for political authority is necessary; in particular, valid political authority need not provide content-independent reasons for action.

Finally, it must be admitted that the pluralism advocated here crucially disappoints any hopes we may have had for the validation of the language of justification that is built into traditional legal reasoning. The law as an
institution capable of change from within and of adaptation to new factual circumstances is regarded by officials and experts, by insiders generally, as authoritative without regard to its morality or its satisfaction of the actual goals of society. This is of course the core idea of legal positivism. Positivism is plausible as an account of law chiefly because it accords so well with the manner in which those who know the law best speak about it. Insiders take what Hart called the internal point of view when they deliberate about the law’s application: They speak, and also think, of the law as requiring no extrinsic justification.

If political authority is not absolute, the internal point of view is at best hypothetical. It is a way of thinking about the law as if law were authoritative without regard to its goodness or badness as such. The standards by which attempts to ascertain the law must be judged are, according to positivism, independent of any moral standards. It must follow, of course, that law as such does not deserve our obedience on moral grounds, although particular legal systems may happen to prescribe or uphold morally acceptable norms. It should therefore be no surprise that we are not morally required to obey the law and that what limited cause we have to respect the law is incidental to its being the product of asserted political authority. The problem this raises for understanding the role of the internal point of view in actual judicial and legal practice is not new. On this account, however, the problem can be seen as perhaps incurable.

References


Raz similarly concludes that the attitude of judges and officials towards the law may exhibit the requisite internal point of view, even if their attitude of belief in the legal duties apparently created by the law is merely feigned (Raz 1981, 153–7). Hart understandably found this a useless adjunct to Raz’s anarchist version of positivism (Hart 1982, 153–61).