

## Political legitimacy without a (claim-) right to rule

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## Political Legitimacy without a (Claim-) Right to Rule

**Abstract** In the contemporary philosophical literature, political legitimacy is often identified with a right to rule. However, this term is problematic. First, if we accept an interest theory of rights, it often remains unclear whose interests justify a right to rule (the 'grounds of authority' question): either the interest of the holders of this right to rule or the interests of those subject to the authority. And second, if we analyse the right to rule in terms of Wesley Hohfeld's characterisation of rights, we find disagreement among philosophers about what constitutes the conceptual core of political authority: a power-right or a claim-right to rule (the 'nature of authority question'). In this paper I show that both of these are problematic for a number of reasons. First, if we think that it is only the interests of the holders of a right to rule that justify the possession of authority, the conceptual core of authority must consist in a claim-right. However, this understanding of authority biases our thinking about legitimacy in favor of democratic exercises of power. Second, if we hold such a decisively democratic view of legitimacy, we confront an impasse with respect to addressing global collective action problems. Although it is clear that political authority is necessary or useful for solving these issues, it is doubtful that we can establish global institutions that are democratically authorized anytime soon. The paper suggests an alternative 'Power-Right to Command View' of political legitimacy that avoids the democratic bias and allows for thinking about solutions to global problems via global service authorities.

**Keywords** Authority, Legitimacy, Hohfeld, Democracy, Global Justice

This paper pursues the question: how can we best characterize the idea of political legitimacy? When we ask whether some political authority possesses legitimacy in the normative rather than the sociological sense, we want to know two interrelated things; namely, whether this political authority is permitted to create laws, authoritative directives, and rules in general, and whether the subjects of the authority have decisive moral reasons to comply with these instructions.

In the contemporary philosophical literature on this topic, political legitimacy is often identified with a ‘right to rule, where this is understood as correlated with an obligation to obey on the part of those subject to the authority’ (Raz 1985, p. 3; see also Buchanan and Keohane 2006, p. 405; and Tasioulas 201, pp. 97, 98). However, this conception of legitimacy, as it is used by most philosophers, is problematic. First, if we accept an interest theory of rights it often remains unclear whose interests justify a right to rule (the ‘grounds of authority’ question): either the interest of the right-holders or the interests of those subject to the authority. And second, if we analyse the right to rule in terms of Wesley Hohfeld’s characterisation of rights (Hohfeld 1919), we find disagreement among philosophers about what constitutes the conceptual core of political authority: a power-right or a claim-right to rule (the ‘nature of authority question’).<sup>1</sup>

Both of these are problematic for a number of reasons. First, as I explain below, our response to the former ‘grounds of authority’ question has implications for our answer to the latter ‘nature of authority’ question. If we think that it is only the interests of the right-holders of the right to rule that justify the possession of authority then the conceptual core of authority must consist in a claim-right to rule. However, as will become clear, this understanding of authority biases our thinking about legitimacy in favour of democratic exercises of power. This is because, if we think that it is the interests of the holders of a right to rule that justify authority, we cannot hold jointly the claims that

(a) The legitimate exercise of political authority rests on a right to rule,

(b) All rights are ultimately grounded in some interest of the right-holders, and that

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<sup>1</sup> I name proponents of both of these options in the next section.

- (c) There can be non-democratic political authorities that are nonetheless fully legitimate in that they are able to give decisive moral reasons for compliance to their subjects.

Second, if we hold such a decisively democratic view of political authority (which is based on the interests of the right-holders and a claim-right to rule), we confront an impasse with respect to addressing global collective action problems like climate change, poverty, the international tax competition, and regulating the global financial markets. Although it is clear that political authority is necessary (or at least useful) for solving these pressing issues it is doubtful that we can establish global institutions that are democratically authorized and therefore possess a claim-right to rule anytime soon.

Thus my aim in this paper is twofold. First, I show that interpreting political legitimacy as a claim-right to rule imposes implausibly demanding democratic requirements on the justifiability of political authority. I argue that our primary (in the sense of basic) notion of political authority rather has to be a non-democratic one. According to this alternative understanding of political legitimacy, authority (1) is based on the interests of the subjects of the authority, and (2) has as its conceptual core a Hohfeldian power-right. Second, I demonstrate that one of the advantages of a conception of political legitimacy based on a moral power to command is that it leaves more normative room to think about how to solve pressing coordination issues – in particular questions of global justice – than the claim-right to rule view.

### **A prominent idea: political legitimacy grounded in a claim-right to rule**

Philosophers typically describe the nature of political authority in terms of the effects it has on people. One of Joseph Raz's central insights into political authority is that the exercise of political authority changes (in some way) the normative situation of those subject to the authority

(Raz 1986, p. 99). A helpful way to analyse the effects of the exercise of political authority on its subjects is to consider the exercise in terms of Hohfeldian rights-incidents. According to Hohfeld, every right includes at least one legal or moral advantage (Hohfeld 1919, p. 36). Furthermore, each of these advantages correlates with a disadvantage of the person bound by that right. Within Hohfeld's scheme there are four such 'incidents':

- (1) If you possess a *claim-right*, this gives me a regarding *duty* to respect or fulfil that claim.
- (2) If you have a *permission*, then I have *no right* to hinder your exercise of this privilege.
- (3) If you possess a *power*, then I am *liable* to having my normative situation altered by you.
- (4) Finally, if you possess an *immunity*, I have a correlative *disability* in this respect.

Legitimate authority is often understood as consisting in a 'bundle' of right-incidents (see Copp 1999, p. 18). Typically, the most central incidents are identified as a moral power to alter the subjects' normative situation, and a permission to implement those changes. A further question is: why should the subjects have to comply with the instructions of the authority? Is such compliance mandatory due to the authority's claim-right to be obeyed or is compliance made necessary by the authority's exercise of a moral power that changes its subjects' normative situation?

In discussions of political legitimacy as a right to rule, many philosophers do not clearly explain the nature and the grounds of this right, nor the relation between these. Some important theorists claim that the conceptual core of legitimate authority is a moral power,<sup>2</sup> and (as will become clear throughout this paper) I do not disagree with this. However, there are others who hold that legitimacy rests on the authority possessing a claim-right to rule and to be obeyed. For instance, George Klosko writes that 'we can say that an entity that is able to claim general

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<sup>2</sup> See Applbaum (2010), Copp (1999), Perry (2013), Raz (1986, p. 24).

obligations possesses ‘authority,’ that is, a *claim-right* to the obedience of the relevant population’ (Klosko 2004, p. 21, italics added). Further, A. John Simmons argues that ‘state legitimacy [...] includes an exclusive power over subjects to impose duties and enforce them coercively, which correlates with obligations on others to refrain from these tasks. It also includes a *right*, held against subjects, to be obeyed (i.e., to have any imposed duties discharged). This latter right is the logical correlate of subjects’ political obligations’ (Simmons 2001, p. 130, italics added).<sup>3</sup> And Stephen Darwall thinks of the rights of authorities to the obedience of their subjects ‘specifically [in terms of] a ‘claim right’’ (Darwall 2010, p. 262).<sup>4</sup>

The claim-right to rule view is commonly taken to refer to the authority of democratic institutions.<sup>5</sup> The clearest account of this democratic interpretation of the claim-right to rule has been suggested by Thomas Christiano (2008) as part of his theory of democracy as the public realisation of people’s moral equality. As Christiano explains, it is generally accepted today that everyone has a justified interest in having the opportunity to participate in political decision-making processes about issues that deeply affect their lives. Normally the entity in which such decisions are publically made these days is the state. This is not to say, though, that collective decision-making has to be limited to the domestic sphere (as the example of the European Union shows) or that democratic participation should be restricted to the level of nation states. However, what is generally important for all persons is that they are not merely told what to do but that they can have a say in the determination of the public rules that regulate their lives. Thus, on the Hohfeldian model it is plausible to hold that all persons have a claim-right to

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<sup>3</sup> It seems odd to think that Simmons takes this special right held against the subjects to be another power-right instead of a claim-right.

<sup>4</sup> My thanks to Justin Tosi for his thoughts on the commitments of these theorists.

<sup>5</sup> There is also a non-democratic version of the claim-right to rule view. However, for reasons explained in footnote 7, in this paper I confine my discussion of the claim-right to rule to (and refer to this view in terms of) the democratic interpretation of this idea.

participate in political processes about momentous decisions that pertain to them. But people disagree on what the right thing to do is. Democratic states solve this problem by way of the egalitarian procedure that gives everyone equal opportunities to influence the outcome of the decision-making process. The citizens authorize a representative government to act in their name and this government therefore ‘embodies’ (Christiano 2008, p. 247) the choices of its citizens. It is ‘because all citizens have rights to an equal say and because the democratic assembly is the institutional method by which these equal political rights are exercised, [that] the democratic assembly has a right to rule’ (Christiano 2008, p. 248).

Conversely, (given everyone’s legitimate interest in participating in the collective decision-making process as well as their disagreement about what ought to be done) people’s claim-right to participation gives rise to everyone’s duty to obey the outcome of their own collective choices. This is because ‘the democratic origin of the legislation makes it such that those who disobey it treat others as inferior because democracy is the public realisation of equality [...], so individuals owe it to each other to obey it’ (Christiano 2008, p. 97). Although every person has a legitimate interest to participate in the making of collective decisions that deeply affect them it is only within a democracy that the claim-right that this interest gives rise to is respected and publically acknowledged. Consequently, it is only within democratic structures that there exists a general duty to obey the laws that reflect the choices of their morally equal authors.<sup>6</sup> The same

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<sup>6</sup> I take Christiano to be an especially clear proponent of the democratic conception of the claim-right to rule view. However, Christiano also holds that there can be other forms of justified authorities like the bureaucracy of democratic states or even hostile but justified occupational forces (Christiano 2008, p. 241). Still, for him these other forms of authority are not primary notions of authority and often seem to be justified merely by their connection to democratic forms of authority (e.g. as in the case of the bureaucracy of a democratic state). For reasons I explain in footnote 22, I do not think that Christiano argues that non-democratic authorities are legitimate without deriving their justification from another, more basic democratic authority. However, even if Christiano would want to accept the idea of independent, non-democratic authorities suggested here, it still would be the case that anyone who holds the *democratic* right-to rule view would have to deny that there can be independently legitimate non-democratic authorities.

cannot be said of non-democratic institutions since these are not a public expression of our moral equality and (thus neither) of our general duty to respect each other and our conflicting political opinions.<sup>7</sup>

### **Why the ‘right to rule view’ is problematic**

What is unfortunate about this claim-right to rule account of political legitimacy is that it biases our thinking about what kind of political institutions can be legitimate. This becomes clear when we consider that the claim-right to rule view makes it impossible for us to hold jointly three claims, all of which seem *prima facie* plausible. Thus, roughly stated, if we accept that

(a) The legitimate exercise of political authority rests on a right to rule

as well as the widely held view that

(b) All rights are ultimately grounded in some interest of the right-holders,

then we preclude the possibility that

(c) There can be non-democratic political authorities that are nonetheless fully legitimate in that they are able to give decisive moral reasons for compliance to their subjects.

As we saw, there is agreement in the literature that claim (a) is correct and we can thus accept it for the sake of the argument advanced in this paper. Further, it does not seem implausible to

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<sup>7</sup> There are also cases where someone has a claim-right to our obedience if we have consented to this person having authority over us in a certain respect. We can think of the case of a guide who agrees to lead a tourist on a tour to the top of a mostly inactive volcano on the condition that the tourist unconditionally obeys her orders that pertain to this expedition. However, in the realm of politics such non-democratic instances of a claim-right to rule are not the norm and they do not generally explain the legitimacy of authorities that rule over large numbers of people. This is why Simmons (who is a proponent of this non-democratic claim-right view) argues that it is unlikely that there are any legitimate states (see Simmons 1979).



accept that claim (b), the interest theory of rights, is correct as well.<sup>8</sup> Claim (c) is plausible for many people because (as will be explained below) also non-democratic authorities can be deemed legitimate if they serve their subjects in particularly important ways. However, if we accept the view that legitimate authority is based on a claim-right to rule and that all rights are based on the interest of the right-holder, we have to ask who those right-holders are that have a justified interest in ruling.

One group of people who do not qualify in this respect are the persons holding public offices of government. Fortunately, gone are the days when people thought that certain qualities of individual persons (such as their noble birth) naturally gave them a claim-right to hold political power and to the obedience of their subjects. It is no longer acceptable to think that our elected democratic representatives have personal interests in holding their offices in any normatively relevant sense which could justify a claim-right of theirs to rule. It is certainly the case that our legislators personally benefit from the salaries and pensions attached to their offices. They also might enjoy being able to give orders to others. But these advantages that are conferred on people that hold public positions are not the reasons why we maintain such offices in the first place. Instead, it is only individuals who have an equally justified interest in (and a claim-right to) having a say in the collective decision-making of their political community. No king, class of people, or party could, morally speaking, have a similarly justified interest in exercising political power. As a result, on the claim-right view ‘the idea of a [claim-] right to rule [...] seems to be the primary notion of legitimacy while [other accounts] are dim reflections of this primary notion’ (Christiano 2008, p. 241). Thus, to characterize legitimate authority as being based on a

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<sup>8</sup> There are of course philosophers who do not accept the interest theory such as Hillel Steiner (1998) or Leif Wenar (2005). However, given that the interest theory of rights is widely accepted I assume its correctness for the purpose for the argument made in this paper.

claim-right limits the range of possible fully justified authorities to those that are democratically authorized, which is to deny claim (c) above. This shows that our answers to the ‘grounds of authority’ question (whose interests justify authority?) and the ‘nature of authority’ question (what is the conceptual core of political authority?) are intricately linked. Further, though, the previous discussion of the democratic account of legitimacy illustrates that the ‘grounds of authority’ question is prior to the ‘nature of authority’ question: we need to know whose interests justify the possession of political authority before we can say what this right fundamentally consists in (a moral power or claim-right).

In the following sections, I will demonstrate the counter-intuitive and counter-productive conclusions that follow from the normative narrowing of legitimate authority to democratic authorities.

### **The problematic denial of binding pre-democratic political authority**

What is problematic about the thought that only democratic authorities are fully legitimate? There are at least two considerations that count against the idea that democratic authority is the primary form of political legitimacy.

The first problem is that the claim-right to rule view commits us to saying that before the founding of the first real democracy there had never been any political authority that was able to give its subjects discrete moral reasons for compliance. But if this is correct, previous authorities must have ruled on the basis of some less comprehensive, piecemeal notion of political legitimacy. As their subjects, we would have only been under a duty to follow their instructions if these reproduced independent moral obligation (see Perry 2013, p. 10). However, such duties consequently would not have depended on anything about the authority itself but entirely on the

quality of the content of the instructions (about which there will always have been disagreement). As David Hume notes, this is quite an odd thought. In his essay 'On the Original Contract' (Hume 1994) Hume aims to criticize the idea that the subjects' consent is a necessary condition for a general duty to obey political authorities. He points out that throughout human history people have been obedient to the ruling authorities. Hume thinks that it is unlikely that all of these people were mistaken to think that they ever were under a duty to comply with the orders of their rulers. Concerning the supposed necessity of consent for the legitimate exercise of power, he famously points out that

It is strange, that an act of mind, which every individual is supposed to have formed, and after he came to the use of reason too, otherwise it could have no authority; that this act, I say, should be so unknown to all of them, that, over the face of the whole earth, there scarcely remain any traces or memory of it (Hume 1994, p. 189).

From a moral perspective pre-democratic authorities surely were always liable to at least one criticism: they failed to respect the moral equality of their subjects in the political decision-making process. This, though, is not the same as the claim that such non-democratic authorities were generally unable to give their subjects decisive moral reasons for compliance because they did not possess a claim-right to be obeyed.

Thus, if we reject claim (c) we also have to accept that prior to the existence of democracy it was always morally permissible for people both to refuse to surrender their judgement to their non-democratic rulers and to treat their rulers' commands as authoritative. Such subjects could still have acted wrongly. However, the wrongness of their actions would have been due to errors

in their own judgment. They would not have been wrong merely by disobeying the instructions of their non-democratic rulers. There would have been nothing particular about the authoritative commands that gave the subjects in this pre-democratic age reasons to comply with prohibitions on murder, theft, and fraud. Of course, subjects of pre-democratic authorities too can be thought to have authority-independent moral obligations to refrain from such acts. Still, they would have been correct to claim that it was up to them to determine how to best comply with moral duties that applied to them: on the claim-right to rule view, authoritative directives of non-democratic authorities that disallow such offenses cannot be morally binding – which is a very strong claim. So the first problem of the right to rule notion of political legitimacy is that a rejection of claim (c) commits us to the thought that fully legitimate and binding authority did not exist prior to the establishment of the first real democracy. Some readers might of course think that the view that any pre-democratic authority was ever legitimate is unacceptable. They might think that whatever benefits pre-democratic regimes provided for their subjects cannot outweigh the facts that such regimes were normally oppressive, disrespected the moral equality of persons, and were based on unverifiable justifications and brute force.

### **The service conception of authority**

There is, however, another problem that renders implausible the view that the only fully legitimate authorities are democratic ones that possess a claim-right to be obeyed. The problem is that the claim-right to rule view denies the fundamental importance of the existence of authority or, put another way: the crucial value that authorities can have as servants of their subjects.

We approach the basic value of political authority when we consider that there are other accounts of legitimacy that are highly plausible but that do not include democratic authorisation as a necessary condition. These alternative characterisations of legitimate authority ground the justification of the exercise of political power not in the interests of the right-holders of a right to rule but in the *interests of those subject to an authority* and thus provide a distinctive answer to the ‘grounds of authority’ question.<sup>9</sup> One such conception of legitimacy is Raz’s ‘service conception’ of political authority that is not based on a claim-right to rule but has as its conceptual core a moral power to command those subject to the authority (Raz 1986, p. 24). Raz’s theory of legitimate authority has been influential and is based on the *normal justification thesis* (hereafter: NJT):

the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly (Raz 1986, p. 53).

This NJT, of course, does not sit well with the claim-right to rule view since in justifying authority it makes no reference to the interests of right-holders. The thesis does not primarily focus on the subjects’ interest in having their moral equality respected and publicly realized, but on the subjects’ morally-relevant interests in general, and the value that political authorities can

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<sup>9</sup> This is true irrespectively whether we think of interests as being necessary or merely sufficient for the justification of rights. I thank Andres Moles for helpful discussion on this point.

have through facilitating these interests.<sup>10</sup> As an example we can think of a situation in which I am a father and suffer from a dangerous disease. However, the physician who is the foremost expert in treating this disease turns out to prioritize some of his other patients to whom he has close personal ties. Now, it is obvious that such a physician is liable to criticism for his biased way of treating his patients unequally. Nonetheless, if he is the best hope I have to be saved from death (and he treats me in the medically optimal way) I have very important moral reasons to swallow my sense of indignation and to submit myself to his (biased) care so that I survive and can keep taking care of my child.

According to Raz, authority works by giving us ‘content-independent reasons’ (Raz 1986, p. 35) for action. This means that the fact that the authority is the source of an instruction is a reason to comply with it irrespectively of the content of that order. We might, for instance, think that we have reasons to hide some of our money from the tax office to save it for the education of our children. However, since it is a legitimate government that instructs us to pay taxes, we ought to take the state’s instruction as giving us a sound reason to pay, and to refrain from acting on the countervailing consideration. Raz summarizes this effect of the exercise of authority in his *pre-emption thesis*. This holds that ‘the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them’ (Raz 1986, p. 47). Raz thinks

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<sup>10</sup> Jonathan Quong argues that the NJT generates problematically illiberal results since it seems to allow for someone to have authority over another person with respect to anything if it is true that she can help the other person to better act on the reasons that apply to that person. Thus, if I have the non-moral goal to go on a holiday trip to country X and there is a travel agency that can optimally arrange this trip for me it appears that Raz’s thesis gives this agency authority over me with respect to my planning of the trip. Quong points out that, to avoid such problematic conclusions, the NJT has to be restricted to cases in which a political authority can help us better to comply with moral reasons and duties that independently apply to us (see Quong 2011, chapter 4). However, there is evidence that Raz indeed thinks that in the case of political authority the NJT is in fact restricted to moral reasons that apply to persons when he says that ‘public authority is ultimately based on the moral duty that which individuals owe to their fellow humans’ (Raz 1986, p. 72).

that in this way authoritative instructions ought to replace our own reasoning about an issue. A simultaneous, secondary feature of content-independent reasons is that they act as 'exclusionary reason[s]' (Raz 1990, p. 39), which is to say that they tell us to not act on other reasons we might have. As the NJT explains, the exclusionary and content-independent force of authoritative directives is ultimately justified by the fact that conformity with these instructions enables us to do better what we have reasons to do anyway.

### **The fundamental instrumental value of political authorities' moral power**

What is crucial about Raz's account is that it shows that an authority is usually justified in altering or creating new reasons for action for its subjects and to forbid them to act on their own evaluation of the reasons involved because these instructions benefit the subjects in some way.

According to the service conception of authority, the exercise of political power is considered legitimate since it helps to realize some of the most basic interests of those subject to the authority. Political authorities can be legitimate *if and because* they solve important problems for us and thereby enable our collective social practices. Hume agrees with this explanation when saying: 'if the reason be asked of that obedience, which we are bound to pay to government, I readily answer, *because society could not otherwise subsist*' (Hume 1994, p. 197). Since maintaining our social practices is a fundamental interest we all share, political authorities that help us in performing these tasks are of fundamental instrumental value. Without their coordinating services, complex social enterprises like human societies would not be possible. This enabling function of political authority also for Raz constitutes its primary justification. To him 'a major, if not the main, factor in establishing the legitimacy of political authorities is their ability to secure coordination' (Raz 2006, p. 1031).

The fundamental value that political authorities can have as the servants of their subjects is something that the claim-right to rule view ignores. As we saw, according to the latter, political authorities are only justifiable if they also publically realize the moral equality of their subjects. However, the service conception takes its appeal from the fact that people have other, more basic interests that are important enough to justify political authority – even if this authority is not democratic. It is this basic and enabling role that political authority can have that explains why the subjects have decisive moral reasons to comply with the commands of the authority that operates by exercising a moral power. There are a number of salient general human interests (other than the interest in participating in the collective decision-making process) that can play this justificatory role: our interest in coordinating our collective practices (which sometimes means having an interest in having *a* rule we can follow rather than having any particular rule<sup>11</sup>); our interest in having what we need to survive; our interest in being able to fulfil our duties toward others. Thus, non-democratic institutions are legitimate *not* because they help their subjects exercise their (interest in and) claim-right to participate in public decision-making; they are legitimate because they enable them to realize some of their *other* morally important interests.

Throughout this paper I have avoided the claim that non-democratic service authorities can generate a general duty to obey for their subjects. I have done so partly because I do not think that generating such a duty is necessary for having authority and partly because adequately defending this alternative position is the topic of (at least) another paper. However, I would like to hint briefly at why I think a general duty of obedience is not a necessary component of legitimate authority. Although many philosophers hold that authority consists centrally in

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<sup>11</sup> This non-epistemic explanation of political legitimacy is indebted to Jerry Gaus's idea of political authorities as umpires (Gaus 1996, pp. 188-191).



exercising a moral power, few of them address the problem that within the Hohfeldian scheme a *power* does not correlate with a duty but with a *liability* (for an exception see Perry 2013). Raz certainly thinks a legitimate authority (that he thinks is based on a power) must be able to generate duties for its subjects (see Raz 1994, p. 325). However, he also doubts that even democratic states can create a general duty to obey (Raz 1986, p. 104). Perry (2013), on the other hand, holds that a power-based authority can only function if we have a reason to obey the authority in the first place.

Others (see Applbaum 2010; Enoch 2012, pp. 23-28) deny that establishing such a general duty of compliance is a necessary condition for being a legitimate authority or that it is a crucial aspect of the operation of authority. Instead, what is indispensable for being an authority and for giving the subjects decisive moral reasons for compliance is being able to give exclusionary reasons for action (that is to say: reasons to consider only those reasons given by the authority). And according to the NJT, service authorities can give their subjects exclusionary reasons for action insofar as they can enable their subjects to better comply with moral reasons that independently apply to them. Among these independent moral reasons are the subjects' aforementioned interests (e.g. in coordination). Moral duties might figure amongst the interests of subjects that legitimize authority. But that does not mean that an authority has to generate itself a duty to obey in order to help its subjects to better realize their interests and to fulfil their independent moral duties. Thus, also a non-democratic service authority can give such exclusionary reasons by exercising its power to change its subjects' normative situation.<sup>12</sup> But in contrast to views that take a claim-right to obedience to be a necessary requirement of legitimate

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<sup>12</sup> For these reasons, I think that those who advance the so-called 'directionality thesis' (see e.g. Darwall 2010) are mistaken in two respects: they are wrong to think that a legitimate authority-holder must herself possess a claim-right to being obeyed; and they are mistaken to think that legitimate authority requires a claim-right to be obeyed in the first place.

authority, on the power-based view subjects do not violate a duty by disregarding the exclusionary reasons their authority gives them. Instead, by disrespecting these reasons they have made themselves liable to having their normative situation altered, e.g. by having penalties imposed on them (see Applbaum 2010, pp. 230-232).

In virtue of offering a particular response to the ‘grounds of authority’ question (namely: that it is the interests of the subjects<sup>13</sup> that justify the authority’s power), the service conception therefore also provides a different explanation of the ‘nature of authority’ question (viz. its conceptual core consists in the exercise of a moral power to command, not a claim-right to be obeyed). Since we cannot survive and treat others justly without the coordinative capacities of political authorities we have thus decisive moral reasons to comply with the authoritative instructions that generate such coordination. It is therefore important to note that it is the subjects’ legitimate fundamental interests (that apply to them independently of the existence of authority) that ultimately generate these reasons to comply with the instructions of an authority that can help the subjects to discharge their duties and to realize their interests. Raz’s service conception and the NJT thus provide a substantive account of how political power can be legitimate, a ‘Power-Right to Command View’,<sup>14</sup> which is less restrictive than the democratic view of legitimacy in that it does not focus on (or take as a necessary requirement of legitimacy the fulfilment of) the subjects’ interest in having their moral equality publically respected. The service conception, in other words, allows us to conjointly hold claims (a), (b), and (c) and thus to avoid the problematic conclusions outlined in this section and the previous one.

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<sup>13</sup> Other than their interest in having their moral equality respected in collective decision-making.

<sup>14</sup> I choose this formulation to highlight the fact that service authorities do not possess a *right* to rule of the kind that is based on the interests of the right-holders (which would have to be a claim-right).

These points lead to the conclusion that it is the ‘Power-Right to Command View’ (and not the democratic one) that constitutes the primary (in the sense of basic) notion of political authority. Democratic institutions (and the right to rule), accordingly, are but special cases of this more basic service conception as they focus on actualizing a particular interest of people: on respecting their moral equality in collective decision-making. Democratic institutions might constitute the fullest realisation of the idea of legitimate authority. What the service conception denies is that they are the only realisation of this concept.<sup>15</sup>

### **The power-based view of legitimacy and the value of democracy**

Democracy is – without doubt – of special value. Thus, the question arises: given that the service view of authority denies that democratic authorisation is generally a necessary condition of legitimacy, does it invite colonialism or domination – or can it account for the importance that most people attribute to democracy?<sup>16</sup>

There has been considerable debate about this question. Some theorists argue that democratic authority has certain epistemic advantages over other forms of authority. According to David Estlund (2008) what constitutes part of the value of democratic procedures is that they tend to produce better decisions: the larger the number of voters, the more likely it is that they make the right decision in cases where there is a right and a wrong alternative. Hélène Landemore (2012), as well, argues that democratic procedures generate better political outcomes. She points at empirical studies that suggest that it is the diversity of views among voters that leads to better

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<sup>15</sup> The difference between the democratic claim-right view and the service conception of authority is thus not a conceptual but a normative one. They disagree on which conception of authority is the normatively more fundamental one.

<sup>16</sup> In this paper, I am not trying to answer the question whether democracy has intrinsic or instrumental value. My explanation of the way in which the service view of authority can relate to the importance of democracy is not committed to either of these ideas.

decisions. These epistemic accounts align with the NJT in that they make an instrumental case for democracy: what (partly) justifies democratic authorities is that they provide the service of facilitating better decisions.

However, others deny that instrumental justifications can capture the real value of democracy. According to Scott Hershovitz (2003), for example, the NJT fails as an account of legitimate authority since it cannot account for the fact that citizens of democratic states treat each other as moral equals when making collective decision. Thus, he holds, the service conception misses the point that ‘making decisions together can be more important than getting them right’ (Hershovitz 2003, p. 218).

Another group of philosophers, though, points out that with respect to democratic procedures the NJT can be seen to be at work in a non-instrumental way. Christiano, for instance, acknowledges that

Raz’s normal justification thesis could conceivably accommodate [the] conception of democratic authority [as a unique public realisation of equality in collective decision-making]. For one might say that one acts better in accordance with the principle of equality by deferring to the decision of the democratic assembly than by trying to advance equality on one’s own (Christiano 2008, p. 252).

And according to Daniel Viehoff (2011), democracy has special value as a unique arbitration procedure. Given that we often disagree on what is the right thing to do, democratic procedures allow us to arrive at collective decisions while respecting each other’s differing opinions and (thus) moral equality. What both Christiano’s and Viehoff’s arguments emphasize is that the

service conception can account for the particular non-instrumental procedural value of democracy by explaining how this kind of governance helps the citizens to realize and fulfil one of their particularly important moral interests (to have their moral equality respected in the collective decision-making process) and duties (to respect the outcome of that process).

Thus, a Power-Right to Command View based on the service conception does not have to deny the validity of the claim that (a) there are democratic authorities that possess the right to rule. Neither do democratic theorists have to give up on their claim that democratic authorities have particular value when they accept the Power-Right to Command View. The only thing the latter denies is that democratic authority is the primary notion (and always a necessary condition) of political legitimacy and the main standard against which all other forms of justified authority have to be measured. Instead, according to the Power-Right to Command View, what is at the centre of political legitimacy is a moral power (answering the ‘nature of authority’ question) that is based on fulfilling the fundamental interests and duties of those subject to the authority (answering the ‘grounds of authority’ question). Its point of departure is *not* the interests of the possible claim-right to rule holders. Instead, this view holds that – in order for democratic authorisation to be a necessary condition of legitimate authority – we need to refer to further normatively relevant factors. These further aspects will often depend on the context we are considering.<sup>17</sup> In this sense, Allen Buchanan argues that only ‘where democratic authorisation is possible (and can be pursued without excessive risk to basic rights) it is necessary for political legitimacy’ (Buchanan 2004, p. 259).<sup>18</sup> However, where such democratic procedures are not

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<sup>17</sup> Raz (2006, p. 1031) agrees with this conditional relevance of democratic authorisation.

<sup>18</sup> This is, of course, not a minor point. It is to say: *whenever* democratic authorisation is possible it is a necessary condition of political legitimacy. And surely also the subjects of non-democratic authorities have an interest in participating in the political decisions that deeply affect them. However, the point I make here is that in situations in which this interest cannot be realized authorities can be morally justified without respecting this interest in participation in political decision-making if they provide other indispensable services for their subjects.

possible, but morally important tasks have to be performed, non-democratic authorities, too, can permissibly implement rules and obligate their subjects.

### **The importance of the ‘power-right to command’ view for global justice**

However, there are other virtues to construing the idea of political legitimacy in terms of the exercise of a moral power besides its greater theoretical appeal. The short remainder of this essay is devoted to showing that the characterisation of justified authority as resting on a Power-Right to Command View can be of considerable advantage when we try to think about how to address some very pressing practical moral problems. One such prominent and urgent issue regards the question of how we ought to react to the poverty and the relative detrimental inequalities that exist throughout our world. As we will see, this problem presents a case in which the interpretation of legitimate authority as a power-right to impose and alter duties has some real bite.

If we would accept the view that legitimate authority is based on claim-right to rule, the question of whether the poverty-related suffering in the world generates transnational distributive obligations poses a tremendous difficulty. Some philosophers, for instance, reject the very idea of global distributive justice because they think that the concept of distributive justice presupposes the existence of common political authorities that act in the name of their subjects. To these philosophers, the elimination of harmful interpersonal disparities is generally not independent of having to justify the use of coercive political institutions. Because such institutions enforce rules on their subjects, the price they have to pay for the moral power to coerce is to treat the subjects with equal concern – which must include giving the subjects a democratic say in the collective decision-making process. But these philosophers often also hold

that we are under no obligation to establish new joint authorities with people from other countries.<sup>19</sup> Currently, there are no democratic international institutions that act in the name of all those they coerce. Supporters of the claim-right to rule view thus have to conclude that only voluntarily accepted transnational obligations and humanitarian aid can count as morally justifiable attempts to fight poverty-related suffering. But if the legitimacy of international authorities depends on democratic authorisation and global democracy is non-existent and not a mandatory objective, these philosophers might be right in claiming that there are no sound principles of global distributive justice.

Advocates of the claim-right to rule view encounter another difficulty when addressing the problem of existing harmful global inequalities. This difficulty is caused by some democratic theorists' rejection of the very idea of global democracy. For Christiano (2010), for instance, global democracy is not only non-existent at present but also normatively undesirable. He argues that the current geo-political and economic situation does not warrant the normative conditions for establishing global democratic institutions. For instance, not all human beings currently have equal stakes in those actual international practices that would require authoritative regulation (Christiano 2010, pp. 132, 133). But democracy is valuable because

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<sup>19</sup> This restrictive view is often attributed to Thomas Nagel (2005). However, it is possible to interpret Nagel's argument in more charitable way. Nagel uses the term 'justice' in an idiosyncratic way to refer only to egalitarian justice. Thus, on the charitable view of Nagel, his restriction of duties of distributive justice to associations that are ruled by one and the same authority can be read as merely limiting the concern for equality to these associative contexts. This would leave open the possibility that Nagel endorses a sufficiency principle of global distributive justice and only rejects the idea of global egalitarian justice. It could then be the case that common non-democratic international institutions can give rise to non-egalitarian global distributive duties of justice. But even on the charitable view, two of Nagel's claims cause him to conclude that, due to the way our world is right now, questions of distributive justice do not arise at all in the global sphere. This is because he thinks that common authorities are a necessary condition for the enforcement of any duties of distributive justice, and because he also thinks that current democratic states have no obligations to establish common international authorities (Nagel 2005, pp. 121, 140). Thus, even on the charitable interpretation, Nagel's argument generates the following problem: while non-egalitarian duties of global distributive justice might be conceivable as a result of common non-democratic global institutions, the possibility of egalitarian duties of global distributive justice depends on the existence of a common democratic authority.

(and insofar as) it allows people, whose actions have profound effects on each other's lives, to equally influence the determination of the public rules they all live by. There is little disagreement among political philosophers that the deep level of interdependency that we find in nation states is not reached in the global sphere. It would therefore seem unjustifiable for us to establish a global democracy that would give equal decision-making power to people with unequal stakes in political decisions. The stakes people have in decisions on international rules are not even roughly equal, unlike the stakes citizens of one country have in decisions on national legislation.<sup>20</sup>

Many democratic theorists believe that the democratic decision-making model is the best one available to ensure the accountability of political authorities. However, if democratic authorisation is a necessary condition of legitimacy, we face a dilemma. On the one hand, we can be thought to have duties to work toward the elimination of gross and extremely harmful global inequalities.<sup>21</sup> On the other hand, though, internationally the normative conditions of the possibility of democratic global authority are not met. Thus, Christiano (2012, p. 92) thinks that with respect to fighting global poverty and working toward a more just world we are confronted with a deliberative impasse: although we require international institutions to combat the problem caused by global poverty, such institutions cannot be legitimate because they cannot be democratic.<sup>22</sup> One problematic implication of the claim-right to rule account of political

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<sup>20</sup> It is of course a further question whether these unequal stakes are not themselves the result of an objectionable international order and how we ought to weigh different kinds of stakes against each other.

<sup>21</sup> The same thought seems applicable to other global collective action problems such as climate change, the international tax competition, and the regulation of the international financial markets.

<sup>22</sup> I take it the fact that Christiano thinks of this situation as an 'impasse' shows that he does not accept claim (c) that non-democratic authorities can be democratic on their own without some grounding in another democratic institution. If he would accept (c) he would not have to think of the current global situation as an impasse: if we need authoritative global coordination and decision-making, but no global democratic institutions are possible or desirable, we could (as the argument in this paper suggests) opt for creating non-democratic global service institutions to help us fulfill very salient moral duties and realize vital human interests. However, Christiano does not contemplate this option.



legitimacy is therefore that fighting global poverty must be left to voluntary agreements among states. All we can do to eliminate existing detrimental inequalities is to hope for the good will of the rich nations in this world. Unfortunately, a look into the recent history shows that in this case we should not be too optimistic.

So how exactly does the Power-Right to Command View help us to better engage with questions of global justice? It does so by morally allowing for non-democratic global service authorities whose job it is to enforce salient duties of justice in the international sphere. Such institutions would not have to amount to the creation of a world state. They could instead supplement the existing authority of states where the latters' coordinating and enforcing abilities run out (see e.g. Buchanan 2011). Further, the fact that we do not internationally agree about what we owe to each other within and across our existing states is not an insurmountable problem for the Power-Right to Command View. Rather, according to the latter, global governance institutions could enforce relatively uncontroversial general duties such as bans on aggressive wars, weapons trading, unfair terms and conditions of trade, the persecution of war criminals, and the exclusion of people from making use of a share of the world's resources etc. The point here is not to argue for a detailed account of what such institutions would have to look like or what duties we have globally. What the present discussion aims to show is that the Power-Right to Command View (which rests on the exercise of moral powers and focuses on the *interests of subjects* instead of right-holders of a right to rule and thus provides distinct answers to the 'grounds of authority' and 'nature of authority' questions) can help us better to address pressing problems of our time in ways that are precluded by other theories of political legitimacy – such as the claim-right to rule view. The non-democratic global service institutions we would thus create do not have to be considered 'dim reflections of' a primary democratic

notion of authority. They would instead be legitimate as prime instances of the basic service notion of political authority. The Power-Right to Command View, therefore, is not only more coherent with an important set of theoretical convictions. At the level of application it also provides us with a more helpful account of justified political authority than those views that focus on a claim-right to rule.

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