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## Article

# The Problem of Authority: Revisiting the Service Conception

Joseph Raz<sup>†</sup>

The problem I have in mind is the problem of the possible justification of subjecting one's will to that of another, and of the normative standing of demands to do so. The account of authority that I offered, many years ago,<sup>1</sup> under the title of the service conception of authority, addressed this issue, and assumed that all other problems regarding authority are subsumed under it. Many found the account implausible. It is thin, relying on very few ideas. It may well appear to be too thin, and to depart too far from many of the ideas that have gained currency in the history of reflection on authority.

Criticism can be radical, rejecting the service conception altogether. Or it can be more moderate, accepting the service conception or some of its central traits, especially the normal justification thesis, as setting necessary conditions for the legitimacy of authority, but denying that they constitute sufficient conditions. Most commonly, moderate critics argue that legitimate authority, at any rate legitimate political authority, presupposes a special connection between rulers and ruled, a special bond that is overlooked by the service conception. My purpose is to revisit the problem of authority, and to examine moderately critical claims, or some of them. I will start by explaining in the first section some background methodological

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1. Some of the basic ideas appear in JOSEPH RAZ, *THE AUTHORITY OF LAW* (1979); the main elements of the service conception are set out in JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986).

points. Part II will briefly restate the service conception and the way it deals with the problem of authority. Part III develops the service conception and elaborates some of its implications by dealing with a series of only loosely connected questions and doubts to which it is open. Part IV examines in general terms the argument that authority, at any rate political authority, presupposes a special link, missing in the service conception, between government and the governed. Part V considers the possibility that such a link is forged by consent, whereas Part VI comments on the possibility that the link is constituted by identification with or membership of the political community (or some other group).

### I. SOME METHODOLOGICAL OBSERVATIONS

A few observations about the general approach to start with.

*First, authority, political obligation, and obligation to obey the law:* Some writers think that the so-called political obligation is to obey the law, and that one has an obligation to obey the law if and only if the law or legal institutions have legitimate authority. That is a mistake, and it is so even if we confine our attention to legal authorities alone. Political obligation is the broadest of the three notions, signifying the obligations members of a political community have towards it or its institutions and political order, in virtue of their membership. That includes much more and much less than an obligation to obey the law. More—because it includes some duties to be a good citizen in ways that have little to do with the law. They will be duties to react to injustice perpetrated by or in the name of the community, to contribute to its proper functioning (e.g., by voting and by being active in various other ways), and more. They require less than obeying the law, for much of the law has nothing to do with the political community. If I pick my neighbor's apple and eat it, I may be breaking the law, but I am unlikely to be doing any harm to the polity. Obligations to obey the law need not depend on the legitimacy of its authorities. There could be various reasons, including moral reasons, to obey the law in a country whose legal authorities are not legitimate. Considerations of stability and the protection of vested interests are often thought to provide such reasons.<sup>2</sup> Finally, it is

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2. Various legal systems recognize such reasons by having doctrines giving legal effect to de facto authorities.

worth mentioning that we have political duties that do not depend either on membership in a political community or on being subject to its laws. Rawls's duty to uphold and support just institutions is of this kind, applying to all of us, regarding any just institutions, wherever they are.<sup>3</sup> This Article deals exclusively with the nature of authority.

*Second, power and right:* In our common use of the concept of authority, power and the right to it intermingle. Any attempt to separate them is bound to be somewhat artificial. Yet it must be made, for they seem to be interrelated in some systematic way, which invites describing their distinctive contributions to the concept of authority. My suggestion was that even the notion of a *mere de facto* authority (i.e., one that exercises power over its subjects, but lacks the right to it) involves that of legitimacy. What makes mere de facto authorities different from people or groups who exert naked power (e.g., through terrorizing a population or manipulating it) is that mere de facto authorities claim, and those who have naked power do not, to have a right to rule those subject to their power. They claim legitimacy. They act, as I say, under the guise of legitimacy.<sup>4</sup>

On the other hand, I suggested, legitimate authorities are not always de facto authorities. Arguably, the legitimate government of Poland in 1940 was the government in exile in London, which did not enjoy power over the population of Poland.<sup>5</sup> The resulting methodology applies to the clarification of other concepts too: there is a class of normative concepts that have a secondary use in which they indicate a claim by their users, or some of them, that they apply in their primary, normative,

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3. See JOHN RAWLS, A THEORY OF JUSTICE 293–94 (rev. ed. 1999).

4. Even those who do not claim a right to rule do—exceptional cases apart—claim that they may act as they do, that their actions are defensible. But they do not claim that those over whom they wield power owe them obedience, i.e., have a duty to obey them. They are content with being able to make them obey, by credible threats or in some other way.

5. Possibly the government in exile enjoyed some de facto powers (there was a Polish army—also in exile—that recognized it, etc.), but its legitimacy did not depend on its possession of that power. Its legitimacy depended, however, on a nonnormative fact, on being recognized as legitimate by the bulk of the Polish population and by some other countries. In other circumstances legitimacy may depend on the chance of the government gaining effective control. This enables one to keep the distinction between authority without the power to use it effectively, and someone who is entitled to have authority (say, was duly elected) but does not have it (because, e.g., he was not admitted to the office to which he was elected). Contrast with this case a parent who has authority over his child even though he lacks power over him.

sense, a claim that may be erroneous. The most important concept of this kind is that of a (normative) reason.<sup>6</sup> A reason for an action is a consideration that renders its choice intelligible, and counts in its favor. But when I say “my reason for leaving was that I was afraid of missing the last bus,” I indicate what reason I believed at the time I had for leaving (the fact that I will miss the last bus if I do not leave), though I am not committed to the fact that there was in fact such a reason.

If that is right, then the concept of legitimate authority has explanatory priority over that of a mere *de facto* authority. The latter presupposes the former but not the other way around. From here on “authority” refers to legitimate authority.

*Third, concept possession and its application:* It is not literally true that “authority” is a concept that applies only to people who think that it applies to them. There can be authorities who do not claim to have authority. However, as just explained, *de facto* authorities do claim to have legitimate authority, and as will be seen below, political authorities generally do so. The question arises whether it is a condition of adequacy of an explanation of the concept of authority that those who have authority at least implicitly accept the explanation as correct. (Alternatively, can one accept an explanation of the concept as of limited validity, as applying only to people—perhaps in authority, or perhaps subject to authority—who at least implicitly take it to be a true explanation?)

No. If people dispute an account of authority that is otherwise well supported, they make a mistake. The service conception is an account of authority, which includes an explanation of what it is to have authority, to be subject to authority, when one has authority or is subject to it, and like questions. The account is not about what people think it is like to have authority or to be subject to it, but of what it is to have it or be subject to it. It is compatible with claims that people have different beliefs on these matters, though it follows from the account that theirs are mistaken beliefs. Does it follow that they are guilty of a conceptual confusion? Worse, does it follow that they do not know their own language? Of course not. If they have false beliefs about authority (not merely about the powers of people who actually have authority) then they have the concept of au-

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6. I qualify them as “normative” to distinguish between them and explanatory reasons, which are simply facts or events that explain how or why things are.

thority, they have some understanding of what it involves. But their understanding is partial, and in part incorrect. Our understanding of concepts usually is. It leaves plenty of room for mistakes and disagreements.<sup>7</sup>

*Fourth, hopes of neutrality:* Some writers take their task to be to provide an explanation of normative concepts, such as “authority,” which is normatively neutral, that is consistent with any possible normative view.<sup>8</sup> It is not clear whether there is a sense in which this can be a reasonable demand. If it is satisfied only by explaining normative concepts exclusively in non-normative (or nonevaluative) terms, it amounts to a requirement of semantic reduction of all the normative concepts to which it applies, and in that form there is no reason to accept it as a general methodological requirement. Alternatively, it may be taken to require that, while explanations of normative concepts may rely on other normative or evaluative concepts, these must be ones which anyone, whatever their normative or evaluative beliefs, is committed to accept as possibly<sup>9</sup> having true (or valid) instantiations. So understood, the requirement gestures towards a semantic reduction of thick normative or evaluative terms into thin ones. It is not clear, however, that many normative terms meet this requirement. It is doubtful that many thick concepts can be reduced to thin ones.

Perhaps the neutrality requirement should be taken as a matter of degree: the closer an explanation comes to satisfying it, the better it is, other things being equal. After all, explanations that meet the requirement, or rather concepts that they successfully explain, can be accepted and used by people whatever their normative beliefs.

Some people suppose that the explanation of authority should be normatively neutral in a different sense. They think that the explanation of authority should be such that it is possible for the propositional form “X has authority over Y,” to have true instances, that it is possible for someone to be a legitimate authority over others. Let me call the first kind of normative neutrality “explanatory neutrality,” and the second

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7. See Joseph Raz, *Two Views of the Nature of the Theory of Law: A Partial Comparison*, in HART'S POSTSCRIPT 1 (Jules Coleman ed., 2001).

8. For example, if a correct explanation of dishonor entails that (a) those who acted dishonorably deserve to be killed, and (b) that anyone who betrayed a trust acted dishonorably, then this explanation is inconsistent with my normative views.

9. In the nonepistemic sense of “possibly.”

kind “existential neutrality.”

Existential neutrality has the advantage that it does not conflict with the view that there can be legitimate authorities, a view that is very widely held, and has been throughout history, wherever people had views on the topic. People can make mistakes, including normative mistakes, but an explanation of a concept in wide use and more or less universally believed to have applications, which, in combination with true normative beliefs, entails that it has none, has a tall task of explaining how it is that people are so mistaken.

It is possible to exaggerate the difficulty of the task. First, it is possible to explain how people are generally mistaken about the possibility of legitimate authority without attributing to them a gross misunderstanding of the concept. Their mistake, if mistaken they are, may be in some of their normative beliefs, rather than in their conceptual understanding.<sup>10</sup> Second, concepts have a history, and the conditions of their persistence or identity through time are, at best, very vague. Hence it may be that the impossibility of legitimate authority is the impossibility of there being instances of our current concept of authority. Possibly, under some ancestors of our concept, legitimate authority was possible. The reverse is also possible, and even more likely. One source of pressure towards concept change may have been a growing realization that the concept then prevailing has no instances (e.g., if ever the concept of authority was such that it had to derive from divine authority, then recognition of the impossibility of divine authority may have encouraged change in the concept, a change that made it possible for it to have instances, at least in the eyes of the people at that time).

The account I offer has instances. But the hurdle of running against popular opinion can be higher or lower. For example, my account has the consequence that political authorities are likely to have a more limited authority than the authority many, perhaps all of them, claim to have, and that people generally believe that they have. This still requires explaining why

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10. Out of abundance of caution, let me amplify here: there is no implication in the points above that an explanation of a concept to be correct must be one generally available to those who have the concept. There are many aspects of a concept that its users may not be aware of, and many mistakes about it they may make. The claim was merely that there would need to be a good explanation of how a mistaken belief in the possibility of instances of the concept, in our case a belief in the possibility of legitimate authorities, came to be so widespread.

people are so mistaken,<sup>11</sup> though since the mistake attributed is less far-reaching, the burden of explanation is much less.

My previous comments explained what advantages I find in both explanatory and existential neutrality. They fall short of making either a methodological principle. I suspect that the demand for explanatory neutrality is impossible to meet (i.e., explanations that meet it, if there are such, are otherwise faulty). There is not much plausibility in it. We do not expect all scientific concepts, for example, to be explanatorily neutral in the sense of their instantiations being consistent with all possible scientific theories. Some scientific concepts may be theory-transcendent, or they may be more or less theory-transcendent. But many are not. *Mutatis mutandis*, the same, I suspect, is true of normative concepts. The same considerations would rule out the requirement of existential neutrality. Special cases apart, it is not a requirement we normally impose on the explanation of other concepts, and it seems unmotivated to impose it on normative concepts generally or on authority in particular.

The hope for neutrality may express itself in a requirement that the account of authority should explain what follows when someone has authority, but will not include anything about the conditions under which one may acquire or hold authority. For this requirement to make sense, it has to be the case not only that whoever offers the account does not write about the conditions under which one does hold authority, but also that nothing follows from the account regarding the conditions that make one an authority. This seems to be an impossible requirement to meet: how could it be that the way to justify a claim that one has authority is not affected by, indeed not guided by what has to be justified, namely the consequences of having authority?

Still, there is a difference between the two parts of the account of authority. One can reasonably expect an account of authority to specify, however abstractly, all or at least the central consequences of having authority. However, beyond saying that the conditions under which one holds authority are those that justify ascribing authority—namely, ascribing to one's actions the consequences that follow from having authority—it is not clear that one can reasonably hope for a complete specification of those conditions. If one provides some sufficient conditions

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11. A point made to me privately by H.L.A. Hart.



for having authority, the question arises: can it be established that no other conditions establish one as an authority? Establishing a negative existential is notoriously difficult, and while I tried to make the account that follows exhaustive, I do not have an argument to show that it is.

*Fifth, concept possession and the limits of its application:*

The remark about the historicity of the concept of authority calls for a couple of brief clarifications. It implies two possibilities: first, that there was a time when the concept did not exist at all, and second, that our concept is a descendent of earlier concepts. It is plausible to think that both are realized, which explains how the term is used: sometimes to refer to the whole series of concepts that are the ancestors of our concept, sometimes to our concept alone.

Does it not follow that there is a wider concept, which is used whenever we use the term in the first way, i.e., to refer to what I called the whole series of ancestral concepts? And is it not the real concept of authority? Yes and no. Yes, for there is such a general concept. No, because it is misleading to identify the general concept with the concept of authority *simpliciter*. The main reason is that the way, and I think the only way, in which the broad notion can be identified is as I did identify it, i.e., historically, as the concept that applies to all instances of what I called “our” concept of authority and those of its ancestors (rather than by its ahistorical features). “Our” concept is the concept of authority, if only because it is our point of access to all its ancestors, which are identified by their relations to it.

It is also true that we need the wider concept, or rather that we regularly rely on it. For example, and crucially, there can be no de facto authority among people who do not have the concept of authority, for to have de facto authority is, among other things, to claim legitimate authority. It follows that when we talk of the de facto authorities existing in the middle ages, or in fifteenth-century Japan, or in Ancient Persia, we rely on something like the broad concept: there were at that time people or bodies with power over populations who claimed authority over them, using here the appropriate ancestor of our concept, or the wide concept, which includes all ancestors.

One concept is an ancestor if the successor concept emerged as a modification of the ancestral one and retained sufficient similarity to it, either in its features or its function. The relationship is not typically one of similarity alone. It contains a contingent causal component. Typically when that does

not exist, as when we find in a different culture a causally unrelated but similar concept, we would identify it just like that: "They," we would say, "also had a concept like (or similar to) our concept of —." On the other hand, similarity is part of the ancestral relationship, for otherwise we would have no criteria to distinguish between a concept being modified by a successor and one rejected in favor of an alternative.

Needless to say, since the broad concept is identified by its relations to our concept and its ancestors, and since "our" concept can change over time and acquire more ancestors, the overall concept we have now is different from the one we had, or will have, when "our" concept was or will become different.

*Sixth, explanation and advocacy:* I keep referring to "our" concept of authority. But is there such a thing? Are there not several concepts, all of them descending from the very same ancestors? Quite possibly so. Each person when using the concept of authority uses his concept, and should allow for the possibility that there are several. That does not lead to an explosion of concepts. The reason is simple: in the use of concepts we allow that we are ignorant about many aspects of them, that we may use them incorrectly, and that their character is determined by the rules governing their use in the community, rules whose complete understanding may elude any or indeed all of us. In allowing the possibility of at least partial ignorance regarding the nature of our concepts, we recognize that concepts are social beings, owing their features to a community of speakers in ways that may elude any one of them, or indeed all of them. This means that our concepts are not very idiosyncratic, that there are common concepts, even though we may not know all their features.

Needless to say, if there are a number of concepts of authority prevalent in a single society, they are likely to be competitors. The boundaries between them are fluid, and those who use each claim merit for it, and (when aware, if only dimly, of the existence of the others) find reason to prefer it to the others. This means that each explanation of a concept can also be used in the battle of concepts, where there is such a battle; that is, it can be used to advocate the merits of one concept over its competitors.

The indeterminacy of concepts is another factor forcing all explanations to enter, if successful, into the advocacy business. Explanations may strive to replicate the indeterminacies of the concepts they explain, but it is almost impossible to replicate

them perfectly, and the success of the explanation will inevitably exercise some influence towards changing the concept to make it conform to its explanation.

## II. THE SERVICE CONCEPTION IN BRIEF

The service conception is driven by two problems, one theoretical and one moral. Starting with the common thought, which broadly speaking and with appropriate qualifications and amplifications I endorse, that authority is a right to rule, the theoretical question is how to understand the standing of an authoritative directive (as I shall call the product of the exercise of the right to rule). If issued by someone who has a right to rule, then its recipients are bound to obey. The directive is binding on them and they are duty-bound to obey it.<sup>12</sup> But how could it be that the say-so of one person constitutes a reason, a duty, for another? Is it that easy to manufacture duties out of thin air?

The moral question is how can it ever be that one has a duty to subject one's will and judgment to those of another? Of course, we are affected by others and by the actions of others in innumerable ways. We often act to induce others to help or not to hinder us, to collaborate with us in common enterprises, to avoid hurting us or to turn their actions to our advantage. But the case of authority is special. Directives issued by authority aim to constitute reasons for their subjects and are binding on their subjects because they are meant to be so binding. If we recognize a duty to obey them we recognize that they have a right to command us, not only to affect the circumstances that shape our opportunities and the obstacles on our path. Authorities tell us what to intend, with the aim of achieving whatever goals they pursue through commanding our will. Can one human being ever have such normative power over another? Can it ever be right to acknowledge such power over oneself in another?

The theoretical problem is similar to the one that promises (and all voluntary undertakings) present. By promising, we im-

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12. Authorities do much more than impose duties. But arguably whatever they do—confer powers or rights, grant permissions or immunities, change status, create and terminate legal persons (corporations and their like), regulate the relations between organs of legal persons, and much else—they do by imposing duties, actual or conditional. I will therefore continue, as writers on authority generally do, to discuss the problem of authority in relation to its right to impose duties.

pose on ourselves obligations that we did not have before, and we do so simply by communicating an intention to do so. In exercising authority we impose on others duties that they did not have before, and we do so simply by expressing an intention to do so.<sup>13</sup> How can actions communicating intentions to create reasons or obligations (for ourselves or others) do so just because they communicate these intentions?

The beginning of the answer is to note that fundamentally there is nothing special in such a case. Various of our actions incur obligations. Conceiving and giving birth to a child is often assumed to be one such case. Infringing other people's rights is another (it generates an obligation to make amends, etc.). Claims that we have an obligation because of what we did, or because of how we acted, are true, if they are, by virtue of general reasons for people who acted in certain ways to have certain reasons or obligations. There are, it is assumed, general reasons for anyone who has a child to look after it, a general reason for anyone who violates another's right, to compensate them, and so on.

Promises and authorities are no exception. Not every time someone acts with the intention of undertaking an obligation towards someone does he or she make a binding promise. A promise is binding only if the promised action is of a class regarding which there are sufficient reasons to hold the promisor bound by his promise. That means that to be binding, promises must meet many conditions: the promisor must be capable of knowing the meaning of his action, he must be capable of having a reasonable understanding of its likely consequences, and, most importantly, (a) the act promised must belong to a class of actions such that it enhances people's control over their life to be able to make such promises, and (b) the act must not be grossly immoral, etc. A promise to be a slave is not binding, nor a promise to make someone else a slave, and so on.

The theoretical question regarding the nature of authority is answered in a similar fashion. A person can have authority over another only if there are sufficient reasons for the latter to be subject to duties at the say-so of the former. That, of course, while probably right, does not tell us when one person has au-

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13. In both cases, sometimes the person placed under an obligation already had an obligation to perform the same act. "An obligation that he did not have before" does not mean an obligation to do something which until then he had no obligation to do. The obligation is new, even if another obligation to perform the same act already exists.

thority over another. It does not establish even that anyone can ever have authority. But it states what has to be the case if some people have authority over others. That is all that one can ask of a general account of authority, namely that it establish what it takes for there to be legitimate authority, rather than that it should show who has authority over whom and regarding what. That latter task is a matter for evaluating individual cases. But of course, a general account of authority can, while still not establishing who actually has authority, say much more about the conditions under which people are subject to authority. In particular we would expect it to address the moral problem with authority, namely, how can it be consistent with one's standing as a person to be subject to the will of another in the way one is when subject to the authority of another?

The suggestion of the service conception is that the moral question is answered when two conditions are met, and regarding matters with respect to which they are met: First, that the subject would better conform to reasons that apply to him anyway (that is, to reasons other than the directives of the authority) if he intends<sup>14</sup> to be guided by the authority's directives than if he does not (I will refer to it as the normal justification thesis or condition). Second, that the matters regarding which the first condition is met are such that with respect to them it is better to conform to reason than to decide for oneself, unaided by authority (I will refer to it as the independence condition).

Simple examples of regulations regarding dangerous activities or materials illustrate the point. I can best avoid endangering myself and others by conforming to the law regarding the dispensation and use of pharmaceutical products. I can rely on the experts whose advice it reflects to know what is dangerous in these matters better than I can judge for myself, a fact that is reinforced by my reliance on other people's conformity to the law, which enables me to act with safety in ways that otherwise I could not. Of course, none of this is necessarily so. The law may reflect the interests of pharmaceutical companies, and not those of consumers. If that is so it may lack au-

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14. Perhaps I should say "tries" rather than "intends" to cover cases where even though one intends to be guided by the authority one will fail to do so because of one's weakness of will, and would therefore do better to ignore the authority and try to conform to background reasons. There are probably endless refinements of this kind, which I will not try to provide, and which are probably impossible to enumerate.

thority over me because it fails to meet the normal justification condition.<sup>15</sup> But if it does meet the normal justification condition it is likely to meet the independence condition as well. Decisions about the safety of pharmaceutical products are not the sort of personal decisions regarding which I should decide for myself rather than follow authority. They do not require me to use any drugs, etc., and in that they are unlike decisions about undergoing a course of medication or treatment where we may well feel that I should decide for myself, rather than be dictated to by authority.

I said that the two conditions solve the moral question about authority. But in what sense do they do so? Several objections can be anticipated. The independence condition, it may be objected, merely restates the problem and does not help with its solution. The whole point of the moral problem is that acting by oneself is more important than anything. What advance is there in stating that authority is legitimate only where acting by oneself is less important than conforming to reason?

Another objection to the independence condition has it that it suggests that one can compare the importance of conforming to reason with the importance of deciding for oneself, independently of authority. But this, says the objection, cannot be done: the two are very different, incommensurable concerns. There is never an answer to the question which of the two is more important? I doubt that this objection is valid. It seems to be premised on the thought that the concerns that underlie reasons with which we should conform and those that underlie the reason to act independently of authority have nothing to do with each other. But that is not so.

Some of the reasons for relying on one's own judgment derive from the need to cultivate the ability to be self-reliant, simply because often one has no one else to rely on. The clearest case is the way parents should allow their children freedom to decide for themselves on a gradually expanding range of matters, in spite of knowing that they, the parents, would make a better choice for their children were they to take over deciding on those matters. This is the way children learn how to decide for themselves and become self-reliant. There are other reasons to decide for oneself. Certain matters are, by the social

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15. For the purpose of the example only, I disregard the complicating fact that the law's authority is wider than regarding the possession and use of pharmaceutical products. This raises the question of the unit of assessment in determinations of the legitimacy of authorities, which is discussed below.

forms of various cultures, to be decided by oneself. For example, while in some forms of marriage parents choose the partners, in others neither parents nor anyone else are expected to have any say in the matter. In such cases one cannot have the relationship, or engage in the good or the activity, unless one does so oneself, not through an agent, nor by following a superior.

The former case for self-reliance (parents and children) is instrumental where the end is to secure what conformity with reason will, in the long run, secure; the latter case (marriage) depends on the fact that there are reasons that can only be satisfied by independent action.<sup>16</sup> Both of them trace the concerns behind independence back to concerns with satisfying reasons. The thought that the two concerns never meet and must be incommensurate is unjustified. The question of the role of what I called independence also involves other, perhaps more fundamental considerations. We are not fully ourselves if too many of our decisions are not taken by us, but by agents, automata, or superiors. On the other side, sometimes it is our duty, our moral duty if you like, to accept authority. Sometimes—for example, on the scene of an accident—coordination, which in the circumstances requires recognizing someone as being in charge of the rescue, is essential if lives are to be saved. We must yield to the authority, where there is someone capable of playing this role. There are in the political sphere many less dramatic analogues of such situations, where a substantial good is at stake, a good that we have moral reasons to secure for ourselves and for others but that can in the circumstances be best secured by yielding to a coordinating authority. These cases justify giving up deciding for oneself, and pose no threat to the authenticity of one's life, or to one's ability to lead a self-reliant and self-fulfilling life. None of this denies that often the two concerns, one satisfied by conformity with reasons, the other by acting on one's own judgment, may be radically different, and the cases for conformity or independence may be incommensurate, with the (uncomfortable) result that whether one is then subject to authority is undetermined.

The other objection to the autonomy condition cannot be dismissed so easily. It should be met not by a refutation but by a deflection. Indeed, the independence condition does little to solve the problem. That is not its task. It merely frames the

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16. I turned to the notion of second order reasons to express such situations. They involve reasons to act for a certain reason, and the faculty of reason discharges its function when we conform with that second order reason.

question. Part of the answer to the moral challenge to all authority is in the first condition, which says that authority can be legitimate if conformity with it improves one's conformity with reason.<sup>17</sup> It provides the key to the justification of authority: authority helps our rational capacity whose function is to secure conformity with reason. It allows our rational capacity to achieve its purpose more successfully. These observations express a way of understanding our general capacity to guide our conduct (and our life more broadly) by our own judgment. The point of this general capacity is to enable us to conform to the reasons that confront us at any given time. It is conformity achieved by the exercise of one's judgment. We value the ability to exercise one's judgment and to rely on it in action, but it is a capacity we value because of its purpose, which is, by its very nature, to secure conformity with reason. The point is perfectly general. The value of many of our capacities should not be reduced to the value of their use. But, even where their value also reflects the value of the freedom to use our capacities or not,<sup>18</sup> it depends on the value of their successful use.

The value of our rational capacity, i.e., our capacity to form a view of our situation in the world and to act in light of it, derives from the fact that there are reasons that we should satisfy, and that this capacity enables us to do so. It is not, however, our only way of conforming to reasons. We are, e.g., hardwired to be alert to certain dangers and react to them instinctively and without deliberation, as we react to fire or to sudden movement in our immediate vicinity. In other contexts we do better to follow our emotions than to reason our way to action. These examples suggest that the primary value of our general ability to act by our own judgment derives from the concern to conform to reasons, and that concern can be met in a variety of ways. It is not, therefore, surprising that we find it met also in ways that come closer to obeying authority, such as making vows, taking advice, binding oneself to others long before the time for action with a promise to act in certain ways, or relying on technical devices to "take decisions for us," as when setting alarm clocks, speed limiters, etc.

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17. For the sake of brevity I'll use this and other similarly inaccurate restatements of the first condition.

18. In fact, while we can manipulate ourselves through substance abuse or in some other way into losing, for a short or a long period, the use of our rational capacity, it is not one that we can use or refrain from using at will, as we can our capacity to read books.



Both being guided by our emotions and being guided by our judgment (not necessarily mutually exclusive conditions) are constituents of some activities and relationships that are valuable in themselves, resulting in cases where the independence condition of legitimacy is not satisfied. By the same token, there can be other forms of activities, joint activities and enterprises, which are valuable in themselves and that inherently involve yielding to decisions taken by others. The conditions of legitimacy are open to different views about what is and what is not valuable and worthwhile. They merely state how conclusions on such issues bear on the question of authority.

In postulating that authorities are legitimate only if their directives enable their subjects to better conform to reason, we see authority for what it is: not a denial of people's capacity for rational action, but simply one device, one method, through the use of which people can achieve the goal (*telos*) of their capacity for rational action, albeit not through its direct use. This way of understanding matters is reinforced by the fact that in following authority, just as in following advice, or being guided by any of the technical devices, one's ultimate self-reliance is preserved, for it is one's own judgment which directs one to recognize the authority of another, just as it directs one to keep one's promises, follow advice, use technical devices and the like.

Of course, authority is special in the way in which it restricts one's ability to act independently. The service conception expresses that thought by the thesis that authoritative directives preempt those reasons against the conduct they require that the authority was meant to take into account in deciding to issue its directives. Those subject to the authority are not allowed to second guess the wisdom or advisability of the authority's directives. A simplified description of typical situations explains the point. There are reasons with which we should all conform, say regarding safe driving. In the absence of the law (or other authoritative directives) telling us how to drive (by imposing speed restrictions, traffic lights, road signs, etc.), we would have tried to drive as safely as we can. The law of the road is meant to enable us to drive more safely (i.e., to conform better to the background reasons), and it does so by directing us to do things that otherwise we might not have done. Where the law leaves driving decisions to us, we are still guided by those background considerations. But where it intervenes to require certain ways of driving, we are bound to obey it, and are not allowed to question its force, even while we are, of

course, allowed to question its wisdom and advocate its reform. This is, roughly, what I mean when I say that legitimate laws, and the directives of legitimate authorities generally, preempt the background reasons that might militate against the authoritative directives and replace them with their own requirements.<sup>19</sup>

The preemptive force of authority is part and parcel of its nature. It cannot succeed as an authority (i.e., succeed in improving our conformity with reason) if it does not preempt the background reasons. The function of authorities is to improve our conformity with those background reasons by making us try to follow their instructions rather than the background reasons. Authorities cannot do so without at least the possibility that their directives will sometimes lead us to act differently than we would have done without them. In itself, while this requires that the authority's directives must be capable of changing what we ought to do, all things considered, it does not specify in what way they impact on what we have most reason to do. The preemption thesis explains that: it reflects the thought that authorities are able to function in the way described because their decrees are the product of decisions by agents who themselves are set on determining what it is that we ought to do, and direct us to do so. They constitute legitimate authorities when doing so will in fact achieve the result of conforming better to reason (while respecting what reasons there are for us to determine our actions by our unhindered judgment). The fact that this is how they operate indicates that when they are legitimate their decrees should replace the background reasons. They preempt them. How much is preempted? What count as background reasons? They are the reasons that the authority was meant to consider in issuing its directives, provided, of course, that it acts within its legitimate power.

The preemptive standing of authoritative directives shows why the moral question about the law is a serious one. It shows what truth there is in the saying that in accepting authority we surrender our judgment to the authority. At the same time the

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19. I do not wish to indulge in excessively detailed analysis, but it is worth noting that there are two kinds of reasons the preemption thesis affects: First, it preempts reasons against the conduct required by the authoritative directive. Second, it preempts reasons that do not necessarily bear on the pros and cons of behaving as the directive requires, but that do militate against the desirability of issuing the directive. These may be that the matter should be left to individual discretion, or that the directive will have undesirable side effects that make it undesirable, and so on.

solution of the theoretical problem shows that, in spite of its special character, authority, when subjected to the normal justification and the independence conditions, is just another case of the world confronting us with reasons for action. The theoretical puzzle was “how can people create reasons by acting with the intention of doing so?” The answer is that this is so when considerations that are independent of human will make it so.

Yet again we see the analogy (as well as the difference) between authority and promises. Both yield reasons generated by actions designed to do so, a fact that gives both of them their puzzling air, and both can do so because considerations independent of human will validate such creation of reasons. Therefore, in following both, we follow reason, and thus exercise our judgment—though in both cases we do it at one remove—by accepting, through our judgment, the binding force of acts (promises, directives) that preempt our freedom to act for some of the background reasons. It is true that only authority involves accepting the directives of another. But if the two conditions are right, even authoritative directives, just like promises, are binding because and where they improve our powers by enabling us to conform to reason better than we could without them.

### III. REFINEMENTS AND ELABORATIONS

So far I have tried to sketch the outlines of the service conception and to explain how it contends with two basic problems about authority. Its success in dealing with them is the main case for believing that it is along the right lines. But to establish itself the account has to deal with a whole host of additional difficulties. In this section I will briefly look at a range of difficulties, reflection on which leads to refining the account, as well as displaying some of its strengths.

#### A. CAN WE BE SUBJECT TO SEVERAL AUTHORITIES AT THE SAME TIME?

Of course we can. The more difficult question is whether we can be subject to more than one authority regarding the same subject matter at the same time. The normal justification thesis is based on a contrast between how I would act if unaffected by the authority compared with how I would act when trying to follow the authority. In the context, this is ambiguous. Does it mean “how I would act when not influenced by any au-

thority”? or, “how I would act when not trying to follow this particular authority”? The first question allows for the possibility that we are subject to several authorities at the same time and regarding the same matter. This is as it should be. We can be subject to the authority of our parents, of our schools, and of the law, for example, at the same time, and regarding the same issue.

When subject to several authorities with similar or overlapping jurisdictions, certain matters may be regulated by one authority, while the others remain silent on them. We should, in such cases, follow those who issue directives on the matter. When several authorities pronounce on the same matter and their directives conflict, we must decide, to the best of our ability, which is more reliable as a guide. Often there are cooperative relations among authorities. The law recognizes the authority of schools and of parents, for example, and lends them legal authority, by directing the relevant people to obey them, or by enforcing their directives through legal procedures. At other times authorities may be hostile to each other, directing their subjects not to obey, and more generally not to cooperate with the working of other authorities. In such cases the question whether a given authority’s power extends to exclude the authority of another is to be judged in the way we judge the legitimacy of its power on any matter, namely, whether we would conform better to reason by trying to follow its directives than if we do not.

#### B. PREEMPTION AND ACTING FOR THE BEST REASONS

Often we have more than one sufficient reason to do something. An authoritative directive may direct us to do something that we should do for independent reasons anyway. For example, I may have promised a friend to drive slowly and the law also instructs me to drive slowly. If I drive slowly, I may do so because of the promise alone, not being aware of the law or not caring to obey it, or I may do so because of the law alone, or because of both, or for yet another consideration that appears to be a cogent reason, but may not be.

Such situations raise no problems. But the law involves a different kind of overdetermination. By law we must not murder, but we also have an independent reason not to murder, namely respect for human life. This case is typical of many. Another kind of overdetermination is somewhat different. We have a reason independent of the law to contribute our share

towards meeting the cost of maintaining communal services. The law imposes a duty to pay tax as a way of doing so. Independently of the law, we do not have a reason to pay the precise sum we owe as tax. But once the law is there we have two reasons, we may want to say, to pay the sum that we owe as tax (we can disregard here that the tax law is likely to serve other purposes as well). One is our obligation to obey the law, the other our duty to contribute to the cost of community services.

Ideally, we would refrain from killing exclusively out of respect for people's lives, and not at all out of respect for the law. Ideally, we should pay our tax because we owe it as our share towards the cost of community services, as well as because the law demands it. Is this consistent with the preemption thesis?

A proper understanding of preemption removes any suspicion of a problem. A binding authoritative directive is not only a reason for behaving as it directs, but also an exclusionary reason, that is, a reason for not following (i.e., not acting for) reasons that conflict with the rule. That is how authoritative directives preempt. They exclude reliance on conflicting reasons, not all conflicting reasons, but those that the lawmaker was meant to consider before issuing the directive. These exclusionary reasons do not, of course, exclude relying on reasons for behaving in the same way as the directive requires. Think about it: authority improves our conformity with reason by overriding what we would do without it, when doing so would not conform with reason. So, assuming that it is entirely successful in its task, it need not and does not stop us from following the reasons on the winning side of an argument. It must, however, if it is to improve our conformity with reason, override our inclination to follow reasons on the losing side of the argument. Hence the preemption excludes only reasons that conflict with the authority's directive.

So when an action is rightly required by authority (i.e., when there are conclusive reasons for it, independently of the authority's intervention), we may (in both senses) do as we are required either because we are so required, or for the reasons that justify the requirement, or both. Sometimes, as in the case of the prohibition of murder, doing as required by authority for cogent reasons other than that the conduct is so required, is the better option. There will be other cases, for example, cases in which the directive issued by authority is mistaken or unjustified. It requires some action, the performance of which, while supported by some authority-independent reasons, is not suffi-

ciently supported to require that action, not if the directive requiring it is ignored. This can be consistent with the directive being binding on us. Even legitimate authorities make mistakes. In such cases we should conform with the directive, and the ideal case is one in which we do so because we are required to by the authority and not because of the other reasons that support the action.

The tax example was different because we do not have a reason independent of the law to pay exactly as required by law and to pay it to this precise authority, even though once the law is in place the reason that justifies passing it is a reason for doing as it requires, which is distinct from the general duty we have to obey a legitimate authority. In such cases the best option is to act for both reasons, i.e., for both the law and the background reason for it.

In what sense are these options best? All that is required of us is to conform to reason, and it does not matter for what reason, or imagined reason, we do so. However, not only what we do but why we do it tells something about us. It is regarding such judgments, judgments about the agent, about what kind of person he is, how he conducts himself and so on, that the actual reasons that led him to action matter.

### C. CONFLICTING REASONS

Authoritative directives are not always conclusive reasons for the conduct they require. They can be defeated by conflicting reasons, or by conflicting directives. The reasons that can defeat them are those they do not exclude. The question is of some importance when considering the law. Typically, one rule of law does not exclude another of the same rank (in the sense in which constitutional rules, primary legislation, delegated legislation, and common law are of different rank). Rules of law exclude many nonlegal considerations, though legal systems typically allow some to count and sometimes to override legal requirements. But they do not exclude other legal rules of the same rank. I will say that legal rules constitute *prima facie* reasons for the conduct they prescribe.

When legal rules conflict, how is the outcome to be decided? There are many devices to which the law appeals for assistance. The problem arises when no formal device is available or sufficient. The question is whether the relative merits of the background reasons, those for and against each of the rules, count in the correct determination of each such conflict. It ap-

pears unreasonable to ignore these background reasons, for to do so leaves no option but to take all rules of the same constitutional rank as counting in the same way and to the same degree towards the outcome. Given that one rule may be a trivial one, say some minor tax regulation, while the other may be a matter central to the protection of fundamental rights, it would be unreasonable to take them to be of equal importance. Yet does not the thesis that authoritative directives exclude reliance on conflicting considerations mean that one is not allowed to assess the true importance of a rule, which would involve assessing both reasons for and reasons against it, and these include reasons for and against the conduct it prescribes?

However, the preemption thesis implies rejecting both alternatives. As mentioned, it excludes reference to the background considerations and thus precludes a proper assessment of the importance of the rule. However, it does not follow that all rules of the same constitutional rank must be seen as of the same importance. Just as the authority makes the law, so it does, or at least can, indicate its importance in its eyes. There are various ways of doing so, mostly implicit, some more explicit, like preambles and other legislative material. Other indications are implied in the language the law was expressed in and the context of its legislation. To the extent that judicial practice instructs courts to resort to these devices, they are recognized as legally binding and have authoritative standing.

There is no denying that such considerations are unlikely to determine all questions that may arise about the importance of each legal rule. Nor can all issues arising out of conflicts among legal rules be determined by prioritizing some over others. Often, instead of following one rule rather than the other, practical conflicts should be resolved by finding the option that satisfies the conflicting rules to the highest possible degree. That follows from the nature of practical rationality, which requires that when reasons cannot be completely conformed to, they should be conformed to, to the highest possible degree. This will require courts confronted with conflicts of this kind to find such an optimistic outcome, which will involve an understanding of the point of the conflicting rules. We already saw that this is consistent with the service conception.

Even so, not infrequently in different rules of law conflicts, the law does not contain the resources to resolve the conflict. It is indeterminate regarding the issue, usually leaving such decisions to the discretion of judges, i.e., to their judgment about

the real merit of the different rules, a judgment that goes beyond what the law determines.

#### D. REASON AND KNOWABILITY

It is a matter of dispute whether a factor not known by some agents, or not knowable by them, can nevertheless constitute a reason for those agents. Whatever is the truth on that general question, there are independent reasons for thinking that someone or some body can be an authority only if the fact that the two conditions are met can be known to its subjects. The point of being under an authority is that it opens a way of improving one's conformity with reason. One achieves that by conforming to the authority's directives, and (special circumstances apart) one can reliably conform only if one has reliable beliefs regarding who has legitimate authority, and what its directives are. If one cannot have trustworthy beliefs that a certain body meets the conditions for legitimacy, then one's belief in its authority is haphazard, and cannot (again special circumstances apart) be reliable. Therefore, to fulfill its function, the legitimacy of an authority must be knowable to its subjects.

In stating this argument I assumed that whenever one can form reliable beliefs that the conditions for legitimacy are met, one can also have knowledge that they are met. I was also relying on the fact that, generally speaking, the only reliable way of conforming to authority is through having a reliable belief that it is an authority, and therefore should be obeyed. This assumption helps with defining more precisely what has to be the case for the legitimacy to be knowable. Since the point is to improve conformity with reason, there is at least a rough measure of how important such improvement is. The more important it is, the more extensive inquiries about ways of achieving it are indicated. The indicated degree of inquiry sets the limit to knowability: it is knowable if an inquiry of that kind would yield that knowledge.

We engage in such assessments every day of the week. We regularly need to decide how far to pursue an inquiry in the hope of coming to a more reliable or more nuanced conclusion about what is the right course of action on various occasions. When the issue is of importance we extend our inquiries and deliberations well beyond what we do when the matter is relatively trifling. The same kind of consideration applies to establishing the existence of authorities. How much it can be expected to improve our conformity to reason, and how important



the matter is, establish what inquiry is reasonable to undertake. When reasonable inquiry will not reveal the case for authority, that case, if it exists at all, is unknowable. It follows that people are not subject to any authority regarding those matters.

This argument is used here to establish not merely that it is not rational, or not worthwhile, to carry on with the inquiry about the existence of certain reasons, but that those reasons, authoritative directives, do not exist. There is no authority over the matter, because to exist, authorities must be knowable. This extension of the argument is not surprising. The service conception makes the legitimacy of authorities turn primarily on their value in achieving something beyond them, i.e., conformity to background reasons existing independently of them. In general we have no reason to pursue the means unless they are worth pursuing, given the cost of doing so relative to the importance of the ends. To give one simple example: I suppose that I can get you to give me five pounds by giving you ten pounds on condition that you give me five pounds in return. But (special circumstances apart) I have no reason to pursue this means to that end, no reason at all. It is not merely the case that I have a reason that is defeated by the cost of pursuing the means. The case of authority is not exactly the same, but it is analogous: obeying Jane, let us say, would help me better to conform with reasons that apply to me. However, I cannot know that without pursuing an inquiry that would be irrational to pursue. It follows that I have no reason to obey Jane, and it follows from that, that Jane has no authority over me.

#### E. SMALLEST CLASS

There are other epistemic constraints on the conditions of legitimacy. They constrain the application of the substantive conditions. For example, suppose we can establish that we will conform better with reason if we follow authority regarding matters in a certain domain, let us say matters dealt with in work-safety regulations. Does the authority's power extend over the whole domain or is it limited to part of it only? The normal justification condition may be taken to mean that it has authority over the whole domain. But that encounters the objection that the domain can be artificially extended (e.g., by adding to it safety at home) without any reason to believe that we actually do better in the extensions themselves (e.g., we may be better judges of safety in our homes than whoever is the

authority over safety at work). The extended domain may still meet both conditions of legitimacy simply because the narrower domain meets them, and the disadvantages of the extension are not bad enough to cancel out the case for the authority.

The solution to this conundrum is, I believe, that a person or body has authority regarding any domain if that person or body meets the conditions regarding that domain and there is no proper part of the domain regarding which the person or body can be known to fail the conditions.

#### F. BURDENS OF INQUIRY AND DECISION

The second, independence, condition of legitimacy is premised on the thought that it is important that people decide for themselves how to conduct their lives, and that, especially in some areas, they should do so with only limited reliance on direct advice, let alone commands, from others. We do not fully live as autonomous persons if we do not decide for ourselves. It does not follow, of course, that we always enjoy doing so. Some people find the burden of decision hard to bear. They prevaricate, get depressed, feel oppressed and pressured, and, of course, often decide unwisely, often deciding almost arbitrarily in order to relieve themselves of the burden of decision.

Not everyone suffers from an aversion to taking decisions and assuming responsibility, though most people feel the burden. We are tempted to think that one is not a responsible agent if one does not, as it shows a lack of seriousness about one's actions. Be this as it may, everyone has to carry the burden of inquiry. It makes demands on our attention, energy, time and resources. It may impose a strain on our relations with others, and so on. To be sure, the process of purposeful inquiry, of working one's way towards a decision, can also be enjoyable and rewarding in its own right. But given that its primary purpose and justification is that it contributes to a good decision, one cannot expect the rewards to match the burdens, and sometimes the burdens far exceed the rewards.

There are ways of reducing the burdens of decision and inquiry, and some of them involve shifting the burden onto others. The practice of relying on professional advice has grown in recent times, perhaps in parallel with a decline in the family as a source of advice and support in decision making. Submitting to authority is one way of reducing the burdens. It can be justified only if it is consistent with the independence condition of legitimacy (though when the psychological vulnerability to the

burden is extreme it may be justified to mitigate the condition to relieve the burden). The normal justification condition, however, is better understood broadly to allow that meeting the burdens of decision and inquiry is one of the benefits authorities can bring.

#### G. RESPECT AND OTHER REASONS

We can accommodate the burdens of decision and inquiry in an account of legitimate authority, either through an appropriate reading of the two conditions, or by recognizing these burdens as additional factors bearing on legitimacy, factors that modify or add to the two conditions. I do not believe that it is possible to enumerate exhaustively the considerations that can bear on the legitimacy of authority, or for that matter on the justification of any other normative institution that is widely accepted and is enshrined in social practices. Such institutions do sometimes have core purposes or points, but once they are recognized and are followed in practice they become enmeshed in other practices and concerns, which lead them, without deflecting from their primary justification, to accrue additional purposes and justifying reasons.

One such factor arises out of the way in which, in many societies, some authorities become the primary visible expression of institutions to which they belong, and in the name of which they function. Political and legal institutions with legal authority are a case in point. In many countries superior legal authorities are identified with the state or the country or the nation and speak in their name. Where this is so, respect for and identification with the state, country or nation may be expressed in respect for legal authority, and that in turn takes the form (among others) of trusting these institutions, taking it on trust that they have authority to do what they do, not questioning their conduct too closely to see whether they exceed their authority, etc. Trust is a general mark of respect, and a natural one. If respect for the state, country or nation is desirable, which sometimes it is, and if it is appropriate, given the circumstances of the society in question, for it to express itself through respect and trust in its legal institutions, then a certain slackening of vigilance regarding the two conditions of legitimacy is also acceptable. That is, in such cases, while the conditions themselves are unaffected, people would be justified in maintaining that the government has authority on evidence

that would not be sufficient to reach such conclusions but for the trust they have in the government.

I do not maintain that people have a duty to trust and respect their government in that way. That would be like claiming that they have a duty to have someone as their friend. The respect we are concerned with here is not the basic respect we owe every person. It is respect arising out of identification with the country, and there is no duty on anyone to identify with any country. The claim is simply that that attitude is sometimes (i.e., when certain moral conditions are met) appropriate.

Does it show that sometimes people who trust the government are justified in believing that the government has authority when it does not, or does it show that sometimes the government has authority over such people even though it does not have authority or has only a more limited authority over people who do not trust it? One can argue either way. On the one hand, it may be thought desirable to separate epistemic from substantive considerations, and to have an account that tends to make governmental authority independent of individually variable factors such as trust resulting from identification with the country. On the other hand, as we saw, the service conception does incorporate epistemic elements into the conditions of authority, and, as we shall see, it allows for considerable variability in the extent of governmental authority over the population over which it claims authority. So it may be that the better view is to regard identification as affecting the conditions of legitimacy, and not merely the occasions on which it is justified to believe that they are met. This way the account is closer to familiar (and rational) attitudes that people have to authority.

#### H. PREEXISTING REASONS AND CONCRETIZATION

The account may appear unduly restrictive. It may appear to exclude any power for governments to improve the economic conditions of their citizens. For example, the authority may do so by imposing taxes and using the revenue to subsidize training, which is useful for full employment and for economic development. Neither I nor other inhabitants have reason to impose taxes or subsidize training in the country. But that is a misperception. To the extent that the inhabitants of a country have reason to improve their own economic situation, they will have reason to do so through a common authority in those matters where that authority will be capable of achieving that goal better than they can do so by acting independently of it.

Does it mean that I do have reason to raise taxes? Not necessarily, but the question stems from overlooking the fact that typically reasons do not come singly, rather they are nested. Typically, we have one reason because conforming to it is a way of advancing another reason. The more general reasons apply as a standard background to our activities, and are less affected by changing circumstances, whereas the more specific reasons that nest in them tend to apply during shorter periods and depend on conditions that are often liable to change. My reason to improve my economic situation is an example of a relatively general reason, not likely to disappear until my retirement or even later, though its urgency and force may change over time. A reason to change employment may derive from it. I may have reason to change employment in order to improve my economic condition. But it is a more short-term reason, which may disappear if, for example, I am offered promotion by my current employer, or through other circumstances.

People assigned the task of helping us do so by conforming to or realizing some reasons that apply to us, reasons we have ourselves. These reasons have others nested in them, which set out ways of realizing them. But those nested reasons need not be reasons for us. That is, those helping us may have good grounds for pursuing the goals set by reasons that apply to us in ways that are not open to us. Indeed, as the service conception of authority illustrates, they may be assigned the task of helping us precisely because of that. Through their intervention we acquire new ways of realizing the goals set by the general background reasons, and thereby new reasons to take the actions that will do so.

There are various other ways in which the suppleness of the service conception can be underestimated. In giving the following examples I do not wish to endorse their cogency. I mention them just to illustrate the power of the service conception. For example, someone may believe that people, members of a certain group, have a duty, perhaps a religious duty or a duty of loyalty arising from some historical circumstances, to obey some person or institution. In that case the normal justification thesis is easily satisfied. By obeying that person or institution one is discharging that duty. Or suppose that members of a certain group, perhaps an ethnic group, have a duty to obey someone who can command the allegiance of the group, a sort of national duty for the glory of the nation. Again, if anyone can command the allegiance of the group then that person will sat-

isfy the conditions of having authority under the service conception. Or suppose that one has a duty to obey whoever wins a lottery; again the conditions of the service conception would be met regarding anyone who wins the lottery. Some people believe that one has a duty to obey anyone who is elected by the majority. Again, that is no problem for the service conception. If that is so it simply shows that the conditions of the service conception are met regarding anyone who is so elected.<sup>20</sup>

#### I. COORDINATION AND METACOORDINATION

A major, if not the main, factor in establishing the legitimacy of political authorities is their ability to secure coordination. Some writers, commenting on this fact, have gone further and argued: (a) that the sole (or only major) function of political authorities is to coordinate the conduct of those subject to them for the achievement of some goods; (b) that coordination being secured via a Lewis-type convention does not require an authority with a right to rule: all it requires is the ability to make salient certain coordinative outcomes; and (c) that it follows that political authorities, as such, do not enjoy a right to rule.

Such views overlook quite a number of facts central to the political authorities, as such,

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that they all play diverse roles in some possible plan of action that is likely to yield some sought-after results. This kind of coordination cannot generally be achieved via a Lewis-type convention. Third, one reason for this is that the need for coordination and the means for achieving it are not necessarily generally known and are often a matter of controversy. Fourth, that since the goals people actually have need not be desirable, coordination aimed at securing these goals need not be desirable either. The coordinated schemes of action that political authorities should pursue are those to which people should be committed, or those needed to secure goals that people should have, which are not always the goals which they do have. Fifth, that typically, when the political authority is otherwise legitimate and reasonably successful, it will also be rightly taken, at least in some areas, to be an authority on the second order question of when is coordination in place.

#### IV. THE QUALIFICATION OBJECTION

One possible reaction to the service conception is that it misses its target. It describes the conditions under which an authority is a good-enough authority. It articulates tests of success for authorities, but it does not explain what it is to be an authority. It describes the conditions that have to hold if an authority is to be capable of successfully discharging its tasks, but it is not and cannot be the case that everyone who can discharge a task well has that task. Not everyone who can be a good prime minister of a country is the prime minister of that country, not everyone who can be a good teacher in the primary school of my neighborhood is a teacher in that school. Moreover, no one is a prime minister or a teacher just in virtue of the fact that they can perform the task well. Something else has to happen to give them the task, to make it their task.

To evaluate this point we should contrast theoretical and practical authority. Theoretical authorities are experts whose knowledge and understanding of the matter on which they are authorities is both exceptionally extensive and remarkably systematic and secure, making them reliable guides on those matters. Their word is a reason for holding certain beliefs and discrediting others. In that, it is like testimony: the reports of witnesses about the events on which they report. But expert advice is very different from witnesses' testimony. First, normally their advice does not report their perceptual beliefs or the content of their experiences. (The exceptions are cases

where what we see is hard to understand, where experts may be useful in telling us what we and they see.) Rather, it reports inferential beliefs, conclusions they draw from evidence derived from their own experience or that of others. Secondly, and as a corollary, their advice does not depend on their advantageous situation relative to the matter under consideration: unlike the testimony of witnesses, they need not have been at the right place at the right time to see or otherwise witness the events they report about. They derive their conclusions not from observation, which requires an advantageous position, but by inference from evidence, including testimony, and that does not require enjoying a privileged or advantageous position relative to the events on which they advise. As a result, while testimony bears only on past events, experts can also predict future events.

These differences account for the normative differences between witnesses and experts. With witnesses all we have to do is assess the reliability of their report: the quality of their eyesight, weather conditions, their attention at the time, their distance from the events reported, etc. With experts none of these questions normally arises. What is at issue is their ability to draw conclusions from the evidence. Often it is knowledge of the theory, say some scientific theory, and at other times it is breadth of experience and depth of understanding that establish their credentials as experts, i.e., as people who can reliably infer one thing from another. Once their authority as experts is established, it follows that our nonexpert evaluations of the same evidence cannot reliably challenge theirs. I see the piece of meat at the butchers, and its color makes me think that it is not fresh. But I do not have experience or theory to back me up. My expert friend reassures me that the meat is fresh, and I just yield. If I accept my friend's expertise, relative to me, I have no choice. Theoretical advice preempts the reasons for belief that I would have relied upon otherwise. Just as with any practical authority, the point of a theoretical authority is to enable me to conform to reason, this time reason for belief, better than I would otherwise be able to do. This requires taking the expert advice, and allowing it to preempt my own assessment of the evidence. If I do not do that, I do not benefit from it.

Theoretical authority resembles practical authority in its point (to improve conformity with reason) and in being preemptive, as well as in being relational both regarding who has to take an authority's word as authoritative, and regarding what



matters: it is possible that I should take this expert's word as authoritative, because he knows much more than I do, but you have no reason to do the same, as you know as much as he does on these matters.

These similarities notwithstanding, there are significant differences between theoretical and practical authorities. I noted that, unlike testimony, some expertise can be the basis of predictions of future events. But it cannot change anything. The ability of practical authorities to improve coordination, a factor entirely absent from the activities of theoretical authorities, makes them subject to derived reasons<sup>21</sup> to secure preexisting goals in ways not otherwise possible. They can, as a result, change things in the world.

Furthermore, and it hardly needs saying, theoretical authorities, experts, cannot order us to believe one thing or another, and cannot impose duties to believe—the nature of belief and belief formation excludes such duties. Belief formation, just like actions, is responsive to reasons, but only actions, and not the formation of beliefs, involve the will. Duties exist only when (but not always even then) the response to reason involves the will.

These points are associated with important differences of idiom. For example, some people are authorities on eighteenth-century farming methods, but they do not have authority over anyone. I know nothing about eighteenth-century farming methods and should take what they say as authoritative, but they do not have authority over me. Similarly the notion of legitimate authority is confined to practical authority. People may or may not be experts in or authorities on eighteenth-century farming methods. But they cannot be *de facto* authorities or legitimate authorities on the subject. Finally, only regarding practical matters can we say that someone has authority, or lacks it. In theoretical matters, someone either is or is not an authority, but no one has authority.

What have these points to do with the critique of the service conception, with the claim that it mistakes an analysis of when an authority is good at what it is doing for an analysis of what it is to be an authority? At first blush, they may suggest that the critique is correct regarding practical authorities, but

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21. Note that it is not merely that authorities create new reasons by issuing directives. This is true of theoretical authorities as well. Their very existence opens up opportunities, and thereby subjects them to new derived reasons, reasons to satisfy previously existing reasons in new ways.

mistaken about theoretical authorities.

Since theoretical authorities cannot possess or lack legitimacy, and cannot impose duties (not even duties to believe), they cannot require an additional condition beyond those of the service conception. If they are qualified as authorities, they are authorities. In fact, even the epistemic condition we noticed before, namely that their possession of authority is knowable to those over whom they have authority, does not apply to theoretical authorities, which have no authority over anyone. The greatest expert on eighteenth-century farming methods may be a solitary scholar unknown to the academic community and unrecognized by anyone. He is still an authority, just in virtue of his knowledge of his subject. Nothing more is needed.<sup>22</sup> So the objection fails regarding theoretical authorities.

Practical authorities, on the other hand, impose duties on people. They have authority over people. They have normative powers over people. To be authorities, so the argument goes, they need more than the capacity to function well. They need to be made authorities, not necessarily by being appointed to the job, but something like an appointment has to be there.

However, the admission that the objection fails regarding theoretical authorities seems to me to establish that it fails altogether. It is implausible to think that what is a successful analysis of what it is to be an authority in theoretical matters makes no contribution at all to an understanding of the notion of authority, of what it is to have practical authority. Possibly, the differences between the two kinds of authority mean that it is a successful analysis of one kind, and only a partial analysis of the other. But it is implausible to claim that it has nothing to do with the analysis of the other. There is another reason to doubt the objection. It seems implausible to think that one can be a legitimate authority however bad one is at acting as an authority. If the primary point of authority, practical authority included, is to improve conformity with reason, it is implausible to think that someone who contributes not at all in that respect, someone who in fact makes us act more against reason than we would do had we not tried to follow him, can have legitimate authority.

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22. Of course normally we cannot know that he is an authority unless someone else attests to it. But it seems best to assign the implication that no one who is totally unrecognized can be an authority to the pragmatics of discourse.

We can therefore reject the objection. But another more modest objection is just around the corner. It says that regarding practical authorities, given their ability to change things, to impose duties and confer rights, the service conception furnishes only part of their analysis. It states a necessary condition for being an authority, but not a sufficient one.

This objection is more plausible. But to succeed it needs to meet one doubt: the differences between theoretical and practical authorities may lead to differences in what has to be established to confirm that they do meet the service conception's criteria for legitimate authority. Would not those differences be sufficient to show that not everyone who can be a good authority has practical authority?

Confining the discussion to political authorities, we know that a major part of their role: improving public services, personal safety, security of contracts and other commercial transactions, requires them to be successful in coordinating the conduct of large numbers of people. That ability is not enough for the performance of such tasks, but it is necessary for it. It follows that only bodies that enjoy *de facto* authority (i.e., that are in fact followed or at least conformed with by considerable segments of the population) can have legitimate authority over all these matters. Hence there cannot be an unknown political authority. Similarly, there cannot be a political authority that does not exercise its authority, i.e., does not issue directives that impose duties, confer rights, etc. We can contrast this with theoretical authority: our expert in eighteenth-century farming methods may never give any advice or express any opinions on the matter. It is enough that he could, for his authority depends on his knowledge, not on his power over people, his ability to make them modify their behavior to conform to his directives, as does the legitimacy of political authorities.

Finally, but most importantly, given how things are in our world, governments of the kind we are familiar with can only succeed in meeting the conditions of legitimacy (according to the service conception) if they have the authority to use and are successful in the use of force against those who flout certain of their directives. There is no need now to establish what are the general conditions for the rightful use of force by governments. For our purposes it is enough that such a right must exist for a government to meet the two conditions of legitimacy, and that it must be effectively used. This is an additional, double obstacle on the road to the possession of legitimate governmental au-

thority. It is a normative obstacle: justifying the possession of a moral right to use force; and a factual obstacle: being de facto able to use it effectively. No such conditions need be met by theoretical authorities. Does not the existence of these conditions show that the service conception explains not who would be good had he been given authority, but who really has authority? At the very least they show that the service conception recognizes and has some account of the difference between being qualified to hold authority, and having authority. The question is whether its account is adequate. That question is still open. But the accusation that it simply confused qualification for authority with authority fails.

## V. CONSENT

Let us examine one contender for this missing element: the consent of the subjects. On the view to be considered, the conditions of the service conception need to be met for consent to confer authority on anyone. To have authority, a person or body must meet the necessary qualifications for holding authority. The two conditions of the service conception state what the qualifications are, and therefore, to qualify for having authority anyone must meet them. But actually to have authority over another requires the consent of that other as well.

Most commonly, however, the claim that all authority derives from consent is taken by its advocates to be based on other considerations, independent of the preceding argument. To use the familiar slogans, it cannot be—people say—that one person is subject to the will of another except by his own choosing, expressed by his consent to be subject to that authority.

Some people take this view to be an application to the case of authority of a broader thesis, namely that no obligations bind anyone except by their own will. I will have to disregard that view, which takes us too far afield for the present occasion. I will focus on the more limited view that at least all people who are persons, who are autonomous agents, cannot be subject to the will of another except by choice. No one can have authority over us and tell us what to do without our consent.

We nevertheless assume that there can be duties without the consent of the person bound. I have a duty to respect others, which does not depend on my consent to respect others, let alone on my consent to an obligation to do so. For what, then, is consent a prerequisite? One line of argument will have it that no obligation whose discharge affects a person can be valid

without his consent. But that seems highly implausible. Other people's obligation to respect me, not to kill me, as well as their duty to protect the environment, for example, affect me quite deeply, and they nevertheless have them regardless of my consent. Nor, it seems plausible to think, can I release them from these obligations. I cannot release them from their obligation to protect the environment, for its impact on me is not central to its justification. But nor can I release people from their duty to respect me, or my humanity, as Kant would have said, even though I am central to its justification. To be sure, my consent can turn acts that would, without it, breach that duty, into innocuous acts. For example, by giving you my car as a gift I turn your driving away in it from theft to a permissible handling of your own property. But the effect of my consent presupposes the existence of a prior duty, and its scope (Can I consent to be killed? Or to become a slave?) is determined by that duty, which itself exists independently of consent.

So we turn to the most plausible suggestion: namely that no one can intentionally impose an obligation on a person without the consent of its subject. This idea is supposed to tie up with the ideal of personal autonomy. What makes obligations intentionally created by another a special case requiring consent? It cannot be the content of these obligations, for the demand for consent is not made to depend on the content of the obligations. It depends on their source. Given that only one thing is known of the source, namely that it is supposed to be an authority, the demand for consent seems to depend on the general relationship that is indicated: a relationship of one person being subject to the will of another.

Do you have the impression that we have come full circle? Have we not considered that precise point? Was it not the moral question that was answered earlier? If that answer was good, and nothing was said to indicate otherwise, why are we back with it? Presumably there is a residual feeling that the earlier reply did not cover all aspects of the moral problem. What is left? How are we to find it? The way to an answer was indicated earlier. We saw that consent is a source of obligation only when some considerations, themselves independent of consent, vindicate its being such a source. And those considerations would also determine what kind of consent is required to legitimize the authority and determine over what matters it will reign.

Oddly, it is this test that I find no way of meeting. The moral question was about the legitimacy of one person being subject to the will of another. But that problem cannot be solved by consent. Suppose you say to me: "I impose on you an obligation to come to my party tomorrow," (and you may add: "provided of course that you agree"), and I reply: "I agree." I definitely consented to come to your party. I may even have promised to do so. But clearly whatever you said, you did not impose an obligation on me. The obligation is entirely my own creation. You may have invited me in a funny way, or expressed a strong desire that I should come, again in a funny way. But you did not obligate me to come.

Now suppose you say to me: "You will have an obligation to do whatever I tell you to do," or: "Whenever I tell you to do something that in my judgment you should do anyway, you will have a duty to do it, provided you now agree to this." If you tell me something like that and I agree, then while until I agreed, and at the moment of agreeing, I was not subject to your will; once I agree I am subject to your will. It is analogous to becoming a slave. I was free, and I lost my freedom. Here, I was independent of your will, and now I am subject to your will. Of course it is not the case that I am subject to your will because I want to be. I may have wanted it when I consented. But once I consented, what I want becomes immaterial. I am subject to your will whether I want to or not. Does not that raise the moral problem, rather than answer it?

Still, as I said, the feeling persists that the solution to the moral question given before left some of our concerns unanswered. It saw the issue as one having some other person decide for one rather than deciding for oneself. The emphasis was on "not deciding for oneself." It showed that there is no objection to that, that we should approve of that when it makes us conform better with reason. The argument drew analogies between authorities, agents, mechanical devices, and so on. And that is where it falls short. It did not notice that while they are all cases of not deciding for oneself, there is a difference between these cases and that of authority, for only authority involves subjecting our will to that of another, and that is not merely a matter of not deciding for oneself.

Let us concede that the problem exists, that perhaps the solution offered so far ignores it. It remains the fact that consent does not solve the problem. It can solve the problem only when there is a reason for such consent to bind us, and there is

none, other than the one that can dispense with consent but cannot explain why a single act of consent can subject us for life to the will of another, i.e., that the authority will make us better conform to reason. It should be noted that in denying that consent is necessary for legitimacy, I am not denying that it has some significance. I suspect that the way it is treated in the law of some countries shows that it is regarded as significant, but not to the legitimacy of an authority. Naturalized citizens and the holders of some offices of state are often required to express formal consent, though not necessarily to the legitimacy of the authority. Since the law claims authority over all of us but requires consent from some only, it does not regard consent as necessary for its authority. But the requirement of consent may show that it is taken to express some more specific attitude(s) that are taken to be required in some contexts in particular. Beyond the law we may feel that consent makes a difference: "now (having consented) you have only yourself to blame," we sometimes say. I cannot inquire here into such possibilities, but will simply reiterate that, for the reasons given, they do not establish that consent is a condition of authority.

Perhaps, however, the popularity of consent-based explanations of authority has something to tell us. Perhaps while being mistaken, it points in the right direction. The question is a question of appropriation. The aspect of the moral problem we are confronting is not the limits to one's freedom that the law or other authoritative directives pose. It is that the limits are imposed deliberately, and that they are imposed by another. They are not limits set by me. Consent explanations appeal because they seek to make the limits the agent's own. They are chimerical because they fail to do that. They remain imposed limits, deliberately imposed by another. My historical consent cannot have the significance placed on it; it cannot make the limits my own.

What we need, you may think, is another way of explaining appropriation, of explaining how the commands of authority can lose the character of subjection of one person to the will of another. That is where the search for collective identities begins.

## VI. COLLECTIVE IDENTITIES

The flaw in consent accounts is that they fly in the face of reality. They claim that what is not mine is mine, in spite of the patent fact that it is binding on me regardless of my will, and

often against my will. The best that can be said for them is that they make each of us slaves of our own decisions when young. But there is another way. A rule or directive may be neither imposed on me by another nor made by me. It could be made by "us," by a collectivity of which I am a part. The simplest and least controversial examples derive from limited collective enterprises. We, six friends, may go on an adventure trip together, or organize a party or a conference together. And we may decide, by mutual consultation, what to do in pursuing our joint venture, decisions that bind each and all of us. While none of them is made by me, none of them is imposed on me by the will of another. They are made by us. Is it not an additional necessary condition of the legitimacy of authority that it acts for a collectivity so that its directives are not imposed on members of that group, but are their decisions, collectively taken, perhaps through their agents or representatives?

A. ARE AUTHORITIES ACTING FOR THE PEOPLE?:  
COLLECTIVITIES AND COLLECTIVE ACTIONS

There is discourse about collectivities, their identity and action, and how we relate to them when we say "we," meaning Oxford University, "did this or that" or "hold these ideals high," etc. This is comprehensible discourse, therefore it has truth conditions, and there are states of affairs in virtue of which such statements are true or false.

I have no general reason to think that there are no practical authorities, i.e., authorities with a right to rule or command, which are not the organs of collectivities in the way in which governments are the organs of countries or of states. But it may well be that cases in which authorities act for collectivities and are organs of collectivities are typical. They may be the paradigm in relation to which we understand all authorities. So let us allow that point, necessary for the success of the thought that the answer to the moral problem is that authorities' actions are our actions.

This is not the place to investigate the truth conditions of propositions about collective action. But one aspect of such an investigation is important for our purpose: is it the case that a university, a country, a government, or whatever other collectivity, is *my* university, country or government only if I identify with it?

The notion of identification is both important and obscure, but I think that there can be no doubt that the answer to the



question is negative. Oxford University is my university whether I identify with it or not. Your country is your country whether you like it or not, whether you are alienated from it or not, and this government is the government of all the people of this country however much they hate it. There were times in the past when many Anglo-Irish did not identify with Eire and its government. They did not regard it as their state and their government. But Eire was their state, and its government was their government. Not infrequently we find in a country individuals or groups that do not and cannot bring themselves to identify with their country or to regard its government as their own. They will not use the language of “we,” as in “we just changed the law to make it harder for asylum seekers to stay in the country.” Their refusal, often their inability to use such locutions, is highly significant, but it does not change the fact that that is their country, their law, and their government.

B. IS THE MORAL PROBLEM SOLVED WHEN THE AUTHORITY'S ACTION IS OURS?

The fact that people can be alienated from their countries, that they may refuse to talk of what “we” did when talking of their countries, raises severe doubts about the contention that the answer to the moral problem is that the commands of authorities are our commands, even while we are their subjects. Tell this to the people who are alienated from their country or from their regime. Tell them that it is they who passed the laws that they regard as anathema, etc. It is a sad form of trickery to think that its being the authority of their country makes its command their command in any sense that solves the moral problem.

One response to this point is to say that there is a different sense of belonging, of a group being ours, of its actions being our actions, a sense that does bridge the gap we are looking at. Maybe. There may be a sense of belonging to a country, or identification with its regime (i.e., its political constitution), a sense that would enable people to affirm that the actions of authorities they identify with are their actions—thus dissolving the moral problem. The question is: does this mean that the legitimate power of authorities is limited to people who so identify with the collectivities that the authorities represent? Does it mean, for example, that the Anglo-Irish who did not identify with Eire and its government were not subject to its authority, that they were not subject to the law of Eire?

The problem of the limits of the state's authority is even more far reaching. We tend to believe that states have some extraterritorial jurisdiction, and that in any case they have territorial jurisdiction over all people within the boundaries of the state. But we do not expect visitors to identify with the state or the regime. It may be a good thing if the population of a country identifies with it, and with its regime. But there is no reasonable argument to deny that where the state has any legitimate authority at all its authority reaches beyond ruling those who identify with it.

Identification may play an important role in a theory of legitimacy in another way. It may be said that it is a requirement of the legitimacy of the state, and of its authorities, that it would be reasonable of its citizens to identify with it. Identification, the thought is, is not a brute fact, it is an attitude, which like beliefs, emotions and desires, is responsive to reasons. There are, or can be, reasons to identify and reasons not to identify. Hence sometimes identifying is reasonable and at others it is not.<sup>23</sup> It is, so it may be claimed, a condition of the legitimacy of an authority that it will be reasonable for its subjects to identify themselves with it. That may be so, at least in the case of some authorities. But not surprisingly I believe that the service conception provides the conditions for the fulfillment of this requirement (the others having to do with the relations of the individual to the authority or to the body in the name of which it acts). So that thought offers neither a criticism of nor a supplementation to the service conception account of authority.

#### C. MUST LEGITIMATE AUTHORITIES BE ALSO ACTING FOR COLLECTIVITIES AND DOES IT MATTER?

This brief argument relies on the fact that people, including us, who believe that political authorities can ever be legitimate, hold views about their legitimacy in many concrete cases that cannot be reconciled with the view that political bodies have legitimate authority only over people who identify with them, or with the regimes for which they act. It is open to some to maintain that we should revise our beliefs about the scope of authority. My sense is that this would be a mistake. The problem of appropriation, to which identification is supposed to be

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23. Some people would say that sometimes one should or has a duty to identify, though I doubt that.

the answer, is a misguided question. It is not part of our normal understanding of authority that its actions are the actions of its subjects. On the contrary, the normal understanding is that authority involves a hierarchical relationship, that it involves an imposition on the subject. The service conception explains how and when such power can be justified, at least in the sense of being for the good. The quest for a solution to the appropriation problem is perhaps best seen as an aspirational ideal: it would be good, desirable, to have the bulk of those subject to a political authority identify with the regime for which it acts. But identification should not be thought of as a condition of legitimacy.