2018

An Act-Focused Theory Of Political Legitimacy

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Abstract
There is a moral presumption against the possession or exercise of coercive power, but political power is coercive. If we think that political power is sometimes morally justified, then given the moral presumption against coercive power, we need a theory as to when political power is morally justified and what justifies it. That is, we need a theory of political legitimacy. This dissertation develops and defends a novel theory of legitimacy, the Act-Focused Consequentialist Theory of Legitimacy.

This theory departs in significant respects from existing theories. In Part One of the dissertation, “Four Theses on Legitimacy,” I argue that these departures are well-motivated given the shortcomings of these existing theories. I object that these theories are mistaken to attempt to ground the authority of the State or a moral obligation to obey the law because it is the law. Such attempts are mistaken because authority and legitimacy ought to be addressed separately. I also object that existing theories of legitimacy are radically incomplete insofar as they focus almost exclusively on the legitimacy of ‘the State’ at the expense of the legitimacy of particular actions by state actors. Furthermore, I articulate significant, enduring problems for theories of legitimacy that claim it is the ‘will of the people’ or the ‘consent of the governed’ (in some sense) that legitimizes political power. In light of these objections, I argue in defense of a new approach to theorizing about legitimacy, an approach that ignores questions of authority, that primarily focuses on the legitimacy of particular actions rather than the legitimacy of the State, and that eschews grounding legitimacy in ‘the will of citizens’ in some sense.

In Part Two, “An Act-Focused Consequentialist Theory of Legitimacy,” I develop and defend a theory that embodies this novel approach. I argue that what legitimates particular actions—and, ultimately, the State—is the production of good consequences. I argue that the good consequence to be produced is Functional Autonomy, the ability to successfully act on one’s authentic values, at least up to some reasonable threshold. To maximize overall Functional Autonomy, I argue that there ought to be two divisions of labor. First, there ought to be an institutional division of labor, according to which different institutions perform tasks integral to the production of Functional Autonomy. Second, there ought to be a role-based division of labor, a division of labor within those institutions according to which different state actors deliberate and act in specialized ways. Deliberating and acting in specialized ways amounts to deliberating and acting on role-based reasons.

On this theory, a particular action by a state actor is legitimate if and only if the role-based reasons to perform the action are not outweighed by role-independent moral reasons. I propose that there is very strong moral reason to maximize Functional Autonomy, and so state actors will be morally justified in exercising coercive power so long as their actions are appropriately contributing to their institutional tasks, which in turn are producing Functional Autonomy. As for macro legitimacy, states enjoy degrees of legitimacy, where the degree of legitimacy is determined by how much Functional Autonomy a state produces. A recurring theme in this second part of the dissertation is that various problems that arise for consequentialism as a theory of interpersonal morality do not arise in the context of an act-focused theory of political legitimacy.
Graduate Group
Philosophy

First Advisor
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Keywords
Authority, Consequentialism, Legitimacy, Philosophy of Law, Political Philosophy

Subject Categories
Philosophy

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AN ACT-FOCUSED THEORY OF POLITICAL LEGITIMACY

Justin Bernstein

A DISSERTATION

in

Philosophy

Presented to the Faculties of the University of Pennsylvania

in

Partial Fulfillment of the Requirements for the

Degree of Doctor of Philosophy

2018

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AN ACT-FOCUSED THEORY OF POLITICAL LEGITIMACY

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For my parents, Natalie Bond Bernstein and Matthew H. Bernstein
Unsurprisingly, various faculty members at different institutions have played integral roles in enabling me to write this dissertation. After writing my undergraduate thesis on communitarian approaches to ethics under the close supervision of Michael McCarthy at Vassar College, I knew I wanted to study philosophy but was unsure about where and how to do so. I thank Jeffrey Seidman for encouraging me to pursue an MA at the University of Wisconsin at Milwaukee rather than rushing into a PhD program. My time at Milwaukee helped me to become a better-rounded philosopher with a clearer sense of the profession and different philosophical methodologies. It also provided me with the opportunity to work with some excellent philosophers: Carla Bagnoli, Bill Bristow, Luca Ferrero, Blain Neufeld, Julius Sensat, and Andrea Westlund. I am grateful to these individuals who devoted quite considerable time and energy to training me.

Michael Weisberg has been supportive of me since I arrived at Penn. I appreciate his solicitousness and ongoing interest in my professional success, first as grad chair and later as department chair. Karen Detlefsen deserves my thanks for working with me in developing my pedagogy and for facilitating my opportunity to teach philosophy to high school students through Philly Futures. More generally, I credit Karen with fostering the teaching-oriented ethos of grads at Penn.

In his course, “Political Authority and Political Obligation,” Stephen Perry provided a lucid and comprehensive introduction to various conceptual issues that I address in the first part of my dissertation. His work on the subject and his feedback on my written work since that course have also been quite helpful. Conversations with Rob Hughes and Carlos
Pereira di Salvo have supplied me with much insight into many various philosophical issues—especially concerning Kantian approaches to political philosophy. Brian Berkey has read much of my work, talked through various philosophical problems, and given excellent advice about the profession. I also appreciate Brian’s friendship and generosity.

Daniel J. Singer provided thorough and perceptive comments on various papers that aided me in clarifying and better motivating my work, and I am grateful to him for our many illuminating conversations concerning consequentialism and meta-normative questions. Dan also deserves a shout out for being an especially emotionally invested, ardent supporter of Penn graduate students. His extensive assistance with job applications, sincerity, and genuine openness to feedback have all meant a great deal to me.

Errol Lord joined my committee during my sixth year. One of my biggest regrets about my time at Penn is that I waited as long as I did to ask Errol to join my committee—although he also generously provided insightful comments on my work before he joined. Errol possesses an uncanny ability to clearly articulate conceptual space and the structure of arguments—even when they are buried in opaque writing—and the problems with that conceptual space or those arguments. Errol shared this talent with me during many meetings, especially during my sixth year. As a result, I gained a much better sense of my view, and various dialectics in this dissertation became more perspicuous and compelling. In addition to his professionalism and supererogatory aid as a committee member, I also appreciate Errol’s encouragement and advice, especially during times when I was worried that this project would not coalesce.
Kok-Chor Tan has been an influential mentor since I arrived at Penn. KC has dedicated hours to helping me to better frame my work and to limit the scope of my arguments. He often made a compelling case for the merits of theories of political morality that drew on Rousseau or Kant, and our spirited debates about political obligation have been quite useful. Moreover, when providing feedback and pushing me when engaging with my work, KC maintained his rare humility and intellectual generosity. (I have come to understand that when KC says, in all sincerity, “It is really just a quibble I’m raising,” many other philosophers would say, in all sincerity, “I’m raising a devastating objection.”) In addition to working with me on this dissertation, KC taught me a great deal about political philosophy, both when I served as his TA for The Social Contract and when I audited his course during my second year. Finally, I owe KC my thanks for his help with strategizing about the job market and the many letters he has written on my behalf.

I first met Samuel Freeman when he came to give a talk at the University of Wisconsin at Milwaukee while I was an MA student there. During that talk and the reception, Samuel displayed his characteristic unpretentiousness, knack for humorous quips and anecdotes, expansive knowledge of the history of philosophy and political economy, and ability to precisely and perceptively delineate the implications of and problems for different normative frameworks. Samuel has been generous in sharing all of these gifts with me over the past seven years—in individual meetings over lunch, in written comments, and in seminars. He has worked closely with me in developing and eventually publishing papers that addressed issues associated with liberalism and distributive justice, and he consistently pushed me to situate my view vis-à-vis other moral and political philosophers, especially those in the ‘grand tradition.’ When I came to Penn, I thought I might work on topics
concerning distributive justice. While this dissertation does not focus on distributive justice, engaging with Samuel and his work reminds me why I was so drawn to such debates and liberal egalitarianism in the first place. In the future, I hope to spend more time with Samuel and continue taking my annual selfie with his portrait of John Rawls.

I owe my most significant intellectual debt to my dissertation supervisor, Alexander Guerrero. I could not have asked for a better philosophical role model than Alex. In his work, Alex creatively addresses practically pressing, enduring philosophical problems with formidable intellectual courage. Moreover, he does this with an (impressive and intimidating) ability to integrate work from a variety of subfields in philosophy and other disciplines. When it came to engaging with my research, Alex inspired, gestured towards, or flat out gave me many of the best ideas in this dissertation. He consistently and easily grasped a big, ambitious, and complicated picture that I was sketching, even when it was vaguely expressed rather than supported with concise, logically valid arguments. I would leave almost every one of our meetings—whether in Philadelphia, in Princeton, or over Skype—energized and excited about new ways in which I could clarify or develop my work. In addition to his intellectual gifts, I have been the beneficiary of Alex’s sensitivity, humility, encouragement, advice, kindness, and advocacy. I consider myself profoundly fortunate insofar as my time at Penn overlapped with his and because he agreed to continue to supervise my dissertation after he departed. And I am quite honored and proud to be his first advisee.

When deciding between PhD programs, one major attraction of Penn was its large group of talented graduate students who worked on political and legal philosophy. Over the past several years, I have collaborated with other grads interested in political and legal
philosophy by participating in reading groups, swapping papers, or talking shop over beers. I cannot give all of these grads their due here, but I owe some of them special mention.

Chris Melenovsky was the first person I met when visiting Penn. During our first discussion about Kantian constructivism and in many discussions since then, his precision, keen sense of the relevant problems for normative theories, and his tendency to press me to defend some of my less well-supported assertions have all proved invaluable. I am grateful to Chris for his feedback on this entire dissertation, various other papers, and his efforts when we co-authored a paper. In addition to our intellectual friendship, Chris has also been fiercely loyal, kind, good-natured when I do my impression of him to his face, and a reliable source of good advice.

I also met Doug Weck during my initial visit to Penn. In that first meeting and since then I have benefited Doug’s clear thinking, his ability to raise powerful objections, his insistence on connecting political or legal philosophy to actual institutions, and his kindness. (For an example of his kindness, a few weeks after our first meeting, he sent me an unsolicited email to congratulate me when I got off Penn’s waitlist and decided to accept Penn’s offer.) This dissertation is decidedly better due to Doug’s willingness to carefully read and provide insightful comments on hundreds of pages of my very unpolished writing. Having such an intelligent, perceptive, and thoroughly decent person in my corner since I arrived at Penn—really, since before I arrived at Penn—has made my time here much less daunting than it otherwise would have been.

Since my second year at Penn, I have benefited from Daniel Fryer’s honesty, loyalty, optimism, our spirited discussions, and paper swaps on a wide variety of topics. Daniel’s
knowledge of issues in political philosophy, the philosophy of race, and the law has contributed to the development of my views on various issues and my understanding of the field. Daniel has also consistently inspired me with his enthusiasm for philosophy, his (somewhat intimidating) work ethic, and his work outside of philosophy. I appreciate Daniel’s friendship, his tendency to encourage me to stay the course when I feel overwhelmed by the prospects of a career in philosophy, and his insistence that I stick up for arguments I am tempted to abandon.

Pierce Randall joined the department during my third year here. Since then I have been a beneficiary of his genuine passion for engaging in cooperative inquiry and his extensive knowledge of philosophy, politics, and economics. Our conversations always leave me thinking about philosophical problems in new ways, and I admire Pierce’s ability to take up various philosophical positions and sympathetically argue from them. I am grateful to Pierce for his willingness to talk philosophy whenever I have wanted to—and sometimes when I didn’t particularly want to but needed to—his thoughtfulness, his integrity, his wry wit, and for the many hours he has devoted to providing me with comprehensive feedback on my work.

I am also grateful to Stephanie Wesson and Mike Gadomski who, despite the stresses of being in the second semester of their first year of graduate school, provided me with helpful feedback on the majority of this dissertation.

It is not merely the previously mentioned graduate students that have made my time at Penn philosophy so fulfilling; I have been the beneficiary of close intellectual and personal friendships with many others in the department. I will forego writing gushing paragraphs
about each of the following individuals—gushing paragraphs that would be entirely warranted—and instead just list them: Ben Baker, Marie Barnett, Devin Curry, Louise Daoust, Lindsey Fiorelli, Nabeel Hamid, Rob Hoffman, Karen Kovaka, Raffi Krut-Landau, Dylan Manson, Eduardo Martinez, Emily Parke, Hal Parker, Raj Patel, Brian Reese, Carlos Santana, Jordan Taylor, and Rob Willison. Each of these individuals contributed to my philosophical education, and each has spent time thinking with me about the issues in this dissertation. More importantly, each of these friends has taught me a great deal about how to live well and played an integral role in making the last seven years the happiest of my life.

I also owe thanks to friends outside of Penn Philosophy who were supportive of me during my time as a graduate student. Akshay Aiyer, Wes Anderson, Cory Davia, Rebecca DiBennardo, Emmy Ganos, Thomas Ganos, Ben Helmick, Andrew Kalaidjian, Amandeep Singh Kalsi, Greg Kantrowitz, Michael Kennett, Nick Lehman, Daniel Gray Longino, Ekow Pierre, Gayatri Shetty, Alex Snow, Megan Stern, Katie van Syckle, and Joe White all deserve (and have!) my profound gratitude. These friends encouraged, nudged, or appropriately chastised me to work towards becoming a better-rounded person, kept me grounded, helped me to have faith in myself when I was having doubts, and brought me joy.

Cecilia Tang has made me happier than I knew I could be. I hope that she will be willing to continue to make me happy for a very long time to come. I thank her for being patient and empathetic, especially during times of considerable uncertainty about my career and the last somewhat frenzied months devoted to completing this dissertation.
My brother, Adam, has provided me with friendship, words of encouragement, sympathetic listening, advice, and toleration of my quirks for a very long time. I am grateful for his patience, his kindness, and his fun visits to Philly.

Finally, my parents, Natalie and Matthew Bernstein, have been absurdly emotionally supportive as I have pursued this career path. They’ve helped me to problem-solve at each juncture, to keep perspective in the face of setbacks, and they’ve sympathetically listened to me as I complained or despaired. Any attempt here to adequately articulate my debts and gratitude to them would inevitably fall short. This dissertation is dedicated to them.
ABSTRACT

AN ACT-FOCUSED THEORY OF POLITICAL LEGITIMACY

Justin Bernstein

Samuel Freeman

There is a moral presumption against the possession or exercise of coercive power, but political power is coercive. If we think that political power is sometimes morally justified, then, given the moral presumption against coercive power, we need a theory as to when political power is morally justified and what justifies it. That is, we need a theory of political legitimacy. This dissertation develops and defends a novel theory of legitimacy, the Act-Focused Consequentialist Theory of Legitimacy.

This theory departs in significant respects from existing theories. In Part One of the dissertation, “Four Theses on Legitimacy,” I argue that these departures are well-motivated given the shortcomings of these existing theories. I object that these theories are mistaken to attempt to ground the authority of the State or a moral obligation to obey the law because it is the law. Such attempts are mistaken because authority and legitimacy ought to be addressed separately. I also object that existing theories of legitimacy are radically incomplete insofar as they focus almost exclusively on the legitimacy of ‘the State’ at the expense of the legitimacy of particular actions by state actors. Furthermore, I articulate significant, enduring problems for theories of legitimacy that claim it is the ‘will of the people’ or the ‘consent of the governed’ (in some sense) that legitimates political power. In light of these objections, I argue in defense of a new approach to theorizing about legitimacy, an approach that ignores questions of authority, that primarily focuses on the legitimacy of particular actions rather
than the legitimacy of the State, and that eschews grounding legitimacy in ‘the will of citizens’ in some sense.

In Part Two, “An Act-Focused Consequentialist Theory of Legitimacy,” I develop and defend a theory that embodies this novel approach. I argue that what legitimates particular actions—and, ultimately, the State—is the production of good consequences. I argue that the good consequence to be produced is Functional Autonomy, the ability to successfully act on one’s authentic values, at least up to some reasonable threshold. To maximize overall Functional Autonomy, I argue that there ought to be two divisions of labor. First, there ought to be an institutional division of labor, according to which different institutions perform tasks integral to the production of Functional Autonomy. Second, there ought to be a role-based division of labor, a division of labor within those institutions according to which different state actors deliberate and act in specialized ways. Deliberating and acting in specialized ways amounts to deliberating and acting on role-based reasons.

On this theory, a particular action by a state actor is legitimate if and only if the role-based reasons to perform the action are not outweighed by role-independent moral reasons. I propose that there is very strong moral reason to maximize Functional Autonomy, and so state actors will be morally justified in exercising coercive power so long as their actions are appropriately contributing to their institutional tasks, which in turn are producing Functional Autonomy. As for macro legitimacy, states enjoy degrees of legitimacy, where the degree of legitimacy is determined by how much Functional Autonomy a state produces. A recurring theme in this second part of the dissertation is that various problems that arise for consequentialism as a theory of interpersonal morality do not arise in the context of an act-focused theory of political legitimacy.
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Chapter One: What Does it Take to Make a Theory of Political Legitimacy?

Introduction

Usually, making and carrying out threats is morally impermissible. Government actors routinely and pervasively make and carry out threats. Accordingly, it would appear that government actors behave in a way that is morally impermissible. But many have the intuition that such conduct is, at the very least, often morally permissible. The tension between the moral presumption against making and carrying out threats and this intuition about the moral permissibility of government conduct is often discussed as animating a fundamental question about political morality—what I will label the Question of Legitimacy:

*The Question of Legitimacy*: Under what conditions, if any, is the possession or exercise of coercive power by the State or particular state actors morally permissible, and why do these conditions ground the morally permissible possession or exercise of coercive power?

The Question of Legitimacy is not merely of philosophical interest; it also animates contemporary political disputes. For instance, people disagree as to whether the United States government is morally permitted to prohibit the sale and consumption of various drugs, whether the city of Philadelphia is morally permitted to tax purchases of various beverages with high concentrations of sugar, and whether a particular judge is morally permitted to sentence a defendant found guilty of a non-violent drug offense to a lengthy prison sentence. These questions about the permissible scope of political power are
questions about political legitimacy. And we disagree about the permissible scope of political power.

Even when we agree about particular claims concerning legitimacy, such as “The United States government is morally permitted to prohibit the sale and consumption of various drugs,” we might disagree about what makes such claims true. Some argue that such government prohibitions are legitimate in virtue of citizens expressly or tacitly consenting to be governed. Others, by contrast, claim that such actions are legitimate in virtue of the fact that citizens voted to authorize representatives to vote on various issues, and these representatives in turn voted for such a policy.

My goal in this dissertation is to provide a novel answer to the Question of Legitimacy. I will argue that it is the legitimacy of particular actions that make the State more or less legitimate. This claim constitutes a departure from an especially prominent strand of philosophical theorizing about political legitimacy according to which particular actions are legitimate in virtue of the legitimacy of the State. I will also argue that it is the production of good consequences that ultimately makes particular actions legitimate. This claim is also a departure from the most prominent strand of philosophical theorizing about legitimacy insofar as the most prominent theories of legitimacy claim governments are legitimate if and only if they are appropriately connected to the will of the governed in some sense. Before sketching how I will develop and defend my theory of legitimacy, it is worth clarifying the Question of Legitimacy and addressing various methodological considerations that arise for developing such a theory.
§1 Clarifying the Question of Legitimacy

In the Question of Legitimacy, ‘the State’ denotes a relatively abstract entity, or perhaps some sort of massive collective agent.¹ Some construe the State as somehow more abstract than the government,² although in this dissertation nothing turns on the distinction. As for the term ‘state actor,’ there are interesting questions about the necessary and sufficient conditions for what, if anything, makes someone a state actor, but I will not address them. Instead, I use the term to refer to paradigmatic cases of government officials who occupy specific, legally defined roles.

The Question of Legitimacy concerns making and carrying out threats—what I call ‘exercises of coercive power.’ The necessary and sufficient conditions for an action to be coercive is, itself, the subject of significant philosophical disagreement.³ I aim to be relatively ecumenical in using the phrase, ‘exercises of coercive power’—I use the phrase to refer to the phenomenon of making threats backed by additional threats, which ultimately culminate in threats to use various forms of physical force. Here it is worth emphasizing that one can be concerned with the moral justification of coercive power without being committed to the claim that law is essentially coercive. H.L.A. Hart influentially argued that law performs a variety of functions, including the creation of various legal powers, privileges, and claims, functions that are not straightforwardly threats in some sense.⁴ Nonetheless, Hart and like-minded theorists do not deny that governments possess or exercise coercive power, nor that

¹ For early modern examples, see, esp., (Hobbes 1994) (Rousseau 1987). For more recent examples, see, e.g., (List and Pettit 2011); (Shapiro 2011) (Stilz 2009).
² See, e.g. (Rousseau 1987); (Morris 1998).
³ For a survey of different definitions of the terms in the context of legal philosophy, see esp. (Hughes 2013)
⁴ (Hart 1994).
such power is pervasive and plays an important role in shaping the deliberations and actions of citizens and state officials.\(^5\)

I will provide an answer to the Question of Legitimacy by providing a theory of legitimacy, a theory I call ‘The Act-Focused Consequentialist Theory of Legitimacy.’ It is labeled ‘Act-Focused’ due to its evaluative emphasis on the legitimacy of actions rather than the legitimacy of the State. It is labeled ‘Consequentialist’ because of its claim that it is the production of good consequences that ultimately legitimates particular actions. A theory of legitimacy is akin to a moral theory insofar as both offer a standard of rightness and a decision procedure.

In a moral theory, a standard right action articulates necessary and sufficient conditions for actions to have a specific deontic status—that is, it articulates the necessary and sufficient conditions for actions to be supererogatory, obligatory, permissible, or impermissible. On the basis of the standard of right action, one can make claims about the deontic status of particular actions. For instance, all plausible standards of right action entail that killing the innocent for fun is wrong. Some standards of right action entail that giving significant portions of one’s income to charity is obligatory, whereas other standards of right action entail that doing so is supererogatory. A theory of legitimacy is like a moral theory insofar as it will articulate necessary and sufficient conditions for the legitimacy of particular actions and the legitimacy of the State. That is, any theory of legitimacy will articulate a standard of legitimacy. On the basis of this standard of legitimacy, a theory of legitimacy makes claims about the legitimacy of particular actions and states. For instance, some theory

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\(^5\) For a view that argues that coercion is essential to understanding how law functions, see esp. (Schauer 2015).
of legitimacy A might claim that the Philadelphia legislature is not permitted to impose a soda tax, but a competing theory B could claim that such a policy is permissible.

A moral theory also justifies the relevant standard of right action, typically by providing some an explanation as to what makes particular actions right or wrong. Examples of such explanations include Immanuel Kant's attempt to ground the content of morality and its authority in pure practical reason. John Stuart Mill provides a markedly different explanation; he attempts to demonstrate that utility (in the highest sense) and only utility is intrinsically good and ought to be promoted. Because a theory of legitimacy is like a moral theory, a theory of legitimacy will also provide an explanation of its standard of legitimacy. For instance, theory A might argue that consent constitutes a waiver of rights to explain why the consent of the governed is necessary and sufficient for legitimacy. Theory B, by contrast, might appeal to respect for human rights to explain why particular states or particular state actions are legitimate.

Finally, a moral theory is also meant to provide guidance to sincere moral agents. For instance, Kant articulates different formulations of the categorical imperative not merely to identify a standard of right action and explain what makes particular actions right but also so that sincere moral agents can guide their deliberations by the standard of right action.

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6 I use the term ‘explanation’ in a broad sense—as an answer to a ‘why’ question. Presumably, though, this explanation will involve giving an account of the grounding of legitimacy—although my view is ecumenical about the nature of grounding.
7 See (Kant 1996). For more recent Kantian explanations of this sort, see, e.g. (Korsgaard 1996; 2009), (O’Neill 1989).
8 (Mill 2001).
9 More precisely, we might take Kant to be articulating a theory of the actions that would be performed by a person with a good will. For something like this interpretation, see (O’Neill 1989).
10 See, e.g. (Kant 1996, 4:436-437).
moral theory also can be helpful in providing guidance, albeit without making reference to the standard of right action contained in the theory. For instance, act utilitarians sometimes recommend decision procedures but insist that one ought not to guide one’s decision-making by directly considering what action would produce the greatest amount of happiness.\(^\text{11}\)

Similarly, a theory of legitimacy ought to, directly or indirectly, inform practical deliberation. For instance, a theory of legitimacy will, hopefully, be fruitful for designing or reforming various institutions. Theory A, for instance, might tell us that to make various institutions more legitimate—or perhaps legitimate full stop—we should strive to ensure that organizations sufficiently removed from the currently reigning regime count electoral ballots. Theory B, by contrast, might tell us that certain governments would be more legitimate if they were to abolish selecting political representatives by elections and select them by lottery instead.\(^\text{12}\) A theory of legitimacy should also be useful for guiding the deliberations of particular state actors, such as judges, prosecutors, administrative officials, legislators, and police officers. That is, a theory of legitimacy ought to, directly or indirectly, help these state actors to determine whether a particular course of action is legitimate.

Presumably, a theory of legitimacy will have some normative upshot for how other foreign states or state actors may behave. For instance, we might think that if some state is legitimate, then other states are not permitted to undermine its operations or wage war against it on humanitarian grounds. In this dissertation, I will not address the question as to how legitimacy ought to inform the relationships between states, although such a question is

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\(^{11}\) See esp. (Mill 2001); (Railton 1984).
\(^{12}\) See, e.g. (Guerrero 2014).
certainly important and interesting. Instead, to keep the project manageable, I will focus on the normative upshot for state actors.

Some readers might be somewhat puzzled that I have not spent much time discussing citizens when discussing legitimacy. This puzzlement is at least partly due to the variety of uses of the term, ‘legitimacy.’ Accordingly, it is worth explicitly addressing both how I intend to use the term and its normative import for citizens. Some, following Max Weber, define ‘legitimacy’ as concerning the belief of citizens that their government is morally justified in ruling or that they are obligated to obey the law. On this view, governments are aptly described as ‘legitimate’ if and only if this attitude is sufficiently pervasive.\textsuperscript{13} I do not use the term ‘legitimacy’ in this descriptive, Weberian sense, as I am concerned with legitimacy in a normative sense. That is, I am interested as to when states or state actions are actually legitimate, not merely when citizens believe—perhaps mistakenly—the State or actions to be legitimate. The descriptive sense of legitimacy might very well be important for a particular normative theory of legitimacy. For instance, someone might argue that states are morally justified in possessing or exercising coercive power only if a sufficient number of citizens believe that their state is legitimate. But this would be to appeal to Weberian legitimacy as part of a normative theory of legitimacy, a normative theory proffered in reply to the Question of Legitimacy.

A distinct usage of the term ‘legitimacy’ differs from the Weberian usage insofar as it is normative, but it is like Weber’s use insofar as it concerns the obligations of citizens.\textsuperscript{14} Legitimacy in this sense concerns not only the moral permissibility of the possession and

\textsuperscript{13} (Fabienne 2017).
\textsuperscript{14} See, esp. (Simmons 1999).
exercise of coercive power, but also the moral power, or *authority*, of the State to alter the moral landscape of citizens by creating a reason or obligation to obey laws.\footnote{For especially influential identifications of legitimacy with both the Question of Legitimacy and what I’ll go on to discuss as the Question of Authority, see (Raz 1986), (Simmons 1999) I’ll discuss Simmons’s influential paper on this topic in Chapter Three of the dissertation.} It is worth delineating questions about the morally permissible possession and exercise of coercive power from questions about the State’s possession of the moral power to alter the moral landscape of citizens. I will capture the question about whether the State has this moral power as follows:

_The Question of Authority:_ Under what conditions, if ever, does the State have the moral power to alter the normative landscape of citizens by creating a moral reason or moral obligation to obey the law, and why do such conditions ground this moral power?\footnote{For influential discussions of authority along these lines, see, e.g. (Buchanan 2002), (Darwall 2013), (Enoch 2012) (Raz, 1986; 2009), (Wolff 1970).}

Many seem to think that the State’s possession of authority is a necessary condition for its legitimacy. If this were correct, then to answer the Question of Legitimacy, we would also need to answer the Question of Authority. I address the purported connection between legitimacy and authority at much further length in Chapter Three of the dissertation; I give reasons to doubt that authority is a necessary condition for legitimacy, and I argue that the Question of Legitimacy and the Question of Authority ought to be addressed separately.

Finally, some readers might be puzzled by my discussion of legitimacy insofar as it has not involved much discussion of democracy—in some sense of ‘democracy.’ Some seem to use the term ‘legitimacy’ to refer to democratic institutions or democratically authorized
actions. Here it is worth highlighting that to claim that states, institutions, or actions are legitimate if and only if they are democratic is to offer a standard of legitimacy. This is merely one standard among others. This standard is a rival to, for instance, theories that claim that states, institutions, or actions are legitimate if and only if they are in accord with natural law, or the divine right of kings. Accordingly, we should not think that legitimacy is defined in terms of democracy in some sense—it is not a conceptual truth that a state or particular state actions are morally permissible if and only if they are democratic in some sense. If it were a conceptual truth, then there would not be a normative disagreement between a proponent of democracy and a proponent of the divine right of kings. Instead, when the two proponents disagreed about the necessary and sufficient conditions for legitimacy, they would be guilty of talking past one another; the person insisting that legitimacy has its source in the divine right of kings would be guilty of a conceptual error. This characterization of their discussion seems inapt. An apt characterization of what is happening when someone says ‘the divine right of kings is what legitimates political power’ and someone else says ‘democracy is what legitimates political power’ is that they are offering different answers to the Question of Legitimacy—they are having a genuine normative disagreement rather than talking past one another. So, we should not assume at the outset that legitimacy concerns democracy in particular, or treat ‘legitimacy’ a synonym for ‘democracy.’

§2 Methodological Considerations for Theorizing About Legitimacy

Since this dissertation will be devoted to theorizing about legitimacy, it is worth canvassing various methodological difficulties that face attempts to develop and defend a theory of legitimacy. One difficulty arises because our political context profoundly shapes our
intuitions about political morality. Research on voting in the United States shows that many of our attitudes about particular issues are correlated with our social groups, and that we see voting as avowing political opinions or voting as expressions of solidarity with our particular group.\(^{17}\) More generally, political attitudes are shaped by the propaganda we are all exposed to from a young age. At different periods in history, different people were confident that different sorts of political arrangements and actions were legitimate.

All of these considerations constitute grounds for worrying that many of our intuitions about legitimacy are a product of tribalism and the political arrangements under which we currently reside, rather than being evidence of \textit{a priori} truths about political morality—if there are such truths. As such, one might worry that a theory of legitimacy can only be a theory that can correctly describe what sorts of political arrangements or actions people \textit{judge} to be legitimate rather than constituting a genuinely normative theory of legitimacy. In other words, some might worry that given the unreliability of our intuitions, the best we can do in constructing a theory of legitimacy is to construct a theory about when people judge governments are legitimate, which would amount to a descriptive theory of legitimacy in the Weberian sense.

In reply, it is worth considering the parallel worry for moral theories. We can find cases in which the prevalence of certain attitudes towards interpersonal conduct is correlated with social conditions. For instance, in some contexts many people think it is morally wrong to engage in same-sex activity, whereas in other contexts, many people think such conduct is morally acceptable. Accordingly, both moral theories and normative theories of legitimacy

\(^{17}\) See, esp. (Achen and Bartels 2016).
have to accommodate intuitions that are the product of one’s social context. I will assume that we should not be entirely pessimistic about the prospects of developing a viable moral theory. So, there is not a special reason to be entirely pessimistic about the prospects of developing a viable normative theory of political legitimacy, although we cannot merely take intuitions at face value.

Theories of legitimacy try to accommodate at least some of our intuitions—or explain why various intuitions ought not to be accommodated—while also offering a standard of legitimacy, an explanation of legitimacy, and action-guidance. There are a variety of theories of legitimacy that have been offered in response to the Question of Legitimacy. I am going to motivate the claim that at least some of them, those that appeal to the will of citizens, face significant challenges. But in deciding which theory of legitimacy we ought to select, we should assess competing theories along many dimensions. For instance, we can ask whether the theory is internally consistent; whether the theory requires various components that are ad hoc or whether there is good reasons as to why the different parts fit together; whether the theory makes claims that seem radically at odds with various considered judgments or whether it aligns with them; whether the theory relies on contentious claims about metaphysics, epistemology, or social science; whether the theory is action-guiding or has the potential to be action-guiding; and whether the theory provides us with a good understanding of the phenomenon in question. I develop an alternative to existing theories, and I argue that it enjoys various advantages over these theories. I hardly claim to have made the case that the proposed theory is, all-things considered, superior to all rivals. But I will have highlighted various appealing features and advantages of the theory over rival theories.
§3 The Plan for the Dissertation

The dissertation is divided into two parts. The first part defends four theses that motivate radically departing from standard theories that aim to answer the Question of Legitimacy. The second part of the dissertation is devoted entirely to developing a particular theory of legitimacy, a theory of legitimacy motivated by these radical departures.

§3.1 Part One: Four Theses on Legitimacy

In the Chapter Two, I begin by emphasizing three features of what I will call the ‘Traditional Picture of Legitimacy,’ or ‘The Traditional Picture.’ First the Traditional Picture is almost exclusively concerned with the legitimacy of the State—what Alexander Guerrero refers to as ‘macro legitimacy.’ A state is macro legitimate insofar as it enjoys a morally justified monopoly on the possession and exercise of coercive force within a territory—what some refer to as a ‘right to rule.’ Second, the Traditional Picture assumes that the macro legitimacy of the State is necessary and sufficient for the moral permissibility of particular state actions performed by state actors in their capacity as state actors—the micro legitimacy of actions. On the Traditional Picture, there is a sense in which macro legitimacy plays an important normative role in determining whether particular actions are micro legitimate; put another way, macro legitimacy is often thought to ground micro legitimacy. Third, the Traditional Picture assumes that one necessary condition for macro legitimacy is authority. In other words, according to the Traditional Picture, we need to answer the Question of Authority to answer the Question of Legitimacy.

18 For the macro/micro distinction, see (Guerrero 2012).
I argue that will-based theories of legitimacy are especially appealing, given the Traditional Picture. I use ‘will-based theories’ in a broad sense, one that is meant to capture the idea that the moral justification of political power has its source in the will of citizens. Such views take a variety of forms. Some will-based theories appeal to the performance of an act of authorization, perhaps by participating in democratic decision-making or democratic life more generally. Others appeal to consenting or agreeing to various conditions, actions that generate, transfer, or waive rights. The popularity of such will-based theories is not limited to political philosophers, but it also has currency in political discourse, such as when we invoke phrases like the ‘will of the people,’ or the ‘consent of the governed.’

Will-based theories include, then, theories that appeal to the actual consent or agreement of the governed, theories that appeal to the fact that the governed enjoy a democratic say. A somewhat different class of theories, albeit one that I will also consider under the heading of ‘will-based theories,’ appeals to some form of idealized, counter-factual consent or agreement of the governed. A third class of will-based theories claims that legitimacy is a matter of satisfying requirements of public justification, according to which political power is legitimate if and only if it is possessed and exercised in accord with the suitably idealized values of citizens. All of these views share a commitment to the claim that the appropriate grounds of justified coercive power or political authority must be found in an appeal to what citizens do, would, or could consent to, accept, endorse, or authorize. These views also aim to eschew grounding justified coercive power or political authority by
appealing to a substantive theory of the good, or some contentious theory about what is objectively valuable.  

Despite the popularity of will-based theories, in the first chapter of the dissertation, I articulate and defend my first thesis:

1. *Will-Based Theories Are Overrated:* Will-based theories of legitimacy or authority are subject to enduring problems, or certain purported advantages they enjoy over other theories are not genuine advantages.

I defend this thesis by surveying a variety of will-based views. I not only articulate problems for such theories, but I also note that they possess a striking structural similarity. As such, there is some reason to think the problem is with the class of theories, not merely with current formulations of those theories.

One could attempt to respond to these objections, either by developing a new will-based theory of legitimacy, or by resisting some of the particular charges I raise. In Chapter Three, however, I suggest that even if one were to develop a will-based theory that successfully mitigates the charges I raised in Chapter Two, such a theory would be far less appealing than one might think. Such a theory would be less appealing than one might think because we should reject the Traditional Picture that I provisionally accept in Chapter Two. In Chapter Three, I begin by considering the widespread claim that macro legitimacy is

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19For a sampling of such views, see, e.g. (Estlund 2008), (Gaus 2011), (Quong 2011), (Waldron 1999) In certain moments, it might appear that John Rawls is also engaged in this enterprise, especially when he discusses the ‘liberal principle of legitimacy’ and explicitly discusses the justification of coercive power; see (Rawls 1993) For an interpretation of Rawls along these lines, see, (Gaus and Schoelandt, 2017). A. John Simmons also endorses a will-based theory of legitimacy, despite ultimately endorsing a form of *a posteriori* anarchism—see, (Simmons, 1979; 1999).
necessary or sufficient for micro legitimacy—where micro legitimacy concerns the moral permissibility of performing an action in one’s role as a state actor. I object, however, that, macro legitimacy—the legitimacy of the State—is obviously insufficient and is not obviously necessary for micro legitimacy—the legitimacy of particular actions by state actors. My second thesis conjoins these two claims:

2. *Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro*: Macro legitimacy is obviously insufficient for micro legitimacy, and macro legitimacy is not obviously necessary for micro legitimacy.

The second thesis implies that theories that focus on macro legitimacy alone will lead to an incomplete theory of legitimacy, and this is for three reasons. First, even if some theory articulates the correct standard of macro legitimacy, this does not tell us about the correct standard of micro legitimacy. Second, even if a theory provides the correct explanation of macro legitimacy, this does not suffice as good explanation of micro legitimacy. Third, on its own a theory of macro legitimacy will not provide any guidance for particular state actors who sincerely wish to perform legitimate actions.

My third thesis concerns a distinct feature of the Traditional Picture—namely, the claim that political authority is a necessary condition for macro legitimacy. This claim seems plausible enough at first glance, as we might think there’s something odd about the claim that some state or state actor is permitted to possess or exercise coercive power over some other person, and yet that person does not have an obligation to obey the law. In Chapter Three, however, I posit that we should reject this feature of the Traditional Picture by arguing in defense of the third thesis of the dissertation:
3. Authority and Legitimacy Ought to Be Addressed Separately: In answering questions of legitimacy, one ought not to address questions of authority. Theories of legitimacy that do not account for the authority of the State or law are not, for this reason, necessarily defective *qua* theories of legitimacy.

In Chapter Four, I consider the upshot of accepting the first three theses. I argue first that, even if will-based theories could avoid the problems articulated in Chapter Two, they still need to be revised if they depend on the Traditional Picture. Second, some of the purported advantages of will-based theories rest on accepting the Traditional Picture. This constitutes an additional reason to accept the first thesis, Will-Based Theories Are Overrated. Third, I argue that a more fruitful strategy for approaching the Question of Legitimacy would be to ignore questions of authority, and to attempt to answer questions about micro legitimacy before turning to macro legitimacy. I suggest that we might learn more about macro legitimacy by ‘starting at the bottom’ with micro legitimacy. More strikingly, I suggest also we might find that it is the legitimacy of particular actions that grounds the legitimacy of the State rather than the legitimacy of the State that grounds the legitimacy of particular actions.

The first thesis, Will-Based Theories Are Overrated, concerns a family of theories of legitimacy. The second and third concern how we ought to engage in theorizing about legitimacy. In light of these three theses and this strategy, I argue in defense a fourth thesis, which, like the first thesis, concerns a family of theories of legitimacy:

4. Consequentialist Theories of Legitimacy Are Underrated: Consequentialist theories of legitimacy have been underdeveloped and overlooked, and an appropriately
developed consequentialist theory of legitimacy would enjoy significant advantages over rival theories—especially rival will-based theories.

In particular, I argue that problems for consequentialist moral theories are not, in fact, as obviously problematic when thinking about micro legitimacy. Moreover, I suggest that consequentialist theories of legitimacy would be promising at explaining the relationship between micro legitimacy and macro legitimacy. I spend the second part of the dissertation developing and defending a particular consequentialist theory of legitimacy.

§3.2 Part Two: The Act-Focused Consequentialist Theory of Legitimacy

I use ‘consequentialist’ to refer to the family of views that hold that “normative properties depend only on consequences.” In the context of my theory of legitimacy, I claim that when particular actions are legitimate, they are legitimate only because they produce good consequences. And when states are more or less, legitimate this is only because they produce good consequences.

While ‘consequentialism’ is a term of art, it is a contentious one; some use it in a pejorative sense, and others have strong convictions about its intension or extension. If one has strong convictions about what constitutes a consequentialist view, and these convictions preclude using the term ‘consequentialist’ when referring to the view I develop, then one may substitute some other term for the view in question. For instance, some might prefer to use the term ‘instrumentalist’ to describe my theory. I prefer to use ‘consequentialism’

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20 (Sinnott-Armstrong 2015, 1).
21 See, e.g., (Arneson 2003) See also, (Enoch 2009). A different term that one might use to describe the view on hand would be “intuitionist” in the sense used by John Rawls—see (Rawls 1971, 34).
insofar as the theory I ultimately advance claims that the normative property of legitimacy depends on consequences. Moreover, the explanation of the legitimacy of particular actions involves arguing in defense of a particular good that ought to be produced, and then arguing that there is strong moral reason to maximize this good. I argue that the appropriate form of reasoning state actors ought to undertake is the one that will yield the best consequences.

Because of these features of my theory, various objections are pressing for it—objections that are strikingly similar to objections raised against other existing consequentialist theories. For instance, one worry is that the view fails to respect the separateness of persons. Another is that it fails to give adequate weight to values associated with partiality or non-moral projects. And one line of argument I make involves claiming that these objections for consequentialism as an interpersonal moral theory are far less pressing in the context of an act-focused theory of political legitimacy. Nonetheless, if one has strong commitments about the essential features of consequentialism as a moral theory or a theory of justice and these commitments would preclude my theory from counting as a consequentialist theory then one could substitute ‘instrumentalist’ for ‘consequentialist’ throughout the dissertation (e.g. the fourth thesis would be “Instrumentalist Theories Are Underrated).

22 Others, such as (Quong 2011) might claim that my view is ‘perfectionist’ insofar as it rests on claims about intrinsic value. I take ‘perfectionism’ to be too broad of a category, as some perfectionists are not consequentialists or are pluralists, whereas my view holds that we ought to ground legitimacy in the production of a particular good.
A consequentialist theory of interpersonal morality includes a theory of value and an explanation as to why actions are right in virtue of producing this value. Similarly, a consequentialist theory of legitimacy consists of two components: a theory of value, and a theory that explains why political power is legitimate in virtue of producing that value. In Chapter Five, I offer a theory of value that should inform a consequentialist theory of legitimacy. I argue that the relevant good to be produced is Functional Autonomy, the ability to successfully act on one’s values, at least up to a reasonable threshold. I argue that the production of Functional Autonomy is especially appropriate as the value that justifies political power, and this is for two kinds of reasons. The first kind of reasons concerns the connection between autonomy and coercive power. The second kind of reasons concerns the character of political disagreements about the appropriate scope of political power and our disagreement about the good.

In Chapter Six, I present a simple, preliminary, argument that supports my answer to the Question of Legitimacy:

**Why State Actors?**

P1. There is strong moral reason to maximize overall Functional Autonomy.

P2. In some circumstances, C: If state actors and only state actors attempt to perform some set of tasks, \{S\}, this will maximize overall Functional Autonomy.

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23 This is a bit of a simplification, especially with regard to indirect consequentialism. See, e.g. (Hooker 2000).
C. In some circumstances, C: there is strong moral reason for state actors and only state actors to attempt to perform the set of tasks, \{S\}.

I briefly consider an objection to P2—that Functional Autonomy will not be maximized if state actors and only state actors attempt to perform some set of tasks, \{S\}. I argue that the issue as to how widespread these circumstances are, or how many tasks are in the set \{S\} merely points to the contingency of political legitimacy on the current view. Moreover, I argue that this contingency is a virtue of the theory. I then build on this argument to provide a theory of micro legitimacy and a theory of macro legitimacy. I begin by arguing that to maximize Functional Autonomy, there ought to be two divisions of labor.

First, there ought to be an institutional division of labor, according to which different institutions ought to attempt to complete distinct tasks. Second, there ought to be a role-based division of labor in which different role occupants within different institutions deliberate and act in specialized ways. In short, there should be a nested division of labor, or nested roles—different roles that different institutions fulfill, and, within those institutions, different roles that different individuals fulfill. To make this more concrete, the institutional division of labor recommends that one institution ought to work to ensure that citizens enjoy access to clean water, whereas another institution ought to work to ensure that citizens are safe from threats of physical harm. The role-based division of labor recommends that some EPA officials are in charge of determining how much lead ought to be allowed in the water, whereas another set of officials would be charged with assessing how much lead there is in the water in a particular region. The reasons for these state actors to perform particular actions associated with their role are what I will call ‘role-based reasons.’
I then argue that particular actions are micro legitimate if only if the role-based reasons to perform a particular action are not outweighed by role-independent moral considerations. I argue that the weight of role-based reasons to perform an action is determined by how well the action contributes to fulfilling the relevant institutional task—which, in turn, contributes to the production of Functional Autonomy. I then propose particular states enjoy degrees of macro legitimacy depending on how much Functional Autonomy they produce.

Putting the different components together, the theory I present is as follows:

**The Act-Focused Consequentialist Theory of Legitimacy**

*Micro Weight*: The weight of a role actor’s role-based reason is a function of how much it contributes to the fulfillment of the appropriate institutional task.

*Act Consequentialist Standard of Micro Legitimacy*: An action is micro legitimate if and only if the state actor’s role-based reasons to perform the action are not outweighed by the role-independent moral reasons that count against the action.

*Scalar Consequentialist Standard of Macro Legitimacy*: The degree of macro legitimacy of a state is a function of how much Functional Autonomy it produces. The more Functional Autonomy a state produces, the more macro legitimacy that state enjoys.

Finally, I consider how this framework ought to inform the practical deliberations of state actors and apply it to two cases.
In Chapter Seven, I begin by noting that consequentialist moral theories and consequentialist theories of distributive justice are subject to significant problems, problems that would appear to apply to P1 of *Why State Actors*. For instance, we might think that Functional Autonomy is a value that ought to be *respected* rather than produced; we might think that in certain circumstances, maximizing Functional Autonomy will require performing actions that should strike us as blatantly micro illegitimate; and we ought to worry that arranging institutions to maximize overall Functional Autonomy will fail to the separateness of persons. If my theory of legitimacy cannot avoid these problems, then it is not an appealing theory of legitimacy—and I will not have given much reason to think that we should accept my fourth thesis, Consequentialist Theories of Legitimacy Are Underrated. I argue, however, that the view is able to avoid these objections due to the nature of the value being promoted, the standards of legitimacy I articulated, and how these standards ought to inform deliberation.

In Chapter Eight, I turn to a distinct, pressing objection: namely, the theory will be excessively demanding, and that as a result is either implausible or fails to be action-guiding. This objection is familiar from debates about consequentialism as a moral theory, as many charge that either consequentialism is excessively demanding and accordingly it will countenance too few actions as morally permissible, or consequentialism renders moral permissibility a standard that ought not to be satisfied. This objection applies to my proposed theory, as my theory might also seem excessively demanding. If correct, this objection implies that the theory will never countenance particular actions, institutions, or states legitimate, or the theory will render legitimacy a standard that ought not to be satisfied.
I argue, however, that the different features of the theory of right action, presented in Chapter Six, mitigate the force of this objection.

By the end of the eight chapters, I will have defended four theses concerning political legitimacy. And I will have constructed and defended a theory that provides an answer to the Question of Legitimacy—one that emphasizes the legitimacy of particular actions rather than the legitimacy of the State.

§4 The Scope of The Dissertation

Before proceeding, it is worth saying a bit about the scope of the dissertation. The Act-Focused Consequentialist Theory of Legitimacy is a theory of legitimacy. It is not a comprehensive theory of interpersonal morality, but is instead intended to be compatible with a variety of moral theories that claim that the possession or exercise of coercive power calls for moral justification. While it is more amenable to some moral theories than others, one need not accept consequentialism as a moral theory if one wishes to accept my theory of legitimacy.

Similarly, it is worth emphasizing that any theory provided in response to the Question of Legitimacy need not be construed as a response what I will call ‘the Question of Distributive Justice’:

*The Question of Distributive Justice.* Under what conditions, if any, is the distribution of the various benefits and burdens of social cooperation fair? And why are these conditions fair?
Since the publication of John Rawls’s *A Theory of Justice*, much of Anglo-American political philosophy has addressed the Question of Distributive Justice. And some might claim that given the way I formulate and answer the Question of Legitimacy, I am ultimately developing a theory that is really an answer to the Question of Distributive Justice. But I reject this charge. While we might ultimately find that the answer to the Question of Distributive Justice is also the answer to the Question of Legitimacy, we should not assume as much at the outset of inquiry. If the relevant theorizing about distributive justice is an exercise in ideal theory in the sense that we assume that citizens are fully compliant with the law, then the Question of Legitimacy might not even arise in the course of answering the Question of Distributive Justice. In other words, making and carrying out threats would not be necessary under conditions of universal compliance.

But even if one does not assume universal compliance while attempting to answer the Question of Distributive Justice, there are other reasons to treat the Question of Distributive Justice as distinct from the Question of Legitimacy. The Question of Distributive Justice has a distinct sense and is not straightforwardly interchangeable with the Question of Legitimacy. For instance, a striking difference between the questions is that they concern distinct evaluative categories. The Question of Distributive concerns fairness whereas the Question of Legitimacy concerns permissibility. Moreover, it is not implausible to think that the moral permissibility of possessing or exercising power is a less demanding standard to satisfy than the standard of fairness that theories of justice apply to political institutions. That is, we might believe that various state actors are permitted to exercise coercive power

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24 See (Rawls 1971), (Simmons 2010).
and that various governments enjoy some degree of legitimacy even though they govern societies that are ultimately unjust.

If one agrees that this is the correct way to think about the connection between legitimacy and justice, then it becomes apparent why questions of legitimacy are so pressing. According to almost all theories of distributive justice, the majority of persons live in unjust conditions. Nonetheless, we still need answers about the permissibility of the possession and exercise of coercive power when living in these unjust conditions. Furthermore, state actors need this guidance even if everyone agrees that institutions ought to be radically reformed because they are deeply unjust; in fact, this would appear to be the case when state actors need the most guidance, or at least the most guidance the most often.

One reason I specify this distinction is that one can accept my theory of legitimacy while disagreeing about justice. Some might argue for theories of distributive justice that call for an expansive state, and then claim that if actions conform to just laws they are micro legitimate, and if institutions are sufficiently just, they are macro legitimate. While such a position is tenable, it is worth emphasizing that this sufficient condition should not be accepted as a necessary condition. Alternatively, some might argue for a theory of justice that is much more minimal, such as some form of classical liberalism. My theory would hold that

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25 Rawls recognizes as much when he writes,

But even granting the soundness of [justice as fairness] for [the purposes of ideal theory], we must ask how well they apply to institutions under less than favorable conditions, and whether they provide any guidance for instances of injustice...The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance....My main concern is with this part of the theory...The conception of justice as fairness does not directly apply [to non-ideal conditions]. (Rawls 1971, 245; 351)

26 For a similar point, see, e.g. (Applbaum 1999), (Luban 1988).
even if the State ought to be minimal vis-à-vis realizing justice, one ought to accept that it is legitimate for various institutions and state actors to accomplish the tasks I set out. That is, some theorists of justice might call for a smaller scale state, but if sufficiently competent, this smaller scale state would be permitted to undertake the various tasks needed to promote Functional Autonomy.

A second reason I highlight the distinction between the Question of Legitimacy and the Question of Distributive Justice is that various points I make about theories of legitimacy do not necessarily apply to theories of distributive justice. This is especially relevant given the attention I devote to certain will-based theories and the prominence of will-based theories offered as answers to the Question of Distributive Justice. For instance, I criticize idealized counterfactual consent and theories of public justification that aim to answer the Question of Legitimacy or the Question of Authority, as I have formulated those questions. On their own, these critiques do not apply to such theories when they are provided to answer the Question of Distributive Justice, or various other normative questions.

For instance, imagine we interpret Rawls’s theory of public reason as integral to identifying the appropriate principles of justice for a society with various features—such as having broadly democratic institutions and being characterized by reasonable pluralism. By requiring that principles of justice satisfy some requirement of public reason, one might argue, we are merely articulating a requirement for any set of fair terms of social cooperation that would be stable over time. Appealing to some standard of public justification for this purpose is importantly distinct from identifying what makes the possession or particular

27 See, e.g., (Gaus and van Schoelandt 2017).
exercises of coercive power morally permissible. Accordingly, I remain agnostic as to whether such critiques apply to will-based theories proffered as answers to the Question of Distributive Justice, or various other normative questions.

I just sketched some ways in which the Act-Focused Consequentialist Theory of Legitimacy is modular and could be accepted in conjunction with a variety of theories of interpersonal morality and distributive justice. A separate point about the scope of the dissertation concerns its different parts. The four theses I present and the theory I develop all build on each other; the dissertation is systematic. But the dissertation contains various choice points. For example, one could argue in defense of a far less expansive definition of Functional Autonomy than the one I articulate; one might opt for a very different metric of Functional Autonomy than the one I suggest; one might argue in favor of some good other than Functional Autonomy as the appropriate good to be produced but accept the of Act Consequentialist Standard of Micro Legitimacy and the Scalar Consequentialist Standard of Macro Legitimacy; or one might accept something like my general view but argue that we should adopt a standard of macro legitimacy that appeals to the dispositions of states or state institutions to produce good consequences, rather than the actual consequences they produce. I take this flexibility to be an appealing feature of the framework as it provides a new way of thinking about fundamental questions of political morality. If readers find themselves thinking about these fundamental questions of political morality in a markedly different way after reading my dissertation and are inspired to take up some but not all of the components that constitute the theory, I consider such a result to be a success.
PART ONE: FOUR THESES ON POLITICAL LEGITIMACY

The little prince looked around for a place to sit down, but the planet was covered by the [king’s] magnificent ermine cloak. So he remained standing, and since he was tired, he yawned.

"It is a violation of etiquette to yawn in a king’s presence," the monarch told him. "I forbid you to do so."

"I can't help it. I can't stop myself," answered the little prince, quite embarrassed. "I have made a long journey, and I haven't had any sleep..."

"Then I command you to yawn," said the king. "I haven't seen anyone yawn for years. For me, yawns are a curiosity. Come on, yawn again! It is an order."

"That intimidates me... I can't do it now," said the little prince, blushing deeply.

"Well, well!!" replied the king. "Then I...I command you to yawn sometimes and sometimes to..."

He sputtered a little, and seemed annoyed.

For the king insisted that his authority be universally respected. He would tolerate no disobedience, being an absolute monarch. But since he was a kindly man, all his commands were reasonable. “If I were to command,” he would often say, “if I were to command a general to turn into a seagull, and if the general did not obey, that would not be the general’s fault. It would be mine.”

“May I sit down?” the little prince timidly inquired.

“I command you to sit down,” the king replied, majestically gathering up a fold of his ermine robe.

But the little prince was wondering. The planet was tiny. Over what could the king really reign? “Sire...,” he ventured, “excuse me for asking...”

“I command you to ask,” the king hastened to say.

"Sire—over what do you reign?"

"Over everything," said the king, with great simplicity.

"Over everything?"

With a discreet gesture, the king pointed to his planet, to the other planets, and to the stars.
"Over all that?" asked the little prince.

"Over all that," the king answered.

For not only was he an absolute monarch, but a universal monarch as well.

"And do the stars obey you?"

"Of course," the king replied. "They obey immediately. I do not tolerate insubordination."

Such power amazed the little prince. If he had wielded it himself, he could have watched not forty-four but seventy-two, or even a hundred, even two hundred sunsets on the same day without ever having to move his chair. And since he was feeling rather sad on account of remembering his own little planet, which he had forsaken, he ventured to ask a favor of the king: ‘I’d like to see a sunset...Do me a favor your majesty...command the sun to set.’

“If I commanded a general to fly from one flower to the next like a butterfly or to write a tragedy or to turn into a seagull, and if the general did not carry out my command, which of us would be in the wrong, the general or me?”

“You would be,” said the little prince, quite firmly.

“Exactly. One must command from each what each can perform,” the king went on. “Authority is based first of all upon reason. If you command your subjects to jump in the ocean, there will be a revolution. I am entitled to command obedience because my orders are reasonable.”

“Then my sunset?” insisted the little prince, who never let go of a question once he had asked it.

“You shall have your sunset. I shall command it. But I shall wait, according to my science of government, until conditions are favorable.”

“And when will that be?” inquired the little prince.

“Well, well!” replied the king, first consulting a large calendar. “Well, well! That will be around...around...that will be tonight around seven-forty! And you’ll see how well I am obeyed.”

—Antoine de Saint Exupery, *The Little Prince*
Chapter Two: The Traditional Picture and Will-Based Theories

Introduction

Many theories of legitimacy rest on what I will call the ‘Traditional Picture of Legitimacy,’ (‘The Traditional Picture.’) To illustrate what I label the ‘Traditional Picture’, consider the following case:

*Water Theft*. A private citizen, Albert, steals a case of bottled water from his local Wal-Mart. A police officer, Beth, witnesses this, and says to Albert, “Stop, or I will make you stop!” She then places Albert in handcuffs, walks him to her police car, and drives him to the local police precinct. A prosecutor, Cary, then decides whether to press charges against Albert. If he’s found guilty, Albert will have to pay a fine and perform community service. If he disobeys or resists at any stage in this process, he will be subject to further sanctions, including imprisonment.

On the Traditional Picture, Albert resides in a territory and there is a relatively abstract entity, the State, that makes and enforces laws over all those within the territory. If the State satisfies certain conditions, the State is legitimate. The State’s legitimacy consists in a moral permission or moral justification to issue directives—such as prohibitions on theft—that are backed by threats to impose various sanctions and, ultimately, to use various forms of force. Sometimes this is referred to as the State’s ‘right to rule.’ On the Traditional Picture, if particular exercises coercive power by Beth or Cary are morally justified, they are morally justified at least partly in virtue of the legitimacy of the State; the legitimacy of the State at least partly grounds the moral permissibility of their actions. So, for instance, Beth threatens to use various forms of force against Albert, and her actions are backed by additional threats
to use force. Cary, in turn, might ultimately issue commands to other people to issue threats against Albert, including, perhaps, locking him in a cell and threatening him with various forms of force if he tries to escape. If Albert attempts to escape this jail cell or physically resist at any stage in this process, then various forms of physical force, potentially even deadly force, will be employed against him. According to the Traditional Picture, Beth and Cary are morally permitted to engage in this behavior if and only if their action conforms to their role, and the State is legitimate.

In Chapter One, I noted a tension between an intuition and a more general principle. The intuition is that in various contexts, it is morally permissible for people like Beth and Cary to exercise coercive power. The general moral principle is that ordinarily, it is morally impermissible to exercise coercive power against free and equal people. I suggested in Chapter One that the tension between the intuition and the general moral principle motivates the following question:

*The Question of Legitimacy:* Under what conditions, if any, is the possession or exercise of coercive power by the State or particular state actors morally permissible, and why do these conditions ground the morally permissible possession or exercise of coercive power?

The Traditional Picture gives a ‘state-focused’ answer to the Question of Legitimacy. Particular exercises of coercive power by particular state actors are legitimate if and only if the state actors act in conformity with their role, and the State is morally justified in possessing and exercising coercive power, or it possesses a ‘right to rule.’
The second feature of the Traditional Picture that I will focus on is that a necessary condition for the State’s morally justified possession and exercise of coercive power is that the State must possess authority. Authority is the moral power to alter the moral landscape of citizens. One way in which the State can alter the moral landscape of citizens is by imposing pro tanto obligations or creating moral reasons to obey particular directives. To return to Water Theft, if Albert resides in a legitimate state, then Albert violates a distinct pro tanto moral obligation by violating the law when he steals the case of water. That is, the Traditional Picture claims that Albert acts wrongfully insofar as he breaks the law and there is a pro tanto obligation to obey the law because it is the law. The source of this obligation, according to the Traditional Picture, is the State’s authority. 28

Much like Beth and Cary’s exercises of coercive power, the invocation of the State’s authority raises a puzzle. Ordinarily, we do not think that merely issuing a directive can alter the moral landscape of other adults. For instance, imagine that I am packing up my U-Haul. I see a stranger walking by, and I say, “Help me move these boxes.” The stranger does not thereby have a moral reason or pro tanto moral obligation to help me. If the stranger does have a moral reason or obligation to help, it is not in virtue of my issuing that directive—I have, at most, alerted her to an existing moral obligation or reason she already had. More generally, given our status as free and equal persons, no autonomous person naturally has

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28 Other argumentative strategies attempt to ground an obligation to obey the law that is not grounded in authority. For instance, one might argue that we have a moral obligation to obey fair terms of social cooperation, and that in a just society, the law is co-extensive with fair terms of social cooperation. See, e.g. (Klosko 1987). I will not address the political obligation literature at length here. But, suffice it to say, there are significant difficulties in demonstrating that such considerations can ground an obligation to obey the law as such. See, e.g. (Huemer 2013), (Simmons 1979)
the ability to create moral obligations by issuing commands to other autonomous persons.\(^\text{29}\)

That is, no person naturally has political authority over any other person. But many have the

intuition that the State has special moral authority over Albert.\(^\text{30}\) These conflicting intuitions
also lead to a question mentioned in the introduction, a question that I captured as follows:

*The Question of Authority:* Under what conditions, if ever, does the State have the

moral power to alter the normative landscape of citizens by creating a moral

obligation to obey the law, and why do such conditions ground this moral power?\(^\text{31}\)

According to the Traditional Picture authority is necessary for legitimacy—and, accordingly,
to answer the Question of Legitimacy one also needs to answer the Question of Authority.

In §1, I suggest that will-based theories are especially appealing because they can

satisfy these features of the Traditional Picture. Will-based theories are theories that answer

the Question of Legitimacy and the Question of Authority by appealing to some actual act

of will, some idealized counterfactual act of will, or some set of values that all citizens would
accept. Substantive theories of legitimacy, by contrast, appeal to some value to answer the

Question of Legitimacy or the Question or the Question of Authority, such as the

promotion of utility or some other good, an appeal to various natural rights, a claim about

the importance of respecting freedom in a Kantian sense, or the realization of human

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\(^{29}\) See, e.g. (Christiano 2008), (Estlund 2009), (Gaus 2011), (Hobbes 1994), (Kant 1996), (Locke
1982), (Quong 2011), (Rousseau 1987), (Simmons 1979), (Stilz 2009), (Wolff 1970).

\(^{30}\) See (Tyler 1990).

\(^{31}\) Alternatively, one might claim that the State is legitimate only if there is a moral obligation to obey
the law. For purposes of simplicity, I’ll proceed as though grounding the State’s authority is necessary
for its legitimacy—I return to this issue in the following chapter.
I suggest that substantive theories will struggle to answer the Question of Legitimacy and the Question of Authority in ways that will-based theories do not appear to.

In what follows, however, I argue that will-based theories are either subject to significant, enduring problems, or they do not enjoy the relevant aforementioned advantages over substantive theories of legitimacy. The basic structure of the argument is as follows. Will-based theories are either too thin or too thick. By ‘will-based theories are too thin,’ I mean that various will-based theories do not appeal to substantive values, which leads them to yield false negatives (the theories claim that states are illegitimate even when they do not appear to be illegitimate) and false positives (the theories claim that illegitimate states are, in fact, legitimate.) I suggest that various actual consent or agreement theories, certain public justification views, and democratic authorization views are all prey to this objection.

By ‘will-based theories are too thick,’ I mean that by including various motives, epistemic profiles, and specifying certain counterfactual conditions, the will-based theorist is no longer appealing to an act of will or the actual values of citizens to ground legitimacy or authority. Instead, the will-based theorist appeals to the relevant act of will as a heuristic for identifying various substantive values. And if we think that there is something objectionable about appealing to substantive values to ground legitimacy or authority—and, after all, this was the purported problem with substantive theories—then there is something objectionable about appealing to idealized, counterfactual acts of will to ground legitimacy or authority. Note that we might deny the antecedent of the previous conditional; perhaps there is not something objectionable about appealing to substantive values to ground legitimacy or authority.

32 For a list of these views, see footnote 17.
authority. But one of the purported advantages of will-based theories over substantive theories rests on accepting the antecedent—i.e., one the main purported advantages of will-based theories over substantive theories is that will-based theories do not appeal to substantive values to ground legitimacy or authority. As such, idealized counterfactual agreement views do not enjoy a clear advantage over substantive theories of legitimacy.

Finally, all will-based theories—whether too thin or too thick—need to specify the relevant baseline or set of options to be consented to, agreed to, that would be consented to or agreed to by suitably idealized agents, that is endorsable by all members of the public given their values, or that is authorized by democratic decision-procedures. The difficulty, however, is that people disagree about how to frame the relevant issues, or what the set of options for choice ought to be. Moreover, one major motivation for opting for a will-based theory is that such theories are respectful of disagreements. If, however, we find that these theories are not adequately respectful of disagreements about how to respectfully resolve disagreements, then such theories appear to fail to satisfy the problem that motivates them and that makes substantive theories of legitimacy unappealing.

Together, these problems give us some reason to accept the first thesis of this dissertation:

1. **Will-Based Theories Are Overrated:** Will-based theories of legitimacy or authority are subject to enduring problems, and certain purported advantages they enjoy over other theories are not, in fact, genuine advantages.
§1 Will-Based Theories and the Traditional Picture

Will-based theories seem promising at answering what I labeled ‘the Question of Legitimacy.’ Perhaps this is because we think consent or agreement can, to borrow a phrase from Heidi Hurd, ‘perform moral magic.’ That is, consent or agreement can render actions permissible when they otherwise would be impermissible, or even change how we describe the actions in question. As Hurd memorably writes, “Consent turns a rape into love-making, a kidnapping into a Sunday drive, a battery into a football tackle, a theft into a gift, and a trespass into a dinner party.” If an act of will in the interpersonal context can authorize persons to perform coercive actions or can function to waive of rights against coercive actions, then perhaps an act of will can also justify coercive actions on the part of the State. That is, if we perform some act of will vis-à-vis our government, then perhaps this morally justifies the government’s possession and exercise of coercive power, either by working moral magic on the power in question to render coercive power permissible or by transforming what appears to be coercive power into non-coercive power. So, one appealing way to answer the Question of Legitimacy is to claim that it is an act of will of the governed that morally justifies the State in possessing and exercising coercive power.

Various substantive theories of legitimacy will not answer the Question of Legitimacy as straightforwardly. We disagree about substantive values—about what is good, right, or just—and these disagreements extend to the values that ought to be promoted or respected by the State. Moreover, even if we were to agree on the good or goods to be produced or respected, we would presumably disagree about how they ought to be produced.

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33 (Hurd 1996).
or respected. More strongly, some claim that respectfully resolving this disagreement is the fundamental problem of politics and that it ought to be the central focus for political philosophers.\textsuperscript{34} Accordingly, to appeal to substantive values in reply to the Question of Legitimacy will, purportedly, struggle to engage with the question appropriately insofar as it will not address what gives rise to the problem; they will not be adequately respectful of normative disagreement between free and equal persons. More strongly, perhaps we should worry that theories of legitimacy that appeal to substantive values are failures to engage in political philosophy appropriately.

Will-based theories also seem particularly promising as answers to the Question of Authority. If we agree or promise to comply with someone else’s directives, then our agreement or promise could ground a moral power on the part of the other party.\textsuperscript{35} For instance, if I agree or promise to help you move, we might think you thereby gain a moral power over me, and you can exercise your moral power and release me from my \textit{pro tanto} obligation to help you, or you can create new \textit{pro tanto} obligations for me by giving specific instructions about when to come over and help you move. In other words, consent or agreement can ground a moral power that can generate new moral reasons or \textit{pro tanto} moral obligations. Furthermore, we might think, by only ruling persons when they agree or to be governed, we respect them as free and equal persons. On such a view, it is an act of will by free and equal persons that generates political authority, not a purported difference in moral status due to economic, religious, racial, physical, or gender-based features of persons.\textsuperscript{36}

\textsuperscript{34} See, e.g., (Waldron, 1999).
\textsuperscript{35} See, e.g., (Estlund 2008).
\textsuperscript{36} For an early influential statement of this idea, see especially (Locke 1982).
Substantive theories of political morality, by contrast, face obstacles in answering the Question of Authority. In cases where we do think that someone has an obligation or moral reason to comply with the directives of some person or entity but there has not been an act of will, it would be unlicensed to infer from this that the person or entity possesses authority or that an exercise of authority generates the relevant obligation or reason. To illustrate, imagine that the leader of a drug cartel that effectively rules a region demands that everyone pay some amount of money to the cartel leader. The cartel leader also announces—and one has very good reason to believe that this announcement is sincere—that she will kill many people if anyone does not comply. So, compliance with the directives of the cartel would be more likely to reduce the number of persons killed.

We all have moral reasons to prevent persons from being killed. So, members of the populace have at least some moral reason to comply with the directives of the cartel. But the moral reason for compliance would be a mere side-effect of the cartel’s issuing a directive insofar as the cartel created a causal path by which we could perform actions that would likely lead to the deaths to others. Our obligation to prevent persons from being killed would call for conformity to the law, but the requirement of conformity would not have its source in the cartel’s exercise of authority. More generally, appealing to various substantive values will not ground the authority of political power, but will point to content-dependent moral reasons that count in favor of conforming to law.

37 Stephen Perry discusses this as “The Problem of Reverse Entailment” in (Perry 2013).
38 For this distinction, see, e.g. (Edmundson 1998) (Green 2012) (Perry 2013) (Raz 1979, 234n235) (Schauer 2015).
A second difficulty arises for substantive theories proffered as answers to the Question of Authority is familiar from the discussion of the Question of Legitimacy; such theories seem insensitive to normative disagreement between free and equal persons. Accordingly, to appeal to a substantive theory in reply to the Question of Authority will constitute a failure to respect disagreement between free and equal persons. David Estlund captures this worry for substantive theories of authority with his question, “You might be right, but who made you boss?”39 In other words, just because some person knows the will-independent, substantive moral truth about what ought to be done in a particular case, this does not suffice for their directives to create moral reasons or obligations to comply.

In summary, an act of will can make it permissible to perform actions that are ordinarily impermissible. We think that the exercise of coercive power is ordinarily impermissible. So, appealing to an act of will on the part of citizens appears promising for purposes of answering the Question of Legitimacy. Appealing to some substantive value to justify coercive power, by contrast, strikes many as a failure to respect persons as free and equal who disagree about substantive values. Similarly, we think that some person A can come to have authority over another person B if B performs some act of will. As such, appealing to some act of will appears to be promising for purposes of answering the Question of Authority. Appealing to some substantive value to ground the authority of A over B, by contrast, strikes many as a failure to respect persons as free and equal—even if we agree about substantive values. Moreover, appeals to substantive values face additional challenges in grounding authority, such as David Estlund’s “You might be right but who

39(Estlund 2008).
made you boss?” challenge, and they struggle to demonstrate that the substantive considerations ground genuine authority rather than mere content-dependent reasons to conform with directives, as in the case of the drug cartel example.

§2 Express and Tacit Consent or Agreement

As mentioned above, we might think that consent or agreement can work moral magic. If we think consent or agreement can work moral magic in the interpersonal context, then it seems that it might also be able to work moral magic on political power, rendering otherwise impermissible coercive power permissible, and grounding authority. In what follows, I will articulate three interrelated problems for this claim.

§2.1 Consent is Not Obviously Necessary for Authority or Legitimacy

To many of us, it seems that at least some states or state institutions are legitimate. But, save for government officials and naturalized citizens, most individuals do not expressly consent or agree to be governed. As such, if we think that express consent or agreement is necessary for legitimacy or authority, it would follow that the initial intuitive judgment—that at least some states enjoy legitimacy—is mistaken. Moreover, it follows that states must be radically reorganized such that each person would have the opportunity to expressly consent or agree to be governed. If this reorganization were not to occur, then no state would be legitimate.40

How might someone reply if she were to find such anarchical implications to be counter-intuitive but still thought that the consent of the governed grounds legitimacy and authority? One possibility would be to appeal to the consent of one’s ancestors. Perhaps the

40 For those who embrace this form of a posteriori anarchism, see esp. (Huemer 2013) See, also, (Simmons 1979; 1999; 2001).
‘founding fathers’ of one’s country or some other persons in the past agreed or consented to governance in accord with a constitution or something similar. But as David Hume influentially argued, even if significant portions of the population were not excluded from constitutional conventions or some ‘original contract’—if it were the ‘founding parents’ rather than the ‘founding fathers’ who consented to be governed, for instance—we ought to doubt that consent or agreement of long-dead people has normative significance for us today.\footnote{(Hume, 1994).} We ordinarily do not think that the consent or agreement of one's distant ancestors works moral magic on their descendants; the fact that our great-grandparents agreed that you and I should live near one another hardly generates some a \textit{pro tanto} moral obligation for us to reside in the same neighborhoods. Insofar as consent or agreement of distant ancestors does not work moral magic in the interpersonal context, why should we think that it does so in the political context?

Alternatively, perhaps one might claim that those within a territory tacitly consent or agree to be governed and that tacit consent or agreement suffices to perform the moral magic of express consent, thereby rendering the State legitimate and grounding its authority. To illustrate, imagine that a cooking club has a weekly meeting at 9 PM and each week a different person is in charge of the meeting, during which time the leader puts forward various proposals that the group votes on. At the end of one meeting, the person running the meeting says, “I propose that we move the meeting next week to 8:30 PM. If anyone has any objections, please speak up.”\footnote{The example is from (Simmons 1979, 79-80).} Here one might think that by not speaking up, individuals are in effect consenting to the proposal, thereby working the relevant moral magic. If this is
correct, then we could apply this same model to subjects of states. By residing in a state rather than exiting, making use of the roads or accepting other benefits provided by one’s state, or perhaps engaging in other behavior, subjects tacitly consent or agree to be governed by their state, thereby grounding its legitimacy and authority.\footnote{See, e.g. (Locke 1982), (Simmons, 1979) For a view that turns on acceptance of benefits, see esp. (Klosko, 1987).}

In reply, it is worth considering Hume’s charge that tacit consent views are inadequate for answering the Question of Legitimacy and the Question of Authority:

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given his tacit consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have a place, where a man imagines that the matter depends on his choice...Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives, from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean, and perish the moment he leaves her.\footnote{Hume 1994, 172}

In this memorably provocative passage, Hume raises two objections. First, one’s consent or agreement has normative upshot only if the person understands herself to be consenting or agreeing. To illustrate, imagine that I am enjoying some loud music and am nodding my head to it. You say, “Will you help me move next week?” Due to the loud music, I do not hear or understand what you say, and I keep nodding my head. While you might be taking my
nodding to be my consent, I do not understand it as such. When I fail to show up to help you move, it would be wrong to say that I violated an obligation to you, or that you enjoyed some authority over me and I was unjustified in disobeying you. My nodding, which I understood as just an expression of my enjoyment but that you understood as consent or agreement, does not work moral magic in this instance. Similarly, many persons who reside in their country would not understand their ongoing residence as a form of consent or agreement. So, their ongoing residence does not work the moral magic of consent or agreement.

Second, in pressing his objection, Hume emphasizes that many who do not exit their country lack the means to exit. This provides further reason to think that individuals do not understand themselves as consenting to be governed by continuing to reside in their country. If individuals do not even consider the option of leaving the country because it is not feasible, then it becomes even less plausible to think that by continuing to reside, they construe themselves as consenting to be governed. Moreover, we should not construe some action as tacit consent when the other person does not have other options but to consent, or the options other than consenting are prohibitively costly.

Here it is worth emphasizing that these costs are not merely financial; relationships, emotional attachments, cultural or linguistic familiarity, and other considerations make emigration costly.\(^45\) We can construe a decision not to leave one’s country as grounded in these considerations rather than, say, tacit consent or agreement to be ruled by one’s State. Finally, even if residents were provided with financial means of exiting their current political

\(^{45}\) See (Simmons 1979).
arrangements, we live in a world in which one cannot but live within the jurisdiction of a state. As such, we ought to wonder whether individuals in such circumstances have the means of exit in the requisite sense. That is, there is an open question concerning the appropriate baseline for one’s options to exit. In summary, tacit consent theorists need to provide

A. a compelling answer as to what the baseline for one’s exit options should be for continued residence to count as consent

and

B. an argument that persons in at least some states enjoy options at or above that baseline,

and

C. an argument to the effect that persons do or should understand themselves to be consenting by residing in a territory.

If the tacit consent theorist cannot accomplish A-C, then appeals to the tacit consent or agreement of the governed do no better than appeals to the express consent or agreement of the governed vis-à-vis avoiding anarchical implications.

§3.2 Opacity and the Framing of the Object of Consent

As noted in the previous subsection, a central component of Hume’s critique of appeals to tacit consent rests on the difficulty of inferring from various actions that persons agree to the terms of a social contract. One way to capture this insight is that mere residence or the acceptance of various benefits that accompany living in a state are opaque vis-à-vis the
resident’s attitude about the legitimacy or authority of their government. A less discussed but strikingly similar point applies to express consent or agreement.\textsuperscript{46} When we consent or agree to someone else performing a particular action, we do not know the exact description or specification of the action in question. For instance, I may consent to a doctor treating me while under the impression that she will not be using needles. But if I knew that she would use a needle, I would have refused to consent. And when the doctor treats me using a needle, imagine I exclaim, “You’ve wronged me—I never consented to your use of needles on me!” To avoid this opacity, various service providers typically make the terms consented to more explicit—sometimes overwhelmingly explicit, such as in the case of iTunes user agreements.

This problem, which arises in the interpersonal context, is even more significant in the context of the person-State context. We might think that in consenting or agreeing to be governed, persons would consent only to certain kinds of coercive actions in response to certain conduct, but not others. As such, consenting or agreeing to be governed by the State will not, on its own, provide an informative answer as to what, exactly, individuals understand themselves to be consenting or agreeing to. Consent and agreement are similarly opaque when invoked in response to the Question of Authority. For instance, when you consent or agree to help me move, I thereby acquire a limited form of authority over you. If you consent or agree to help me, full stop, then presumably my authority over you is more expansive. But you could very well consent or agree to help me and understand this consent or agreement on your part to extend to some activities (helping me carry boxes) but not

\textsuperscript{46}See (O’Neill 1989) for discussion of this point, albeit in the interpersonal context rather than the political context.
others (helping me pack my boxes). Similarly, persons might consent to their state with the understanding that it enjoys authority over some matters, but not others.

Perhaps at this point, someone would insist that states are legitimate if and only if persons expressly and non-opaquely consent to a very specific list of actions and policies. If true, as noted above, it would follow that states would be legitimate if and only if they were radically reorganized, and all existing states lack legitimacy. Moreover, this reorganization would be more radical than previously suggested—states would need to be reorganized to secure non-opaque express consent or agreement to each policy or action on the part of the government. At this point, we ought to wonder whether such a requirement rests on a fetishization of consent or agreement. To illustrate this claim, imagine that a state merely solves a few coordination problems for a populace that enjoys an abundance of resources but the populace does not expressly and non-opaquely consent or agree to each such solution. It would be reasonable to balk at a theory that claims that such a state and its solutions to particular coordination problem all lack legitimacy insofar as the relevant form of express and non-opaque consent or agreement is a necessary condition for legitimacy.

§2.3 Express Non-Opaque Consent Is Insufficient for Authority or Legitimacy

So far, I have been suggesting that we should doubt that consent is necessary for legitimacy. But there is also good reason to doubt that we can adequately answer the Question of Authority and the Question of Legitimacy by appealing to consent or agreement because non-opaque express consent or agreement is insufficient for either authority or legitimacy. In particular, non-opaque express consent or agreement does not justify or authorize deeply immoral institutional arrangements or conduct. As such, non-opaque express consent or
agreement does not seem sufficient to confer legitimacy or authority against the backdrop of such immoral institutional arrangements or conduct.

To illustrate, imagine that citizens expressly and non-opaquely agree to be governed by an oppressive regime like North Korea, or to an expansive list of repressive actions North Korean government officials may perform. Many would balk at concluding that North Korea thereby enjoys legitimacy or authority—even for the actions in question. Because there is good reason to doubt that express, non-opaque agreement is sufficient for legitimacy and authority, the appeal to actual agreement—whether express or tacit—is not adequate for answering the Question of Legitimacy and the Question of Authority. We have at least some reason to think that such an answer would commit one to claiming that states are legitimate or possess authority even when we should not think they do. In other words, if one answers the Question of Legitimacy or the Question of Authority by appealing to express, non-opaque acts of will, one endorses a theory that yields false positives: it claims that states are legitimate or possess authority when they do not, in fact, enjoy legitimacy or authority. The appeal to actual consent or agreement is too thin to adequately answer the Question of Legitimacy or the Question of Authority.

An obvious reply to this objection would be as follows. North Korea has policies in place, and its various state actors perform actions that are morally impermissible. Just as many think that one cannot work moral magic by agreeing to be someone else’s slave, the express non-opaque agreement of North Koreans could not work moral magic on various

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47 For an early articulation of this objection, see esp. Jeremy Bentham’s remark, “If a king had taken an oath to render his subjects unhappy, would such an engagement be valid? If the people were sworn to obey him at all events, would they bound to be suffer themselves to be exterminated by a Nero or a Caligula rather than violate their promise?” (Bentham 1840, 105)
oppressive actions and institutional arrangements.\textsuperscript{48} So, consent suffices to ground legitimacy or authority save for cases of various immoral actions or institutional arrangements.

We have just considered a theory offered as an answer to the Question of Legitimacy and the Question of Authority. On this theory, the State can alter the moral landscape of citizens if and only if, antecedently to commanding citizens to perform the action in question, such commands are morally permissible. As an answer to the Question of Legitimacy, the possession or exercise of coercive power by the State or particular state actors are morally permissible if and only if people consent and the actions they consent to are, independently of consent, morally permissible for citizens to consent to do so.

Some would object to this theory as an answer to the Question of Authority. Joseph Raz, for instance, writes, “It would not be authority if it did not have the power to err.”\textsuperscript{49} We can grant, for the sake of argument, that this is not a non-starter when thinking about the Question of Authority; perhaps the State may alter the moral landscape of citizens by imposing obligations, but it may only impose obligations to do what is, antecedently, permissible for citizens to consent to. As an answer to the Question of Authority, then, the view would be as follows: the State has authority to issue some command if and only if the command is antecedently morally permissibly required of persons, and citizens expressly and non-opaquely consent.

With regard to the Question of Legitimacy, however, this kind of theory is inadequate. If the actions in question were antecedently permissible to perform, then

\textsuperscript{48} For an argument that one cannot become someone else’s slave by performing some act of will, see, e.g. (Brock 1992).

\textsuperscript{49} See, (Raz 1986, 159).
consent appears to be normatively irrelevant to determining what the State may do.\textsuperscript{50} The State may only perform actions that are morally permissible to perform independently of its possession of legitimacy or authority. But if the coercive actions in question are antecedently morally permissible, then it is not apparent why one needs to invoke the moral magic of consent to justify such actions. If one answers the Question of Legitimacy by claiming that the State is legitimate only if it satisfies some will-independent standards about what is permissible to do, then the consent of the governed is explanatorily inert; the substantive, will-independent considerations suffice to answer the Question of Legitimacy.

Finally, by invoking these will-independent standards as to what is permissible, one foregoes one of the purported advantages of will-based theories over their rival theories; will-based theories were supposed to be appealing because they did not appeal to contentious will-independent standards when free and equal persons disagree about those standards.

\textbf{§3 Idealized Counterfactual Consent or Agreement}

In reply to the problems with express and tacit consent as answers to the Question of Authority and the Question of Legitimacy, one might argue that the fact that sufficiently idealized persons \textit{would} be rational or reasonable to consent or agree to certain conditions of governance is necessary and sufficient to render a state legitimate or to ground its authority.

\textsuperscript{50} The inadequacy as answer to the Question of Legitimacy is reminiscent of the King from \textit{The Little Prince} and their exchange, which was quoted as an epigraph to this part of the dissertation. The King may only command what is reasonable for his subjects to do—where ‘reasonable’ seems to coincide with what persons had most reason to do, prior to the King’s command. So, the King commands the sun to set only when, according to his astronomical charts, the sun would set regardless of his commands. The King’s authority makes no normative difference for his subjects. So too, the legitimacy of the State or particular state actions makes no normative difference, as it aligns with what is, independent of its legitimacy, permissible to do.
So, for instance, perhaps people with only true beliefs and certain motivational profiles would consent or agree to be governed by some states. Such persons would, presumably, not agree to be governed by other states, such as North Korea. Accordingly, idealized counterfactual consent views seem promising vis-à-vis the charge that consent-based theories do not articulate sufficient conditions for legitimacy or authority. Put another way, the idealization in idealized counterfactual will-based theories avoids yielding the false positives that accompany actual consent or agreement views.

This appeal to idealized counterfactual acts of will can also avoid the counter-intuitive, and arguably consent-fetishizing, conclusion that for states to be legitimate, we need to radically reorganize states such that each person gives non-opaque and express consent or agreement. Instead, states that strike us as putatively legitimate would be ones that suitably idealized persons would consent or agree to. Put another way, the counterfactual component of idealized counterfactual consent or agreement avoids the false negatives that accompany actual consent or agreement views. Finally, one might draw on idealized counterfactual acts of will to avoid the problems associated with opacity and individuation. That is, one might stipulate the object of consent or agreement rather than wondering what persons have in mind when they consent or agree to some terms.

§3.1 The Framing Problem for Idealized Counterfactual Agreement Theories

There are significant problems for idealized counterfactual will-based theories. To begin, we can worry that idealized will-based theories do not do much better than actual consent or agreement-based theories when it comes to questions concerning the object of consent or agreement. Recall that express and tacit consent or agreement theories are subject to worries
insofar as consent and agreement are opaque. Idealized, counterfactual will-based theorists can avoid this problem by stipulating that the act of consent or agreement is non-opaque.

But we should ask why the idealized consent theorist is entitled to a particular framing of the options for idealized counterfactual acts of will. For instance, perhaps idealized versions of United States citizens would agree to be governed by the United States if the alternatives were living under a totalitarian regime, or in a state of nature where life is ‘nasty, brutish, and short.’51 But imagine that Beth tells Albert that the government possesses legitimacy and authority because Albert would agree to be governed by the United States rather than such dismal alternatives. Albert hears this, and replies, “But why shouldn’t the relevant set of options be between being governed by the United States, living in a smaller country with a greater social safety net, or living in some other set of conditions that I would prefer?” Albert would be right to object that Beth’s framing of the choice is under-motivated.

Perhaps someone would attempt to avoid this framing problem by insisting that the conditions that idealized persons would consent to must, as in the case of actual consent, be sufficiently just. If we were considering whether idealized persons would consent or agree to various social conditions that were sufficiently just, then the baseline problem no longer seems as pressing. To return to the dialog from above, imagine that Beth was to say to Albert, “The United States government is legitimate and possesses authority because it is sufficiently just, and if you had the relevant information and motives, you would agree to be governed by a sufficiently just state.”

51 (Hobbes 1994).
But here, as in the case of actual consent views that include the clause that the action or institutions consented to have to be reasonably just, this runs the risk of rendering the idealized counterfactual act of will superfluous. It would seem that the sufficient justness of the conditions rather than the counterfactual agreement that grounds the legitimacy and authority of the State. That is, if we are attempting to answer the Question of Legitimacy and the Question of Authority by appealing to counterfactual agreement, but we insist that counterfactual agreement has the relevant normative force only if we restrict the options to sufficiently just conditions, it is no longer apparent what justificatory work the counterfactual agreement is doing. In particular, one might claim that once one has fixed the baseline in the relevant way, it is the justness of the baseline, rather than the idealized counterfactual agreement that ultimately grounds the State’s legitimacy and authority.

§3.2 Idealized Counterfactual Agreement is Neither Necessary nor Sufficient

In the previous section, I objected to attempts to fix the baseline for idealized counterfactual will-based theories, attempts that appeal to substantive characteristics, such as the justness, of that baseline. I argued that once one fixes the baseline in this way, we should be wary of accepting the claim that it is the idealized counterfactual agreement that grounds the State’s legitimacy and authority—we ought to seriously entertain the alternative explanation, namely, that the justness of the circumstances is what is really grounding legitimacy and authority rather than an idealized counterfactual act of will. This argument points to a further, more fundamental difficulty for appealing to idealized counterfactual acts of will to ground the legitimacy and authority of the State.

We can see this more fundamental worry in both the individual context and the
context of political legitimacy. In the individual context, the main problem with appealing to idealized counterfactual acts of will is that even if some idealized version of Albert would be rational or reasonable to agree to a boxing match with Beth, this does not justify Beth in punching the actual person, Albert. Similarly, the fact that Albert would be rational or reasonable to agree to Beth’s possession of authority over Albert does not suffice to ground Beth’s authority over actual Albert. That is, the fact that it would be rational or reasonable for Albert to agree to help Beth to move does not suffice to make it the case that when Beth tells Albert to pick up a box, she creates a pro tanto moral obligation for him to do so.

To illustrate this point in the context of political power, let’s return to the case of Water Theft from §1. Recall that Beth says, “Stop or I will make you stop!” Imagine Albert asks, “Why? I didn’t agree to obey this law.” Beth replies, “Well, if you were motivated by considerations x and if you knew information y, you would agree to obey this law. You would also agree that I am permitted to enforce the law. So, I’m permitted to enforce the law against you.” But even if Beth could demonstrate that a suitably idealized version of Albert would agree to obey this law and to Beth’s enforcement of it, Albert would rightfully be puzzled as to what this has to do with him. “Fine,” he might say, “arrest that version of Albert. But do not arrest me.”

Will-based theories are so appealing as answers to both the Question of Legitimacy and the Question of Authority precisely because an act of will appears to be a plausible candidate for working the relevant forms of moral magic—moral magic that could overcome the moral presumption against some possessing or exercising coercive power over others,

52 For a recent articulation of this criticism, see (Enoch 2013).
53 For these objections, see esp. (Enoch 2013) and (Simmons 1979; 2001).
and the moral presumption against some having authority over others. Idealized counterfactual agreement, however, does not appear to work this moral magic. So, we ought to worry that the appeal to some idealized counterfactual act of will is an inadequate answer to the Question of Legitimacy and the Question of Authority.

Perhaps someone sympathetic to some form of idealized, counterfactual agreement would reply that an idealized counterfactual act of will is merely a heuristic for identifying substantive, will-independent moral requirements. But if this is the case, then the idealized

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54 A different view would hold that some sort of counterfactual agreement constructs various moral norms governing the permissibility of coercive power. I will discuss one view that is somewhat similar to this position in the following section on public justification and Gerald Gaus. Other views that fall into this category arguably include (O'Neill 1989), and, perhaps most notably, (Scanlon 1998). T.M. Scanlon argues that while there are reasons to perform various actions, principles of morality—what we owe to each other—are constructed from these reasons. Accordingly, one might argue, idealized counterfactual consent is needed to construct or justify substantive moral norms, not merely to discover them. In reply, however, Scanlon’s view runs into a similar difficulty to the one I have outlined for views that treat idealized consent as a heuristic. In particular, Scanlon grounds principles or rules on the basis of reasons we have. Scanlon is an externalist about these reasons; he would not allow that the cold-hearted person who could profitably murder has reason to commit murder. (For the externalism/internalism distinction see, e.g. (Williams 1981) or (Parfit and Broome 1997).) Accordingly, constructing principles on the basis of an externalist conception of reasons merely moves the problem of disagreement to a debate about what reasons we have, rather than what principles ought to regulate our society. That is, we disagree about what external reasons we have, just as we disagree about substantive, will-independent values and norms. A counterfactual will-based theory resting on an internalist conception of reasons would not encounter this difficulty—although, as will become apparent in the next section on Gaus, such theories are subject to significant objections precisely because of this sort of feature—they are too thin. Moreover, insofar as we have substantive disagreements about the characterization of the idealization of agents and the relevant procedure of construction—a point I return to in the following section on Gaus—such views are prey to at least some of the objections that substantive theories of legitimacy are. In particular, we ought to worry that instead of failing to respect contentious disagreements about political morality, we fail to respect contentious disagreements about how to idealize the persons whose acts of will construct moral principles. If this is the case, then such constructivist theories of legitimacy ought to be construed as subject to at least some of the same objections as other substantive theories. This hardly shows that such theories are not viable contenders in response to the Question of Legitimacy. But it does give us reason to think that at least some of the purported advantages that such a will-based view enjoys over substantive theory of legitimacy do not appear to be genuine advantages. Nonetheless, this is too brief of a treatment of issues in meta-normative theory, and I do not have room in this dissertation to do full justice to debates between
counterfactual agreement is neither necessary nor sufficient for legitimacy or authority; heuristics are not, in themselves, necessary or sufficient to justify coercive actions or ground authority. Instead, when heuristics are good they are useful, epistemically, for determining the content of various substantive, will-independent moral requirements. Since heuristics are neither necessary nor sufficient to justify coercive power or ground authority, if idealized counterfactual agreement is merely used as a heuristic, then idealized counterfactual agreement is neither necessary nor sufficient to answer the Question of Legitimacy or the Question of Authority. Instead, it is substantive moral norms that ground legitimacy and authority—substantive moral norms we can discover or identify by using some form of idealized counterfactual agreement.

If it is the case that idealized counterfactual consent views answer the Question of Authority and the Question of Legitimacy by appealing to substantive values, then it hardly follows that idealized counterfactual agreement views are non-viable as answers to those questions. But it does appear that idealized counterfactual agreement also faces problems that substantive theories of legitimacy or authority face. In particular, if some form of idealized consent is merely being used as a heuristic to identify various substantive values that ought to be respected, then the legitimacy and authority of the State are grounded by substantive values rather than an act of will on the part of the governed. One objection to substantive theories is that they fail to respect actual disagreement because they ground legitimacy and authority in substantive norms or values rather than some act of will on the

constructivists and realists and the role of counterfactual agreement vis-à-vis moral principles or reasons we have.

55 I use ‘moral norms’ so as to remain agnostic about meta-ethical issues concerning whether moral language is truth-apt and whether there are any moral truth-makers.
part of the governed. If one appeals to some form of idealized, counter-factual agreement that functions as a heuristic for identifying various substantive norms or values, then, absent further argument, such views are similarly liable to the charge of failing to respect actual disagreement between free and equal persons.\(^{56}\)

This problem becomes all the more pressing insofar as different theorists disagree about the appropriate idealization and counterfactual conditions involved; some might advocate for a radical idealization of persons and consider what they would agree to, whereas others would advocate for an idealization that is thinner or more minimal. Disagreeing about how to idealize various agents is not, strictly speaking, the same as disagreeing about which substantive values ought to be implemented. But the same worries arise; we ought to worry that appealing to a contentious idealization of persons will fail to respect persons as free and equal, and that accordingly it will fail to justify coercive action or ground authority. That is, if appealing to contentious, substantive norms or values to justify coercive power is objectionable given our disagreement about those values, then appealing to contentious characterizations of idealized agents to justify coercive power should also be viewed as objectionable.\(^{57}\)

To return to Water Theft again, imagine that Albert asks Beth why she is permitted

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\(^{56}\)A further difficulty is that just as we worried that various substantive theories of authority are subject to the ‘problem of reverse entailment’—i.e., demonstrating that there is an obligation or moral reason to obey a law hardly suffices to demonstrate that this obligation has its source in the authority of the State—we can also worry that idealized counterfactual consent also encounters this problem. Perhaps we can appeal to idealized counterfactual consent to identify conditions under which there is an obligation to obey the law, but on its own this won’t show that the obligation to obey the law has its source in the authority of the State.

\(^{57}\) For an argument that is somewhat similar to this one, see (Waldron 1999).

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to enforce the law against him, or why his state enjoys authority over him. Beth could appeal to idealized agreement on the part of Albert to illustrate the content of certain consent-independent moral norms to justify her actions. But that would, ultimately, render the appeal to idealized agreement merely illustrative. Whether she could, in fact, make her case that the state has authority over Albert in this instance and that she acts legitimately in enforcing the law against him would not rest on whether some idealized version of Albert would be rational or reasonable to consent or agree to be governed. It would rest on whether the relevant substantive moral norms justify her conduct, or on whether she is justified in idealizing Albert in the relevantly appropriate way. Beth, then, would not be appealing to an act of will on the part of the governed to answer the Question of Legitimacy. With regard to respecting normative disagreement between free and equal persons, Beth would be doing no better than someone who appealed to Kantian principles, perfectionist principles, consequentialist principles, or claims about natural rights to justify the relevant actions.

So, if Beth were to attempt to justify her conduct by invoking idealized counterfactual agreement to highlight the content of certain moral principles, then she would also need to answer challenges that apply to all substantive theories—such as Estlund’s charge that ‘you might be right, but who made you boss?’—as well as challenges from rival substantive theories—such as those proffered by Kantians, perfectionists, consequentialists, or natural rights theorists. In sum, once one attempts to answer the Question of Legitimacy or the Question of Authority by appealing to a form of idealized, counterfactual consent, one can no longer straightforwardly claim to be merely appealing to the moral magic of consent. One is offering a substantive theory of legitimacy, and thus one’s theory does not straightforwardly enjoy the appealing theoretical features of actual will-based theories,
features that appear to confer advantages over rival substantive theories of legitimacy.

§4 Public Justification, Authority, and Legitimacy

Perhaps someone would charge that it is not idealized counterfactual consent or agreement that ultimately grounds the authority and legitimacy of the State. Instead, such a theorist would continue, political power is justified if and only if it conforms to norms that all suitably idealized persons could endorse given their values. The underlying thought would be that insofar as the State respects the shared values of all, it enjoys legitimacy and authority. This would be a case of a view that would ground legitimacy and authority in a way that is respectful of normative disagreement between free and equal persons. Thus, such ‘public justification’ views would be promising at answering the Question of Legitimacy or the Question of Authority.

I will treat Gerald Gaus’s theory of public justification as a representative of such views. I do so in part because Gaus provides a theory of public justification that aims to answer something like the Question of Authority and the Question of Legitimacy. Moreover, Gaus attempts to answer the Question of Authority and the Question of Legitimacy with an ecumenical idealization of the person, which seems more promising than other idealizations at avoiding the charge that Gaus’s idealization is functioning as a mere heuristic for various substantive values, or is relying on a highly contentious idealization of

58 As mentioned in Chapter One, some provide theories of public reason to model fair terms of social cooperation, where social arrangements are just if and only if they are in conformity with requirements of public reason. For this interpretation of Rawls’s political liberalism, see, e.g. (Gaus and van Schoelandt, 2017) As mentioned above, insofar as the Question of Legitimacy and the Question of Authority are distinct from the Question of Distributive Justice, I won’t consider views that appeal to public reason to answer the Question of Distributive Justice. And, as mentioned in Chapter One, one could accept a theory of public reason in reply to the Question of Distributive Justice but not in reply to the Question of Legitimacy and the Question of Authority.
individuals.\textsuperscript{59}

Despite its promise, I will argue that Gaus’s attempts to answer the Question of Legitimacy or the Question of Authority by developing a theory of public justification ultimately faces three problems. First, like actual will-based views and idealized counterfactual views, there is a difficult question about how to specify the relevant baseline or options that are being publicly justified. Second, I object that Gaus’s arguments do not plausibly support the claim that appealing to substantive moral norms is objectionable. Finally, and most importantly, I object that Gaus’s theory is subject to a dilemma. If his theory treats people’s values as they are, then public justification views fail to identify plausible necessary and sufficient conditions for legitimacy or authority due to its thinness. This is for reasons that are familiar from the discussion of actual will-based theories. If, on the other hand, the theory invokes objective moral values, then the view is not only \textit{ad hoc}, but also subject to the problems faced by idealized counterfactual will-based theories—the problems discussed in §3.

\section*{§4.1 Gaus’s Theory of Public Justification}

Gaus argues that it is permissible for A to claim moral authority over B on the basis of some

\textsuperscript{59} For a more substantive idealization that aims to justify coercive power, see, esp., (Blake 2001). One reason I choose Gaus rather than, say, Blake as a representative of this strand of theorizing is, that Blake does \textit{not} treat particular rules as the relevant object of justification; instead, Blake considers whether suitably idealized persons would consent to be governed by the State. Given the problems with the opacity of consent and the possibility of consenting to some forms of governance but not others, I take Gaus’s approach to be more promising at avoiding those problems. Given arguments in Chapter Three, Gaus’s is approach is more promising insofar as he is more sensitive than various others at recognizing the distinction between macro legitimacy and micro legitimacy, and he does not claim that macro legitimacy is necessary for micro legitimacy. Insofar as his view \textit{still} faces the relevant challenges I articulate while being sensitive to the distinction between micro legitimacy and macro legitimacy, this provides additional support for \textit{Will-Based Theories are Overrated}.
moral rule M if and only if

i. in society S there is an actual social rule M according to which there is a duty to ø in circumstances C

ii. M is a moral rule

iii. M is endorsable by all members of S at time t.\(^60\)

Whether some rule M is endorsable by all members of a society turns on whether it is consistent with the evaluative standards of all members of that society. Some standard is an evaluative standard, E, for an individual A if and only if “A’s holding E along with various sound beliefs about the world is a reason for or against a purported moral principle from A’s rational and reflective point of view.”\(^61\) The idealization of agents, on Gaus’s view, merely involves assuming the agent has ‘sound beliefs’ and observes various norms of consistency.

What about cases where one invokes a moral norm or criticizes someone when that norm is not endorsable by some person, given her evaluative standards? Gaus claims that this amounts to ‘claiming the superior stance’ as to the content of morality, and that this is a failure of respect. Similarly, Gaus claims that it is a failure of respect to coerce someone on the basis of a moral rule that the person would not endorse given their evaluative standards. More specifically, Gaus argues that a principle that members of liberal societies happen to accept is the following: ‘exercises of coercive power are morally permissible if and only if they are endorsable by all members of society.’

\(^60\) (Gaus 2013, 70-71).
\(^61\) (Gaus 2009, 87). As noted in an earlier footnote, Gaus’s conception of reasons is an internalist one.
Gaus’s standard of public justification appeals to a relatively ecumenical idealization of the actual values of agents. He proposes a view according to which the only rules that are authoritative for a society are those are consistent with the values of each ecumenically idealized individual. He answers the Question of Authority, then, by claiming that moral rules are authoritative if and only if they are already observed in that society, and they are consistent with the values of each. Gaus also answers the Question of Legitimacy by claiming that rules may be legitimately enforced if and only if they are consistent with the values of each. By including the requirement that authority and coercive power be consistent with the values of each, Gaus articulates a theory that is promising at respecting persons as free and equal while answering the Question of Legitimacy and the Question of Authority.

§4.2 The Framing of the Rule to be Justified

An initial problem that David Enoch raises for Gaus’s theory concerns how to go about assessing which rules are endorsable for each. We can see this by turning to Gaus’s argument for the conclusion that his theory entails that his favored version of classical liberalism is justified whereas more left-leaning, or ‘high liberal’ views are not justified. This is because, Gaus argues, the set of rules endorsable by both classical liberals and high liberals include classical liberal rules. But the set of rules endorsable by both classical liberals and high liberals do not include the rules that high liberals endorse; Gaus claims the additional rules that the left-leaning liberal would prefer are not endorsable by classical liberals. In other words, left-leaning liberal proposals about distributive justice and extensive social safety nets

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62 Gaus and others sometimes refer to these views as ‘high liberal’ views. For the distinction between high liberalism and classical liberalism, see (Freeman 2001).
63 (Gaus 2011, 521).
are not endorsable by some persons given their evaluative standards, but this is not the case for the rules associated with classical liberalism, which are endorsable by all. So, given Gaus’s claims about the necessary conditions for legitimacy and authority, it would be wrongful to insist that someone ought to conform to some moral rules associated with high liberalism, or to coerce someone to conform to moral rules associated with high liberalism.\textsuperscript{64}

An initial worry is that we should doubt that the set of rules, \{classical liberal rules but not high liberal rules\} are, in fact, endorsable by high liberals. Absent various redistributive policies, at least some high liberals would not be able to endorse rules that include protecting negative liberty and extensive private property rights. For at least some high liberals, presumably, extensive protection of property rights by the State is morally appropriate only if the State is also performing other tasks, such as doing reasonably well at securing fair equality of opportunity, or ensuring that citizens have access to various public goods. Otherwise, the State’s enforcement of property rights amounts to preserving a deeply unjust social order at the expense of the most vulnerable members of society.

To illustrate with another similar case, the property rules endorsable by capitalists would require that the means of production ought to be owned privately. The rules of property endorsable by various socialists, by contrast, would require that the means of production ought to be owned collectively. It is not as though the set of rules \{capitalist

\textsuperscript{64} One objection, of course, is that it is not clearly the case that high liberals would accept living in a classical liberal society; they would reject rules under which some were able to accumulate larger shares of wealth, and where there was less of a role for government to provide a social safety net. I put this objection to the side because how we assess it turns on the more fundamental point that Enoch raises.
economic arrangements but not socialist economic arrangements} is endorsable by both capitalists and socialists.

Returning to the case of the high liberal and the classical liberal: if the two options were a set of classical liberal rules and no set of rules, there are reasons to doubt that high liberals would choose the classical rules. But, more importantly, it is not apparent why that should be the relevant alternative set of rules.

This concern is familiar from the discussion of idealized counterfactual agreement and the challenge of justifying a particular framing of options. That is, we saw that it would be under-motivated to ground the legitimacy of the United States government by insisting that suitably idealized persons would agree to be governed by the US if the set of alternatives were \{Be governed by the United States OR Live in a Hobbesian state of nature\}.

Gaus’s view is subject to this problem, or at least a problem that is strikingly similar to it. If, for instance, we are concerned with whether someone should be allowed to drive at a certain speed, why should we think that the issue is what the speed limit should be rather than whether there should be roads with speed limits, whether there should be roads, or whether there should be roads but no speed limits at all? Depending on how we frame the question to be assessed in terms of Gaus’s public justification requirement, there may very well be contradictory verdicts as to whether the rule is authoritative or legitimate. For instance, a thrill seeker might have values such that he could endorse having roads with speed limits rather than no roads. But the thrill-seeker would prefer roads without speed limits to roads with speed limits. Thus, if we frame the issue as a question as to whether there should be roads, Gaus’s theory will yield one result, whereas if we frame the question
as to whether there should be roads with speed limits, Gaus’s theory requirement will yield a different result.\(^{65}\)

This is a significant problem, especially if we think that framings themselves have to be endorsable by members of the public. For instance, one framing of the rule to be decided upon would not be endorsable by the thrill seeker—the framing that she would find endorsable would presumably be \{roads without speed limits OR roads with speed limits\}. The cautious motorist recognizes that if there were no speed limits, she would never wish to drive, and so the framing that would be endorsable for her would be \{roads with speed limits OR no roads\}. For any given rule, then, it must not only be the case that it is endorsable by the members of the public, but it must also be the case that the particular framing is also endorsable by each member of the public. A natural worry, then, is that almost no rules would be endorsable—either because of non-endorsement at the level of framing the possible rules to be selected, or non-endorsement when it comes to the moral rule.

Here, again, we can see a dialectic that is familiar from earlier discussed will-based theories. If we were actual will-based theorists, then the absence of non-opaque express consent or agreement to governance ought to lead to anarchism. This is because, for such views, an actual act of will is necessary for legitimacy or authority, but we do not consent to be governed. Similarly, for any given issue, there will be some person whose evaluative standards would preclude that rule or the framing of the rules for selection. Given the importance Gaus accords to treating a set of moral rules as genuinely authoritative or

\(^{65}\) For the example, see (Enoch 2013).
legitimate if and only if they were endorsable by suitably idealized persons, then without an issue individuation criterion and further argument, it would seem that Gaus’s framework should similarly push us to anarchism. In the context of actual will-based theories of legitimacy, the absence of non-opaque express consent or agreement can also lead us to question whether non-opaque express consent or agreement is, in fact, necessary for legitimacy or authority. As noted above, we might worry that a theory that claims that political power is legitimate or authoritative if and only if there is express non-opaque consent or agreement to every policy is guilty of fetishizing express non-opaque consent or agreement. Accordingly, if Gaus’s theory ultimately commits him some form of anarchism, we ought to similarly worry that Gaus’s theory is guilty of fetishizing his preferred standard of public justification.

Now, Gaus could insist that the framing is not subject to his endorsement criterion. But it is hard to see why he would be entitled to restrict the endorsement criterion in the requisite way.66 Gaus is concerned with the purported wrongness of judging or coercively enforcing rules that are not endorsable by suitably idealized members of the public. Such a concern would also extend to how to frame the moral rules to be deemed endorsable or non- endorsable.67

§4.3 Authority and the Superior Stance

A different worry is whether Gaus is correct that it is morally impermissible to issue directives or enforce them on the basis of rules that are not endorsable by members of the

66 For a similar argument, see (ibid.)
67 Gaus ultimately proffers a criterion of issue individuation in (Gaus 2011)—although Enoch raises substantive criticisms of it and argues that it is not well-motivated in (Enoch 2013). If one wished to defend Gaus, however, this would be a fruitful place to respond to these objections from Enoch.
public. To illustrate, consider the following case. A small child is about to drown in a pond. You are unable to reach her in time, but you see someone else wearing an expensive suit and she could rescue the child. You shout, “You ought to rescue the child!” The person replies, “Why? I do not want to ruin my suit!” You say, “Here’s why—there’s a moral rule: If it is in an agent’s power to prevent something very bad from happening, without thereby sacrificing anything else of great moral significance, the agent ought, morally, to do it. Your suit is not of great moral significance. You could save the child but ruin your suit if you wanted to. And the child’s death is very bad. So, you morally ought to save the child.” Let us assume that the norm invoked is not part of social morality—the society in question does not act as though that rule is the case in many contexts such as when it comes to charitable giving, and the rule is inconsistent with at least one person’s evaluative standards. Since the rule is not a part of social morality for that society, then, Gaus would charge that you fail to respect the suit-wearer as free and equal insofar as you are claiming authority about morality.

Enoch has objected that such a charge would rest on a mistake, because to claim that someone ought to comply with an independent moral rule is not to claim authority when one does not have it. Instead, to claim someone ought to comply with a moral rule is to invoke a standard that has moral authority independently of the person who invokes it. Gaus accepts this and clarifies that the moral problem with issuing a directive like, ‘You ought to x because x is morally required by rule r,’ the agent is not claiming authority in the sense that Enoch would object to. Instead, Gaus argues, the agent acts objectionably because she insists that others defer to her judgment about the content of morality—that is, one claims
‘the superior stance.’ And claiming the superior stance or insisting that others defer to one’s judgment is objectionable because it fails to respect others as free and equal.

We ought to question, however, whether asking others to defer to one’s judgment about the content of morality is, in fact, so objectionable. Perhaps the person in the suit does something pro tanto wrong by deferring to your judgment rather than attempting to figure out what she morally ought to do. Even this is not obviously correct, especially if the suit-wearer has good reason to think that deferring to your judgment will give her the best chance of doing what she has most moral reason to do. But regardless of that issue, it is implausible that you perform an action that is all-things considered wrong, or even pro tanto wrong, by telling the person what morality requires in this situation.

§4.4 A Dilemma for Gaus’s Idealization

The most central difficulty for Gaus’s view becomes apparent when we think about how Gaus would reply to the previous argument. Gaus would correctly point out that the example from the previous section involves an appeal to moral norms that are not part of justified social morality. As stipulated, the above-mentioned rule is presumably one that would not satisfy the public justification requirement that Gaus articulates. And Gaus is expressly concerned only with justified social morality, not with moral rules of what he refers to as ‘absolute morality.’ Since the appeal to the moral requirement that calls for saving the child seems to be an appeal to a moral rule that is not contained within that society’s social morality, it is a rule of absolute morality.

68 See (Gaus 2015, 15-16).
69 For an articulation of the claim that moral deference is itself objectionable, see e.g. (Davia & Palmira 2015), (McGrath 2009; 2011).
But to claim that one may permissibly invoke moral rules or coercively enforce them only if they are part of social morality requires significant bullet-biting. We can see the difficulty more clearly if we cast it as a dilemma Gaus faces—namely, either

*Never Absolute Morality:* It is never permissible to appeal to requirements of absolute morality and coerce others to conform to such requirements, and it is impermissible to use coercive measures to eradicate immoral but socially accepted practices

or

*Sometimes Absolute Morality:* In at least some cases it is permissible to make moral demands and coercively enforce them on the basis of rules of absolute morality.

To illustrate, Enoch presents a case in which a misogynistic father has evaluative standards such that he would not endorse moral rules that would enable his daughter can learn to read. Imagine that various state actors were to undertake coercive measures to ensure that the man’s daughter was able to learn to read. If we accept Never Absolute Morality, these actors would be acting objectionably by claiming the superior stance about the content of morality and by violating the non-coercion principle. Gaus does not wish to accept this implication—he wants to allow that the father has not been wronged in this case, and that state actors perform permissible actions. To accept Sometimes Absolute Morality, by contrast, is to admit that there are at least some moral rules that the State may act on even if

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70 A different case that raises the same worry is one in which the rest of society, including the daughter herself, also holds these standards. In that society, according to Gaus, the State would be justified in upholding a sexist social order. But, presumably, this would strike many as an objectionable conclusion to reach.

71 See, esp. (Gaus, 2015, 1087-1090)
these rules do not satisfy Gaus’s public reason requirement—in effect, it involves admitting that Gaus has not offered necessary conditions for authority or legitimacy.

Moreover, to claim that we ought to accept Sometimes Absolute Morality but also insist on a public reason theory for all other cases would be *ad hoc*. One would be justified in wondering why some moral rules are exempt from public justification requirements, but other moral rules are inadmissible because they violate public justification requirements. Furthermore, the public justification theorist would be providing an inadequate answer to the Question of Authority and the Question of Legitimacy unless they also articulated the substantive standards contained in Sometimes Absolute Morality.

These problems are familiar from the discussion of actual will-based views. Recall the case of persons who agree or consent to various oppressive policies in North Korea. Insofar as the actual will-based theorist wishes to avoid the conclusion that such policies are thereby morally justified, she might be tempted to qualify the theory to claim that agreement or consent works moral magic, thereby rendering such policies legitimate, only if those policies are sufficiently just or moral. But once one claims that the justice of policies is a necessary condition for their legitimacy, we ought to wonder what explanatory work the actual act of will is doing in answering the Question of Legitimacy. Similarly, once we accept that public justification suffices to render certain moral rules authoritative and legitimate only if they satisfy requirements of absolute morality, we ought to wonder whether the principle of public justification is doing the requisite normative work, or if absolute morality is doing the requisite normative work.

Gaus, to his credit, does not try to proffer this objectionable reply—he does not
endorse Sometimes Absolute Morality. But his attempt to avoid this dilemma is instructive because of the difficulties it encounters. Gaus agrees with Enoch that it would be unacceptable if we were to arrive at a theory of political morality that claimed that state actors are prohibited from taking measures to ensure that the father’s daughter learns to read. But he argues that Never Absolute Morality does not, in fact, imply that state actors may not undertake such measures. Gaus argues that the relevant socially accepted but immoral practices rest on failures of rational reflection. As such, they would not be part of justified social morality—not because they are objectionable in virtue of standards of absolute morality, but because they involve inconsistency on the part of the father. So, Gaus concludes, he can avoid the charge that his view requires the State and its actors to sit idly by while the father’s daughter does not learn how to read.

In support of this argument, Gaus brings up the case of slavery. He suggests that the behavior of slave owners betrays their commitment to recognizing slaves as free and equal persons. The fact that slave-owners cooperate with the slaves shows that within their evaluative standards, slave-owners would, if fully rational, endorse a moral principle opposing slavery. Appealing to T.H. Green, Gaus claims that there are some ‘transcendent’ moral principles that are present in every social morality.\(^{72}\)

But it is notoriously difficult to demonstrate that rational agents in a society, \textit{qua} rational agents in a society, are rationally committed, or would be committed upon reflection, to treating others with respect—however one specifies treating others with

\(^{72}\) (Gaus 2015).
respect. To make the obstacles for such arguments more precise, it is not clear that slave-owners cooperate with the enslaved individuals—if we understand cooperation to differ from mere coordination. And even if some agent cooperates with someone else, this does not show that the agent is implicitly committed to regarding that individual as free and equal. The slave-owner can recognize that the enslaved individual has a view of the good, that coordinating will advance the enslaved individual’s view of the good and the slave-owner’s view of the good, but deny that the enslaved individual has the moral standing that one attributes to members of one’s moral community. While this attitude is obviously morally reprehensible, further argument needs to be proffered to show that the person holding it is guilty of inconsistency given their evaluative standards. To quote Philippa Foot, “The fact is that the man who rejects morality because he sees no reason to obey its rules can be convicted of villainy but not of inconsistency.” Moreover, the history of philosophy is replete with unsuccessful attempts to demonstrate that merely regarding oneself as a free and equal person and conforming to norms of consistency suffices to rationally commit one to viewing others as members of the moral community.

Perhaps Gaus might reply by insisting that in these societies, at least one person would reject the moral rule that permits slavery, and, accordingly, this would prohibit the

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73 Such attempts are most prominently associated with Immanuel Kant—see (Kant 1996) And this project has been taken up more recently. See e.g. (Korsgaard 1996; 2009) For powerful objections to these attempts, see esp. (Enoch 2006), (Foot 1972), (Guyer 2012), (Silverstein 2015). In fact, this difficulty is one motivation for Gaus’s critique of left-liberal egalitarian views. That is, Gaus objects to left-liberal egalitarian views precisely because they attempt to show that by viewing oneself as a free and equal person, one is committed to various left-leaning policies of distributive justice. As such, Gaus attempts to employ an argument that leaves him vulnerable to the critique he levels against more left-leaning liberals—they attempt to derive too many substantive conclusions about distributive justice from the mere fact that we conceive of ourselves as free and equal.

74 For the distinction between cooperation and coordination, see e.g. (Rawls 1971).

75 (Foot 1972, 310).
practice. But even if we grant that in every actual society there was always one person who would not endorse a rule that permitted slavery and that the existence of such a person suffices to prohibit the practice, we can imagine a different society where nobody did have the relevant standards. Imagine a society similar to Ancient Greece in which slavery was accepted as a common practice. In that society, the following moral rule is endorsable by each member: if one is captured during war, then the captor may enslave that captured. Or, alternatively, imagine a society with the rule, ‘if one so wishes, one may sell oneself into a slavery contract.’ In response to a case like this, Gaus must deny that in this more extreme case someone could have the relevant attitudes while satisfying standards of reflection. Otherwise, he is stuck with the unpalatable implications Enoch attributes to his view, and that Gaus expressly wishes to avoid. And there does not seem to be good reason to deny that such persons or societies could exist.

So, we are left with the dilemma Enoch initially posed to Gaus; either

*Never Absolute Morality:* It is never permissible to appeal to requirements of absolute morality and coerce others to conform to such requirements, and it is impermissible to use coercive measures to eradicate immoral but socially accepted practices

or

*Sometimes Absolute Morality:* In at least some cases it is permissible to make moral demands and coercively enforce them on the basis of absolute morality.

I will assume that Never Absolute Morality is untenable. Gaus is correct to attempt to avoid accepting the unpalatable implications of Never Absolute Morality, even though I have
argued that his attempt fails. For those willing to accept Never Absolute Morality, my argument will not be convincing; they can consistently accept a view that claims that if citizens have sufficiently morally objectionable attitudes, then they do not have reason to reject slavery and the State may not legitimately take steps to end such a practice. I do not take such views to be worth serious consideration. To accept Sometimes Absolute Morality, however, is to give up on the claim that satisfying public justification standards is necessary for legitimacy or authority.

§5 Democracy

I have argued that the fact that we disagree about contentious normative issues counts against substantive theories of legitimacy and authority appear unappealing, as they purportedly fail to be appropriately respectful of this disagreement. Various forms of actual agreement or idealized counterfactual agreement are meant to be respectful of such disagreement, but I have argued that such theories either fail to articulate necessary and sufficient conditions for legitimacy and authority, or are similarly subject to this purported problem with substantive theories of legitimacy and authority. I have raised a similar objection to theories of public justification. But there is a different kind of will-based theory often mentioned when discussing legitimacy or authority; namely, some claim that legitimacy or authority have their source in democracy. That is, some would insist that the ‘consent of the governed’ confers legitimacy and authority onto the State; but they would deny that the relevant form of consent is actual consent or counterfactual consent. Instead, the consent of the governed is to be found in the form of democratic institutions. Discussions of legitimacy and authority are often used to connote democracy in some sense—the phrases ‘democratic legitimacy’ and ‘democratic authority’ are prevalent, not only in debates about the Question
of Legitimacy or the Question of Authority, but also in popular discussions of political morality. Accordingly, it is worth considering whether a more democracy-oriented will-based theory can avoid the problems I have canvassed for other will-based theories. I will consider Jeremy Waldron’s theory about the nature of authority and respect for law as a representative for this line of thought, as Waldron expressly aims to appeal to features of democratic decision procedures because they are suitable for responding to the problem of normative disagreement without appealing to contentious substantive moral norms.

Waldron begins by claiming that members of democratic societies find themselves in “circumstances of politics.” The circumstances of politics are circumstances in which we agree that there is a need for collective action, but there is disagreement about what particular collective action ought to be taken, disagreement that often has its source in disagreements about justice or morality.76 Waldron argues that democratically enacted law deserves respect because in the circumstances of politics, democratically enacted law is a “respectful achievement.”77 Democratically enacted law is a respectful achievement in two senses. First, when the law is determined by majority vote, it respects differences of opinion about justice and the common good. Second, by counting each person’s vote, democratic decision procedures embody respect for each person by giving that person a say in what we collectively do. On this view, someone who disobeys democratically enacted law disrespects their fellow citizens. Such a person privileges their view on contentious normative issues

76 See (Waldron 1999, 101-111).
77 (Waldron 1999, esp. Chapter Five).
after a respectful decision procedure took account of that person’s view, but the majority disagreed.\textsuperscript{78}

In what follows, I will argue that this kind of theory will not do well at answering the Question of Legitimacy or the Question of Authority. This is for reasons that are familiar from the problems canvassed for other will-based theories.

\textbf{§5.1 ‘We’ the People: Is Democracy Really Necessary for Legitimacy?}

First, just as we should worry that consent is not necessary for legitimacy or authority, we should also worry that democratic decision making is not necessary for legitimacy.

Let us grant for the sake of argument that Waldron is correct and that I am disrespecting my fellow subjects if I disobey a law that they voted for, or the law was passed when I had the chance to participate but declined to vote. In the majority of modern nation-states, the majority of laws predate current citizens. We saw above that for Waldron, the authority of law has its source in the fact that the law was a respectful achievement in the circumstances of politics. But if this is right, then violating a law passed by a previous generation that has not been overturned does not appear to be disrespecting my fellow citizens. The respectful achievement was by some other group, not by ‘us.’ As we saw above with Hume’s critique of an original contract, the actions of one’s ancestors do not straightforwardly bind their descendants. Similarly, the fact that my ancestors democratically enacted some legislation does not seem like the right consideration to ground an obligation.

\textsuperscript{78}This is not entirely fair to Waldron, as Waldron does not strictly think that citizens have an \textit{obligation} to obey the law, but rather have an obligation to not undermine or attempt to bypass democratic decisions. I am thus appropriating his argument to try to articulate a view that better fits the dialectic I’m constructing. Nonetheless, I believe these objections equally apply to Waldron’s actual view. See (Waldron 1999). For a somewhat similar view, see also (Christiano 2004).
to obey it. What is disrespectful about disobedience is supposed to be at least partly due to my fellow citizens having decided upon the law. So, the claim must be that it is disrespectful of my fellow citizens to violate the law even if the laws were not authored by my fellow citizens.

Perhaps one might claim that by not overturning the law, my contemporary fellow citizens have tacitly judged that the law in question is just, or something similar. But here, again, Hume’s critique of Locke’s argument from tacit consent is relevant; as we saw, Hume argues that various proposed criteria for tacit consent did not seem plausible as an equivalent to consent. Just as not exiting one’s country does not constitute tacitly consenting to be governed, not attempting to overturn a law does not appear to be the equivalent to judging that it is a good law or legislating it. The appeal of Waldron’s framework rests on our actually making a collective judgment, rather than tacitly acceding to the collective judgment of our forbearers. But we do not, in fact, make the relevant collective judgment for most of the laws that regulate our lives.

The fact that many laws were not democratically enacted by ‘us’ leads to a further point, a point that draws on salient empirical realities of large societies. In modern nation-states, significant decision-making power rests with various institutions and institutional actors who have only a tenuous democratic pedigree. In the United States citizens do not elect various members of the judicial branch, administrative branch, and executive branch who enjoy significant decision-making power. On its own, this does not constitute an objection to Waldron, and some might object to these non-democratic institutional
arrangements precisely because they are insufficiently tied to the will of the people. The absence of express consent strikes some as grounds for denying the legitimacy of all existing institutional arrangements, and those sympathetic to Waldron might also conclude that the relatively undemocratic nature of governance in modern nation-states is grounds for concluding that no existing nation-states enjoy legitimacy.

In reply, however, we might question whether democratic decision-procedures are as desirable as someone like Waldron claims, and, accordingly, whether democratic pedigree is strictly necessary for authority or legitimacy. This is for two reasons. First, ordinary citizens lack expertise on many issues that the State legislates. To illustrate with a few cases, we might need to determine how much lead ought to be legally allowed in the water, how long stoplights ought to stay red at a given intersection, or the appropriate sanitary standards for restaurants. For each of these cases, very few voters are well-informed. Accordingly, we should wonder whether it is morally desirable for citizens to make these sorts of decisions democratically. Perhaps citizens could become sufficiently informed if they had time, but

For instance, Waldron himself objects to the practice of strong judicial review on these grounds. See (Waldron 2006). Others have attempted to argue that various ostensibly undemocratic institutions are, in fact, democratic. For instance, Adrienne Vermeule argues that administrative agencies are democratic because administrative officials are more representative of the United States populace than elected members of congress, who are overwhelmingly highly educated, wealthy, white, heterosexual, Christian men. See, e.g., (Vermeule 2015). In reply, it’s worth noting that even if individuals working for administrative agencies are more representative than democratically elected representatives, they are self-selected group, and it is not apparent that their attitudes are, in fact, representative of attitudes of the more general populace. Moreover, for reasons I will articulate below, we should worry that we disagree as to whether having administrative officials make decisions is an appropriately respectful decision-procedure. In fact, we do disagree about this; some object to administrative officials making these sorts of decisions on our behalf. I will argue below that disagreement about whether democracy is an appropriately respectful decision-procedure is problematic for a view like Waldron’s, insofar as we cannot both respect disagreement and presume to solve disagreement about decision-procedures by using democratic ones. This same point applies to administrative agencies.
this leads to the second point; this lack of expertise is compounded by a lack of time. Most citizens will not have time to read and assess the writings of various experts on various topics, let alone come to informed judgments without deferring to various experts.\(^8\)

These two points apply not merely to individual issues but also to selecting political representatives. One might think that the solution to the problem of our lack of expertise and time is to elect representatives who can devote the relevant time to becoming informed on the relevant issues. But our difficulty in directly deliberating about political issues extends to deliberating about whom to select as our representatives. And in the case of certain positions, we ought to worry that having elections will create perverse incentives. For instance, we can worry that holding elections for prosecutors or criminal judges will incentivize those officials to adopt a ‘tough on crime’ stance.

§5.2 Democracy is Insufficient for Legitimacy

Apart from the worry that democratic decision making is not necessary for authority or legitimacy, a distinct worry is that even if we were to grant that democratic pedigree is central for answering the Question of Authority, it is inadequate for addressing the Question of Legitimacy. This is because employing democratic decision procedures in the circumstances of politics does not suffice to justify the possession or exercise of coercive power. To illustrate, consider a small cooking club. Each member wishes to enjoy a tasty meal that they cook together, but the members disagree about which meal is tasty. It seems that the

\(^{8}\)For an articulation of some of these problems, see esp. (Achen and Bartels 2016) A different consideration is that in large democracies, the likelihood of one’s vote making a difference to the course of an election is absolutely miniscule. As such, some have argued that it is irrational to devote the requisite time to become informed about which way to vote; the expected utility of such a decision is quite low. For an early argument to this effect, see (Downs 1957).
members are in the circumstances of politics—or, at the very least, they are in the ‘circumstances of cooking,’ which bear a striking similarity to the circumstances of politics. In light of these circumstances, each week the group employs democratic decision procedures to determine which meal members will eat. They also vote on the tasks of each in preparing the meal. Moreover, the cooking club is relatively recent, and none of its members have changed since the beginning—so, there are no votes or rules that predate the current members. The cooking club also has a charter that states that if someone does not perform their tasks, that member will be fined $50. If a member refuses to pay, then they will be locked in a basement of one of the members for a week. Members of the cooking club are also permitted to use physical force against someone who has been locked in the basement and tries to escape.

Imagine one week that the majority of the members of the club votes for a meal comprised of tempeh salad, lentil soup, and falafel. They accordingly vote on distinct tasks to each member of the group. Albert does not like the outcome of either vote. So, Albert decides to defy the outcome of the votes, and he brings ingredients to make his preferred option—a Soylent-based fondue. While it is plausible that Albert violates obligations to his fellow cooking club members, it is less plausible to claim that the club is permitted to issue the fine to Albert and then lock him in the basement if he does not pay this fine. Perhaps some would claim the group is justified in issuing a fine that is backed by additional threats—including imprisonment—since each person, including Albert, agreed to the charter. But then the justification of coercive power draws on actual consent or agreement rather than appealing to the legitimating function of the democratic decision procedures of the cooking club. To return to Waldron’s theory, if we appeal to consent or agreement to a
constitution to justify coercive power, then the appeal to the respectfulness of democracy is, at best, articulating a necessary condition in answering the Question of Legitimacy. But if we do not appeal to some form of actual agreement or counterfactual agreement, then it is hard to see why following democratic procedures suffices to morally justify coercive power. So, we should be skeptical that democratic pedigree is sufficient to answer the Question of Legitimacy.

§5.3 Democracy, the Circumstances of Politics, and the Framing of Decisions

Perhaps Waldron and like-minded theorists would insist that the circumstances of cooking are importantly dissimilar to the circumstances of politics, and this difference will be important to explaining why coercive power is morally appropriate in a state with democratic institutions but not in a cooking club. For instance, Waldron might insist that the stakes are higher in the circumstances of politics. Rather than deciding on a meal that one might enjoy or dislike, the community is making decisions that will have far-reaching effects on our lives. Such a response, however, encounters significant problems because some will disagree that the stakes are, in fact important in the relevant way to justify coercive action in one context but not the other. In at least some cases, we are not in the circumstances of politics, but are instead in circumstances where we disagree about normative issues and we disagree about whether there is a need for collective action. That is, we are often not in the circumstances of politics; instead, we are often in the circumstances of second-order politics.

81 A different way of differentiating the circumstances of cooking and the circumstances of politics is that that the cooking club is a voluntary association, whereas the State is all-encompassing and more difficult to exit. Note, however, that such a consideration cuts the other way; as seen from the discussion of Hume, the difficulty of exit should make us be more skeptical that mere residence suffices for consent—and thereby grounds authority and legitimacy.
For an example of the second-order circumstances of politics, some argue that there is no need for collective action in the face of the question as to whether ‘we’ should regulate activities that contribute to climate change. If we were in the circumstances of politics, we would agree that we have to respond to a collective action problem, but we would disagree about how to do so—and so employing democratic decision procedures would be appropriately respectful of this disagreement. But since the climate change deniers disagree as to whether there is a need for collective action in response to some issue, then it is no longer apparent why the outcome of democratic decision-procedures have a special claim to authority or legitimacy. It is worth emphasizing that so long as there is at least one individual who denies that a given issue, x (such as climate change), is one that calls for collective action, then it would seem that either

(a) We are not in the circumstances of politics vis-à-vis x, and therefore the state lacks authority or legitimacy over x

or

(b) There is some objective criterion we should appeal to determine whether, for x, we are in the first-order or second-order circumstances of politics

or

(c) We can democratically determine whether we are in the circumstances of first-order politics or second-order politics.

If we opt for (a), it would seem that the domain over which the State may permissibly legislate is limited to the case where we are in the circumstances of politics. Given the

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82 For an articulation of this response to something like this problem, see (Raz 1998, 29).
number of people who think that the state should not be in the business of legislating various issues—let alone full-blown (non-philosophical) anarchists—then it would seem that this would call for a very minimal state or perhaps no state at all. The connection between this claim and Waldron’s theory should be familiar from the discussion of express consent views and Gaus’s theory of public justification. As with these other theories, anarchical implications might strike some as an appropriate implication. But, again, this would be a very strong conclusion, one that at least some of us may find to be a problematic conclusion rather than an appropriate output of a theory; we should, at least, be hesitant to accept skepticism about legitimacy.

For those who do not wish to embrace such a conclusion, response (b) is more appealing. For instance, with regard to the climate change denier, Waldron could insist that we are in the first-order circumstances of politics because even though we disagree about whether there is a need to respond to climate change, we agree that there is a need to decide what sort of physical environment we wish to live in. But the opponent of climate change might very well balk at this framing; perhaps she would charge that some other framing would be apter. And we ought to worry that however we end up framing the issue will leave some objecting that they did not have the appropriate sort of input into a decision as to whether we should be voting on that issue, and they would justifiably object that they were not being accorded the appropriate form of respect.

To illustrate, imagine that the climate change denier is told that she is in the circumstances of politics vis-à-vis climate change as the real issue is what kind of physical environment the polity ought to strive to create, not whether the polity ought to undertake
steps to stop climate change. She would be right to object that he has not been given a justification as to why this is the appropriate way to frame the issue. This point would be especially pressing for Waldron given his emphasis on respect for disagreement.

Perhaps Waldron or a like-minded theorist would reply by appealing to (c), that we can use democratic decision-procedures to decide on how to frame various issues, and therefore we can use democratic decision-procedures to determine whether we are in the first-order or the second-order circumstances of politics. This would be more in keeping with Waldron’s theory and his emphasis on respect for disagreement.

But this appeal to democratic decision-procedures ultimately raises the same issue, as some disagree that democracy is the appropriate decision-procedure to either frame issues or to resolve the disputes that Waldron articulates. Given these disagreements, it would appear that with regard to determining how to frame various issues and thereby determine whether we are in the first or second-order circumstances of politics, we are in the third-order circumstances of politics. And in the third-order circumstances of politics, we still need a procedure for resolving disagreements while being respectful of those who disagree about what decision procedure we ought to use to frame issues to then be decided upon by a democratic vote.

This problem is similar to one we’ve encountered before: theories that appeal to consent or agreement need to justify the choice situation for the actual or idealized counterfactual agreement, and Gaus needs a criterion for determining how to frame the relevant moral rules to be assessed by his standard of public justification. Waldron owes us a justification for framing our options for democratic choices; otherwise we should doubt that
we are in the first-order circumstances of politics for many, if not all, of the issues about which we disagree. And if we are not in the first-order circumstances of politics, and if we lack an appropriately respectful procedure for determining whether we are in the first-order or second-order circumstances of politics, then the appeal to democratic decision-procedures is not, after all, straightforwardly respectful of such disagreements. So, appealing to democratic decision-procedures will not suffice as an answer to the Question of Legitimacy or the Question of Authority.

§5.4 Democratic Respect, Substantive Respect, Legitimacy, and Authority

A further difficulty arises because, independently of disagreeing about how to frame various issues or whether we should use democratic decision procedures to decide various issues, we disagree about the moral significance of democratic decision procedures themselves.

To illustrate, imagine that there is a referendum as to whether same-sex marriage should be legal. The outcome of this vote is that same-sex marriage is not legalized. Perhaps some will think there is a sense in which this outcome is respectful—let us label this ‘democratic respect.’ But there is a different sense in which this outcome is disrespectful—members of the LGBTQ community would be justified in insisting that they are not being treated respectfully in a substantive sense—the outcome of the vote violates a requirement of ‘substantive respect.’ Perhaps some members of the LGBTQ community grant that the outcome of the vote embodies democratic respect, but deny that this suffices to ground the authority or legitimacy of the law because it is substantively disrespectful. Others, by contrast, will insist that democratic respect is normatively insignificant and substantive respect is normatively significant.
The appeal to democracy was supposed to draw on the respectfulness of democracy. But we ought to recognize that democratic and substantive respect can come apart, and that it is an open question as to whether one form of respect is more important than the other. We certainly cannot claim to authoritatively resolve this disagreement by using democratic decision procedures. As such, appealing to democratic respect is not sufficient to answer the Question of Authority or the Question of Legitimacy.

Before moving on, it is worth emphasizing that we can grant that democracy is good or important—for many reasons. But given the canvassed points, it does not seem that having democratic institutions is sufficient, or even obviously necessary, for answering the Question of Legitimacy or the Question of Authority.

§6 A Reassessment

I began this chapter by indicating why will-based theories appear especially appealing for purposes of answering the Question of Legitimacy and the Question of Authority. In what followed, however, I articulated enduring, structurally similar problems for various will-based theories.

First, there are significant questions about developing an adequate criterion of issue individuation or framing the terms being consented or agreed to, the rules of social morality to be assessed as endorsable or non- endorsable by each, or the issues to be determined by democratic decision-making. Second, there are reasons to doubt that actual consent or agreement, satisfying a thin standard of public justification, or having a democratic pedigree is sufficient for legitimacy or authority. This is because one can consent to, agree to, or vote for grossly immoral institutions and actions, and if one’s evaluative standards are sufficiently
repugnant, then repugnant rules will satisfy certain requirements of public justification. Third, there are questions as to whether an appeal to consent, agreement, a thin standard of public justification, or democracy is necessary for legitimacy or authority, especially since claiming that consent, agreement, having democratic pedigree, or satisfying a thin standard of public justification is necessary for legitimacy or authority will have anarchical implications—implications that at least some will find to be quite counter-intuitive.

One way to attempt to avoid these problems is to appeal to some form of idealized, counterfactual act of will on the part of the governed. This could, in principle, allow the will-based theorist to avoid claiming that grossly unjust conditions are ones in which there is authority or legitimacy. To adequately avoid at least some of the aforementioned problems, however, the idealization has to be sufficiently ‘thick’ or ‘moralized’ such that we ought to doubt whether an idealized counterfactual act of will really performs the moral magic associated with an actual act of will, or that such an idealized counterfactual act of will is consistent with the values of the governed. If idealized counterfactual acts of will function as a heuristic to identify substantive values, it is properly compared to consequentialism, perfectionism, natural rights theory, and Kantianism—it justifies coercive power or authority by appealing to substantive values. As such, thickly idealized counterfactual agreement theories no longer enjoy certain distinctive theoretical advantages over non-will-based theories—advantages that actual will-based views would enjoy if they were not subject to such significant problems. Moreover, the thickly idealized counterfactual agreement theory will rest on a contentious set of claims about how we ought to idealize persons who would or do agree to the principles in question.
To put the point of the last two paragraphs another way, will-based theories face a ‘too thin or too thick’ dilemma.\textsuperscript{83} If one opts for some an actual will theory, such as an actual consent view, then the thinness of the view leads to implausible claims. Such views countenance putatively illegitimate actions or institutional arrangements as legitimate when people perform the relevant act of will. Such views also claim that putatively legitimate actions or institutions are, in fact, illegitimate insofar as people do not perform the relevant act of will—that is, even if certain policies or states strike us as legitimate, such views cannot agree with this claim insofar as we do not consent to them. The same problem arises for thin public justification theories, such as Gaus’s.

If, on the other hand, one attempts to overcome this problem by making the idealization of agents thick or the counterfactual sufficiently removed from actual agents, then we ought to be skeptical as to whether the view is appealing to the will of the governed. Instead, it seems likely that such views are functioning as a heuristic or form of deliberation for identifying substantive moral principles, or they rely on a contentious set of claims about the appropriate idealization of agents. While one could certainly endorse and defend such theories, they would be merely one rival among other substantive theories, and would face at least some of the same obstacles as such theories. To accept an idealized counterfactual theory would, in other words, give up the central advantages that will-based theories purportedly enjoy over substantive theories. Thickly idealized counterfactual acts of will do not work moral magic, and they do not obviously do better than other rival substantive theories vis-à-vis respecting normative disagreement between free and equal persons.

\textsuperscript{83} As noted above in §4, this is a problem that applies also to various ‘voluntarist’ meta-normative theories. For such views, see, e.g. (Chang 2013), (Korsgaard, 1996), (Street 2010), (Velleman 2013).
In raising this set of problems, I do not mean to claim that they are insurmountable for the theories I considered. And the discussed theories are merely intended to be representatives of a broader class of views; one might charge that these objections do not even arise for other will-based theories that are sufficiently sophisticated.

Nonetheless, given the prominence of will-based theories, the various enduring problems for the thin versions, and the fact that thickly idealized versions do not straightforwardly do better than substantive theories at respecting normative disagreement between free and equal people, we have some reason to accept the first thesis of this dissertation:

*Will-Based Theories Are Overrated:* Will-based theories of legitimacy or authority are subject to enduring problems, and certain purported advantages they enjoy over other theories are not, in fact, genuine advantages.
Chapter Three: Against the Traditional Picture

Introduction

So far, I have provided reasons to accept the first of four theses, theses that animate the first part of this dissertation:

*Will-Based Theories Are Overrated:* Will-based theories of legitimacy or authority are subject to enduring problems, and certain purported advantages they enjoy over other theories are not, in fact, genuine advantages.

I argued for this thesis by provisionally accepting the Traditional Picture and then arguing that various will-based theories face significant problems. Moreover, I argued, because of the structural similarities of these problems, there is some reason to think that such problems are not merely incidental but are due to core features of these views. Nonetheless, I suggested that substantive theories of legitimacy or authority also face significant problems. As such, one might think that if the only options for a theory of legitimacy are either will-based theories or substantive theories, the prospects of articulating an adequate theory of legitimacy are grim.

In this chapter, however, I will argue against two central features of the Traditional Picture. Given these arguments, we should abandon the Traditional Picture. And, I will suggest, in Chapter Four, this should motivate a new, more promising approach to answering the Question of Legitimacy.
As noted in the Chapter One, the Traditional Picture proceeds as though the legitimacy of the State (macro legitimacy) is necessary and sufficient for the legitimacy of particular actions (micro legitimacy). In §1 I argue that we should reject this claim in favor of the second thesis of this dissertation:

*Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro:* Macro legitimacy is obviously insufficient, and it is not obviously necessary, for micro legitimacy.

The Traditional Picture also holds that authority is necessary for legitimacy. In §2, I object to this claim. Accordingly, I argue, that questions of legitimacy and questions of authority ought to be addressed separately—that is, I defend my third thesis:

*Authority and Legitimacy Ought to Be Addressed Separately:* In answering questions of legitimacy, one ought not to address questions of authority. Theories of legitimacy that do not account for the authority of the State or law are not, for this reason, necessarily defective *qua* theories of legitimacy.

In the next chapter, I will argue that the two theses give us additional reason to accept the first thesis, Will-Based Theories are Overrated.

§1 Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro

In Chapter One and Chapter Two, I considered a question about political morality:

*The Question of Legitimacy:* Under what conditions, if any, is the possession or exercise of coercive power by the State or state actors morally permissible, and why do these conditions ground the morally permissible possession or exercise of coercive power?
For the sake of simplicity, I have been considering this question as originally formulated. However, at this stage of the argument, it is fruitful to distinguish two questions that are not sufficiently delineated in the Question of Legitimacy as initially formulated. In particular, we should distinguish different objects of evaluation when we theorize about political morality. Most discussions of coercive power in the context of political morality focus on ‘the State,’ a relatively abstract collective entity, and whether it enjoys some sort of ‘right to rule.’ This question could be captured as follows:

*The Question of Macro Legitimacy:* Under what conditions, if ever, is the State morally justified in possessing and exercising political power over persons within its jurisdiction, and why is it morally justified?  

This is the question that occupies almost all existing theorists of legitimacy. But we can also ask questions about the moral permissibility of particular actions by particular state actors in their role as state actors. The thought here, as noted above, is that political power is either coercive itself or backed by coercive force. The call for justification arises just as much for particular coercive actions by particular state actors as it does for the State. So, a distinct question concerning the moral permissibility of exercising coercive power can be captured as follows:

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84 This discussion and the accompanying distinction between macro legitimacy and micro legitimacy draws on (Guerrero 2012).
85 This trend is not merely limited to early modern theorists, such as Hobbes, Locke, Rousseau, but it also extends to contemporary theorizing. It is also worth highlighting that this focus on macro legitimacy pertains not only to those who treat authority as a necessary condition for legitimacy, such as Simmons (Simmons 1999), but also those who deny that authority is necessary for legitimacy—see, e.g. (Applbaum 2010), (Buchanan 2002), (Ladenson 1980), (Zhu 2015).
The Question of Micro Legitimacy: Under what conditions, if ever, are particular exercises of coercive power by state actors in their role as state actors morally permissible, and why are they permissible?\(^{86}\)

While the Question of Micro Legitimacy and the Question of Macro Legitimacy are distinct, the Traditional Picture does not recognize this distinction.

On the Traditional Picture, when particular exercises of coercive power by state actors are morally permissible, this is in virtue of such actions constituting an exercise of some more general justification or right to rule. If one construes of the relationship between macro legitimacy and micro legitimacy in this way, then the most informative and pressing question will be the Question of Macro Legitimacy. If we can articulate the conditions under which the State has a right to rule and the conditions that ground that right, then we will have a theory of political morality that can tell us both when the State is legitimate and when particular actions by state actors are legitimate. That is, answering the Question of Macro Legitimacy would be necessary and sufficient to answer the Question of Micro Legitimacy.

Macro legitimacy, however, is obviously insufficient for micro legitimacy. Moreover, macro legitimacy is not obviously necessary for micro legitimacy. Accordingly, one cannot adequately answer the Question of Micro Legitimacy by answering the Question of Macro Legitimacy. Accordingly, we have reason to reject theories that attempt to answer the Question of Micro Legitimacy by answering the Question of Macro Legitimacy.

\(^{86}\) See (Guerrero 2012). It is worth noting that a distinct question of micro legitimacy concerns under what conditions, if ever, are state actors morally obligated to conform to role obligations, and why are they obligated?
Consider first the claim that macro legitimacy is sufficient for micro legitimacy. Assume that Sweden is macro legitimate. A Swedish judge imposes a legal but exceptionally punitive sentence on a citizen who possessed a small quantity of an illicit substance—an action on the part of the judge that is, presumably, morally impermissible.\(^{87}\) Assume for reductio that the macro legitimacy of the state suffices for the micro legitimacy of particular actions. Since the judge’s action is micro illegitimate, a false implication follows: Sweden is not macro legitimate.

Other examples of this kind of case abound; individuals act in accord with the legal permissions associated with their role, but we nonetheless think that they are not morally permitted to do so, even when the State is putatively legitimate. They are actors within a macro legitimate state, but they perform a micro illegitimate action. Moreover, all realistically possible states have state actors who have performed or will at some point perform micro illegitimate actions.\(^{88}\) So, if one claims that macro legitimacy suffices for micro legitimacy, it follows that all realistically possible states are macro illegitimate.\(^{89}\) One could accept this entailment, but I will proceed on the assumption that a more sophisticated theory of

\(^{87}\) Some might insist that this is in fact a morally permissible action. Presumably, however, there are some examples we can conceive of in which the State is macro legitimate and particular actions are micro illegitimate. For instance, imagine that the Swedish president decides to impose an internment policy, in accordance with the legal powers of the office, and places various members of a particular religious group in an internment camp. For a similar example, see ibid.

\(^{88}\) For this observation, see ibid.

\(^{89}\) One could also insist that the legitimacy of the State exists and then goes out of existence each time a state actor performs a micro illegitimate action. Such a picture, however, would render macro legitimacy sufficient for legitimacy in a sense that fails to be action-guiding. That is, macro legitimacy would suffice for legitimacy. But because macro legitimacy would be flickering in and out of existence at any given moment depending on whether some state actor somewhere was performing a micro legitimate action, appeals to macro legitimacy would not straightforwardly explain the micro legitimacy of particular actions. And if this were the case, then knowledge about whether the State is, in a given moment, macro legitimate, this would require that we know whether particular actions satisfy some independent standard of micro legitimacy.
legitimacy will not claim that macro legitimacy entails micro legitimacy. This is because skepticism about macro legitimacy should not be so easy to come by; perhaps skepticism about macro legitimacy is ultimately justified, but it should not rest on the contentious conceptual claim that macro legitimacy suffices for micro legitimacy.

It is also not obvious that macro legitimacy is necessary for micro legitimacy. Assume North Korea is not macro legitimate. Imagine that North Korean traffic laws do not violate any proportionality requirements and are identical in content to the traffic laws in some macro legitimate state. One could claim that because North Korea is not macro legitimate, state officials do not act micro legitimately when they issue fines for running a red light or parking illegally. But this is not obvious; people have strikingly divergent intuitions about such cases.

So, we should reject the claim that macro legitimacy is sufficient for micro legitimacy, and we should not assume that macro legitimacy is necessary for micro legitimacy. Accordingly, we need not accept the claim that answering the Question of Macro Legitimacy is necessary or sufficient for answering the Question of Micro Legitimacy. As such, we should accept the second thesis of this dissertation:

*Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro:* Macro legitimacy is obviously insufficient, and it is not obviously necessary, for micro legitimacy.

Perhaps some would reply by abandoning the strict necessity or sufficiency claims. Instead, one might point to some other kind of connection between macro legitimacy and
micro legitimacy. For instance, one might claim that macro legitimacy normally suffices for micro legitimacy unless certain conditions obtain, such as a particular action being immoral or a particular law being sufficiently unjust. While one could defend this position, it encounters a few problems. As discussed in Chapter Two, claiming that the State is legitimate if people consent to it unless it is unjust should lead to skepticism that the appeal to consent is doing any real explanatory work. Similarly, to claim that macro legitimacy suffices for micro legitimacy unless the particular action by the state actor is immoral or unjust raises the question as to why we should think the conditions independent of macro legitimacy are not the conditions that render the particular action by state officials micro legitimate. If we find that particular actions are micro legitimate only if some macro-independent conditions obtain, and we are not claiming that macro legitimacy is strictly necessary for macro legitimacy, then it is hard to see what role macro legitimacy plays in explaining micro legitimacy.

Moreover, insofar as the necessary and sufficient conditions for micro legitimacy require articulating a set of conditions that are distinct from the necessary and sufficient conditions for macro legitimacy, this kind of view saves the claim that macro legitimacy bears an important connection to micro legitimacy, but it does so in a way that renders the connection between macro legitimacy and micro legitimacy uninformative. If we wish to

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90 A different way of defending a claim that answering the Question of Macro Legitimacy is necessary or sufficient for answering the Question of Micro Legitimacy would draw on virtue ethics. On this view, actions are micro legitimate because they are the sorts of actions that state actors of a macro legitimate state characteristically perform. Just as the goodness of character might ground or explain the rightness of particular actions, macro legitimacy might ground or explain the micro legitimacy of particular state actions. I do not have room to fully address such a view, and I provide other arguments in the next chapter to defend the claim that there are good reasons to develop a theory of micro legitimacy before turning to macro legitimacy. Nonetheless, such a view deserves further elaboration and consideration. I thank Daniel J. Singer for proposing this view to me.
determine whether an action is micro legitimate, we would need to determine whether the relevant exceptions obtain. So, such a view would be uninformative for assessing the legitimacy of actions, and it would be inadequately action-guiding for state actors.

§ 2 Authority and Legitimacy Ought to Be Addressed Separately

So far, I have challenged the Traditional Picture by objecting to its characterization of the connection between macro legitimacy and micro legitimacy. A second feature of the Traditional Picture concerns the connection between authority and legitimacy. Recall the Question of Authority is as follows:

The Question of Authority: Under what conditions, if ever, does the State have the moral power to alter the normative landscape of citizens by creating a moral reason or moral obligation to obey the law, and why do such conditions ground this moral power?

I have noted that on the Traditional Picture, authority is necessary for legitimacy, and one must answer the Question of Authority to adequately answer the Question of Legitimacy. In what follows, I will dispute both of these claims.

§ 2.1 Authority is Not Sufficient for Legitimacy

To begin, authority is not sufficient for legitimacy. To illustrate, recall the cooking club from Chapter Two in which members vote on meals to jointly consume and tasks for each member to fulfill to prepare the meal. I will assume that this is a genuine instance in which the club possesses authority due to will-based considerations; the individuals in the cooking club have agreed to the terms of the cooking club, and each week there is a vote as to what
meal they should prepare. When the group votes on a particular meal and particular tasks, each other member presumably acquires an obligation to do her part in preparing that meal. Moreover, this obligation to conform to the vote does not arise as a mere side effect. Yet, as discussed above in Chapter Two, it does not seem plausible that the cooking club may exercise coercive power against someone who does not comply with their required tasks. Since there are cases like these in which there is authority without legitimacy, then authority is not sufficient for legitimacy.

§2.2 Authority is Not Conceptually Necessary for Legitimacy

The possession of authority also is not obviously a necessary condition for the State to be macro legitimate or particular actions to be micro legitimate. Consider the following three propositions:

1. State x is morally justified in possessing and exercising political power.
2. A particular state actor within state x is morally permitted to exercise coercive power.
3. There is no moral obligation to obey the law in state x and state x lacks authority.

These propositions are jointly consistent. Absent further argument, someone who merely treats the sanctions that accompany law as raising the (non-moral) cost of performing various actions does not make a conceptual error.91 To make this more concrete, consider the following familiar case:

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91 For a similar argument, see e.g., (Applbaum 2010, 228-230).
**Risk-Free Red Light:** An agent comes to a red light on a long narrow road in the desert. She is sober and sane, and she can clearly see for miles that no one is coming in any direction. She runs the red light.

Imagine that the agent in Risk-Free Red Light claims that her State is macro legitimate. Imagine next that a police officer stops her and issues a ticket. The agent happily accepts that the police officer is performing a micro legitimate action. Nonetheless, she sees the prospect of being caught running the red light to be a risk worth taking; she denies that she has any moral obligation to obey that law; and she denies that her State possesses authority. This agent is not guilty of inconsistency. So, if political authority is necessary for macro legitimacy or micro legitimacy, we need an argument as to why this is the case.

A. John Simmons provides an influential discussion of legitimacy in which he claims authority is a necessary condition for legitimacy. At times, it seems that Simmons’s treatment of the connection between legitimacy and authority involves an appeal to John Locke’s usage of the term. At other times it seems that Simmons intends the definition to be stipulative. However, if we are interested in the two questions of legitimacy as articulated, 

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92 Some might object that this characterization of the psychology of citizens would be a distorted one insofar as it amounts to the ‘bad man’s’ view of law (such as in Hart, 1994), or that citizens do not appear to view law in this way—see (Tyler, 1990). In reply to such objections, however, see especially, (Schauer, 2015).

93 For instance, Simmons writes, “[Legitimacy is] a complex moral right...to be the exclusive imposer of binding duties on its subjects, to have subjects comply with these duties, and to use coercion to enforce the duties.” (Simmons 1999, 746).

94 At other times, however, it seems that Simmons intends his definition to be the fruits of conceptual analysis. For instance, in objecting to Weber he writes, “To, call a state legitimate is, surely, to say something about it, about the rights it possesses, or the scope of its authority....Surely, none of this is what we have in mind when we call a state or government “legitimate.” (ibid. 750, my emphasis) Simmons claims Weberian definitions of legitimacy are subject to the same sorts of difficulties as subjectivist analyses of moral language. And others, such as Arthur Applbaum interpret him as making just such an argument, and accuses Simmons of conflating an analysis of the concept.
then we need an argument for the claim that authority is a necessary condition for macro legitimacy or micro legitimacy. Otherwise, Simmons has ruled out certain theories of political morality by fiat or articulated how Locke has ruled out certain theories of political morality by fiat. And at least some of the theories being ruled out by fiat may very well be viable or promising—to at least more viable or promising than existing theories.

Others seem to treat it as an obvious truth, if not a conceptual truth, that there is this close connection between authority and legitimacy. Ronald Dworkin, for instance, asserts, “No general policy of upholding the law with steel could be justified if law were not, in general, a source of genuine obligations.” However, while this claim is consonant with Dworkin’s broader theory, he does not provide any argument as to why it is a requirement for any adequate theory of legitimacy. It is beyond the scope of this dissertation to fully reconstruct and assess arguments in defense of the claim that authority is a necessary condition for legitimacy. That said, if one wishes to deny that some position x is viable insofar as it does not treat y as necessary for z, then the argumentative burden is to establish that y is necessary for z—especially if others have articulated coherent theories according to which y is not necessary for z. This is not to say that one could not show that authority is a necessary condition for legitimacy. But the argumentative burden is on those who wish to insist on such a connection.

Moreover, there are already existing theories of political morality that do deny that political authority or a moral obligation to obey the law is necessary for what I have been

labeling ‘macro legitimacy.’ Robert Ladenson argues that legitimacy consists in a moral permission to possess and exercise coercive power—that we should think of its macro legitimacy in terms of a ‘justification right.’ But Ladenson expressly denies that this justification right involves the moral power to alter the moral landscape of its subjects. Articulating a different view, Arthur Applbaum argues that instead of authority, a legitimate State merely requires the moral power to remove a right against coercion on the part of citizens. That is, Applbaum argues in defense of the claim that states are macro legitimate only if they possess a moral power, but he denies that this moral power includes the power to bind citizens to obey laws. Others who have developed somewhat similar views include Allen Buchanan, William Edmundson, and Jiafeng Zhu. While we might ultimately find all of these theories inadequate, again, it would be objectionable to reject them because they do not satisfy a stipulated definition.

§2.3 Authority as Necessary for Legitimacy in Some Other Sense?

Perhaps others would argue that if we engage in substantive normative theorizing in response to the two questions of legitimacy and the Question of Authority, we will find that authority is necessary for macro legitimacy and micro legitimacy in a non-conceptual sense. That is, perhaps one might think that our best substantive theory of legitimacy, or our best conception of legitimacy, will end up claiming that the possession or exercise of coercive power by the State or state actors is morally objectionable unless there is a moral reason or moral obligation on the part of citizens to comply with the law, a moral reason or moral obligation

96 (Ladenson 1980).
97 (Applbaum 2010).
98 See (Buchanan 2002), (Edmundson 1998), and (Zhu 2015).
that has its source in the authority of the State or particular laws. For instance, perhaps someone provides a substantive argument in defense of a normative theory, and this normative theory entails some general claim such as, ‘enforcement of law is morally justified only if it is enforced against someone who violates a moral obligation to comply with that law.’

We should not accept this proposition as true without further argument. To illustrate why, consider the case of Risk-Free Red Light:

*Risk-Free Red Light:* An agent comes to a red light on a long narrow road in the desert. She is sober and sane, and she can clearly see for miles that no one is coming in any direction. She runs the red light.

Without further specifying the case, there appear to be no moral considerations that the agent could honestly appeal to if she were to attempt to justify her decision to run the red light. There is no prudential benefit in obeying the law, there is a purely prudential reason to disobey the law, and the agent disobeys the law for that prudential reason. While it is a violation of the law to run the red light, many find it counter-intuitive to say that the agent would be violating a moral obligation or failing to act on a moral reason. And if there is an obligation or moral reason to obey the law, then it should extend to even these cases. Imagine now that in Risk-Free Red Light, the traffic light has a recording device on it, and after the motorist runs the red light, a police officer is sent out to issue her a fine. There is nothing obviously mistaken in claiming that the police officer has moral reasons or reasons associated with her role that justify issuing the ticket even if the motorist has no obligation
to wait at the red light.\textsuperscript{99} The motorist might happily say, “Yeah, you got me. Go ahead and do your job—you are totally morally permitted, as a traffic officer, to issue me a ticket. But I did not have an obligation to obey that law, and my state lacks authority over me.”

Perhaps some would object that examples like Risk-Free Red Light are silly counterexamples or peripheral cases.\textsuperscript{100} In reply, Risk-Free Red Light and similar cases should be taken seriously because they do not trigger moral intuitions that might come into play when we consider more morally significant cases. If we consider morally significant cases of law-breaking, skeptics of authority can appeal to our content-dependent moral reasons that seem relevant to explain why we judge that there is a moral obligation to obey the law. In cases where laws prohibit actions that are \textit{malum in se}, the obligation to obey the law has to do with the moral reasons that forbid the prohibited action rather than the fact that the law forbids the action. For instance, the obligation to conform to laws prohibiting murder holds in virtue of the \textit{content} of the law and a prior moral obligation rather than in virtue of its status as law or a content-independent reason to obey the law.\textsuperscript{101} We can also account for the reason to conform to laws in various cases where the action is \textit{malum prohibitum}, e.g., violating traffic laws, by appealing to other antecedent duties. For instance, one moral reason for obeying traffic laws is that violating them can put others at significant risk—and one has moral reason to not put others at significant risk.

These observations about content-dependent moral reasons to obey the law support a further point: even if one accepts a claim such as ‘enforcement of law is morally justified

\textsuperscript{99} For articulation of a view that is somewhat similar, see (Sen 1982).
\textsuperscript{100} For such a complaint, see e.g. (Gans 1992, 90-91).
\textsuperscript{101} For an influential discussion of the distinction between content-independence and content-dependence, see esp. (Raz 1986, Chapter Two).
only if it is enforced against someone who violates a moral obligation to comply with that law;’ this does not show that authority or some general moral obligation to obey the law is a necessary condition for macro legitimacy or micro legitimacy. One could, instead, account for the relevant moral obligation in terms of content-dependent reasons, and insist that one be permitted to exercise coercive power against someone only if they violate the relevant moral obligation—where this obligation is entirely content-dependent. Anarchists like Michael Huemer, Simmons, and Robert Paul Wolff accept that there are all kinds of moral reasons to conform to the law.\textsuperscript{102} If we find that in many cases there is a moral obligation to conform to laws, not because of the law but because of content-dependent reasons, then even if one insists that we should accept the claim, ‘enforcement of law is morally justified only if one is morally obligated to comply with that law,’ this does not show that a theory of legitimacy is defective if it does not also ground the authority of the State. Instead, one could claim that exercises of political power are legitimate only if persons have content-dependent moral reasons to conform to law, independent of the question of the permissibility of coercive enforcement of law.

\textit{§2.4 Putting the Pieces Together}

I have argued that authority is not sufficient for legitimacy. I have argued that authority is not conceptually necessary for legitimacy. And I have argued that to defend the claim that authority is necessary for legitimacy in some non-conceptual sense, an argument is owed in defense of that claim. Finally, I have argued that even if one thinks that enforcing law is

\textsuperscript{102} Simmons also claims that there is often moral justification for state actors to enforce law. While Simmons denies that this is a case of legitimacy, his denial rests on his failure to distinguish and articulate the distinction between micro legitimacy and macro legitimacy. I thank Doug Weck for pushing me to respond to this point.
morally justified only if someone violates a moral obligation to comply with that law, this obligation need not have its source in the authority of the State or that law, or some more general obligation to obey the law. Instead, the moral obligation to comply could have its source in content-independent reasons. Given these points, it is under-motivated to object to a theory of legitimacy because it does not answer the Question of Authority— that any theory of legitimacy ought to proceed under the assumption that authority i. All of these conclusions jointly support the following, third dissertation of this thesis:

Authority and Legitimacy Ought to Be Addressed Separately: In answering questions of legitimacy, one ought not to address questions of authority. Theories of legitimacy that do not account for the authority of the State or law are not, for this reason, necessarily defective qua theories of legitimacy.

§3 Conclusion

I have argued that we should reject two core features of the Traditional Picture of Legitimacy. The first feature concerns the Traditional Picture’s characterization of the connection between macro legitimacy and micro legitimacy, according to which macro legitimacy is either necessary or necessary and sufficient for micro legitimacy. Rather than accept this claim, I have argued that we should accept the second thesis of my dissertation:

Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro: Macro legitimacy is obviously insufficient, and it is not obviously necessary, for micro legitimacy.

The other feature of the Traditional Picture that I discussed was its claim that authority is necessary for legitimacy. In reply, I have argued in defense of the third thesis:
Authority and Legitimacy Ought to Be Addressed Separately: In answering questions of legitimacy, one ought not to address questions of authority. Theories of legitimacy that do not account for the authority of the State or law are not, for this reason, necessarily defective qua theories of legitimacy.

Insofar as these two claims are inconsistent with the core of the Traditional Picture, we should abandon the Traditional Picture. In the next chapter, I will consider the implications of abandoning the Traditional Picture.
Chapter Four: Implications of the Three Theses

Introduction

In Chapter Two, I provisionally accepted what I labeled the Traditional Picture of Legitimacy. On this picture, macro legitimacy is necessary, or perhaps necessary and sufficient, for micro legitimacy, and the possession of authority is a necessary condition for macro legitimacy. I indicated that given these features of the Traditional Picture, will-based theories of legitimacy appear quite promising, and substantive theories of legitimacy appear significantly less promising. Nonetheless, I then surveyed various will-based theories, and I argued that they were subject to a host of structurally similar problems. As a result of this survey, I argued there is reason to accept my first thesis:

Will-Based Theories Are Overrated: Will-based theories of legitimacy or authority are subject to enduring problems, and certain purported advantages they enjoy over other theories are not, in fact, genuine advantages.

In Chapter Three, I examined the Traditional Picture more closely, and I argued that we should reject it. In particular, I challenged the claim that the legitimacy of particular actions has its source in the legitimacy of the State by arguing for my second thesis:

Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro: Macro legitimacy is obviously insufficient, and it is not obviously necessary, for micro legitimacy.

I also challenged the Traditional Picture because of its depiction of the relationship between legitimacy and authority by arguing in defense of a third thesis:
Authority and Legitimacy Ought to Be Addressed Separately: In answering questions of legitimacy, one ought not to address questions of authority. Theories of legitimacy that do not account for the authority of the State or law are not, for this reason, necessarily defective \textit{qua} theories of legitimacy.

In this chapter, I wish to consider the implications of these three theses for theorizing about legitimacy. In the §1, I argue that the second and third theses offer additional support for the first thesis. In §2, I argue that we ought to pay more attention to answering the Question of Micro Legitimacy than the Question of Macro Legitimacy, and we ought to pay more attention to both theses than the Question of Authority. In other words, I propose that theorists of legitimacy should ‘start from the bottom’ by developing a theory of micro legitimacy, and then develop a theory of macro legitimacy. In §3, I briefly sketch various versions of such theories to make it more concrete what these sorts of theories of legitimacy could look like. In §4, I begin by articulating reasons why we might think that a consequentialist theory of legitimacy would be quite unpromising given the Traditional Picture.

Since we ought to reject the Traditional Picture, however, some of the reasons that appear to count against a consequentialist theory of legitimacy do not, in fact, count against a consequentialist theory of legitimacy. Moreover, insofar as one accepts the first thesis, Will-Based Theories Are Overrated, we have additional reason to think consequentialist theories of legitimacy are more promising than they might seem. That is, given some of the enduring problems for will-based theories, and given that some of its purported advantages rest on accepting the Traditional Picture, will-based theories enjoy far fewer advantages over rival
theories than we might have thought—including consequentialist theories of legitimacy. I argue that we might think various problems for consequentialist theories of legitimacy in the interpersonal context are suggestive of its appeal in the context of political morality. Finally, I suggest that such a view is especially well-motivated to ‘start at the bottom’ and explain macro legitimacy in terms of micro legitimacy. Jointly, these arguments give us reasons to accept the fourth thesis of this dissertation:

Consequentialist Theories of Legitimacy Are Underrated: Consequentialist theories of legitimacy have been underdeveloped and overlooked, and an appropriately developed consequentialist theory of legitimacy would enjoy significant advantages over rival theories—especially rival will-based theories.

Two further tasks would need to be undertaken to accomplish an adequate defense of the fourth thesis. First, there needs to be an articulation of that consequentialist theory. Second, there needs to be a defense of such a theory against various common objections to consequentialism. Before concluding, I briefly articulate these objections. The rest of the dissertation is devoted to developing a consequentialist theory of legitimacy and assessing whether it can avoid these objections.

§1 A Genealogy and the First Three Theses

To begin, the second and third theses of this dissertation—Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro and Authority and Legitimacy Ought to Be Addressed Separately—constitute additional reason to accept the first thesis of this dissertation, Will-Based Theories Are Overrated.
In support of this claim, I will give a grossly simplified story that focuses on will-based theories that appeal to the actual consent or authorization of the governed. Because we are free and equal persons who disagree about morality, some other individual or group is not justified in possessing and exercising coercive power over us. But if we perform some action—consenting, agreeing, authorizing—we perform moral magic and justify the State’s possessing and exercising coercive power, or its ‘right to rule.’ When particular actions by state actors are morally justified, it is because these actions are exercises of this right to rule. As such, it makes sense that political theorists would be more concerned with questions about the legitimacy of the State than with developing a theory of right action for particular state officials. In short, there is some reason to suspect that will-based theorists have failed to appreciate Macro is Obviously Insufficient and Is Not Obviously Necessary for Micro not merely due to contingent reasons, but because of the features of their particular normative theory of legitimacy.

Similarly, because we are free and equal, other individuals or the State do not naturally possess authority over us. Just as we can confer moral authority upon someone else by consenting, or agreeing, or authorizing them, so too can we confer authority upon the State through some act of will. By consenting, agreeing, or authorizing the State to govern, we can make sense of how the State can come to have authority over us. Such acts of will render us ‘authors’ of the law, or otherwise satisfy the presumption against authority. That is, the emphasis on the will of the citizens makes it apparent why we would think that the

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103 For a somewhat similar diagnosis of the connection between consent, legitimacy, and the obligation to obey the law, see especially, (Buchanan, 2002)
104 For this sort of language, see, e.g. (Hobbes 1994).
State’s authority and its macro legitimacy are so closely connected. And a concern with grounding the State’s authority as well as its macro legitimacy makes it apparent why will-based theories would be appealing. The picture is that the presumption against coercive power and some possessing authority over others are both met by consenting to, agreeing to, or authorizing the State’s rule. By grounding this right, the State becomes macro legitimate. By construing particular actions by state actors as exercises of this right, we can see why such theories have overlooked the distinction between macro legitimacy and micro legitimacy.

In presenting this grossly simplified story, I do not intend it to be interpreted as an exercise in intellectual history. Instead, it is meant as a rational reconstruction of how will-based theories and the Traditional Picture fit together or, perhaps, reinforce one another. If we accept this grossly simplified story, then three points are worth making.

First, insofar as will-based theories have enjoyed such significant influence, it is not implausible that some of the features of will-based theories of legitimacy—that they treat macro legitimacy as though it is at least necessary or perhaps necessary and sufficient for micro legitimacy, and they proceed as though one’s answer to the Question of Legitimacy must be the same one’s answer to the Question of Authority—have come to be accepted as desiderata for all theories of legitimacy. That is, particular features and points of emphasis for will-based theories of legitimacy have come to be accepted as the appropriate desiderata for any theory of legitimacy; they have led to the widespread acceptance of the Traditional Picture of Legitimacy. So, it is not implausible that some of our intuitions about the

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105 One could also capture this point in terms of the distinction between a concept of legitimacy and a conception of legitimacy. Various features of will-based conceptions of legitimacy have, arguably, come to be treated like features of the concept of legitimacy. Applbaum charges that A. John Simmons is guilty of conflating these concepts—see (Applbaum 2010, 218).
desiderata for a successful theory of legitimacy are the result of the prominence of will-based theories rather than being well-motivated pre-theoretical desiderata. And it is not implausible that these intuitions support the Traditional Picture.

Second, some of the purported theoretical advantages of will-based theories over other theories are genuine advantages only if we should accept the Traditional Picture. But in Chapter Three, I argued that we should not accept the Traditional Picture. So, will-based theories do not enjoy the relevant theoretical advantages over rival theories. More specifically, since Authority and Legitimacy Ought to Be Addressed Separately, then even if will-based theories could avoid the objections from Chapter Two and give a plausible theory of authority, this would not give it an advantage over theories of legitimacy that struggle to ground the authority of the State. Whether a theory does well at grounding authority does not count in its favor *qua* theory of legitimacy. Similarly, since Macro Is Obviously Insufficient and Not Obviously Necessary for Micro, even if will-based theories were promising at answering the Question of Macro Legitimacy, this would not enable us to answer the Question of Micro Legitimacy.

In short, the second and third theses provide additional support for the first thesis of this dissertation: Will-Based Theories are Overrated.

§2 The Priority of Micro Legitimacy

So far, I have objected to will-based theories of legitimacy, and I have argued that we should reject the Traditional Picture. How, then, should theorists of political morality proceed? In what follows, I will argue that the Question of Micro Legitimacy is the most pressing of the three questions I canvassed in the previous chapters—the Question of Authority, the
Question of Macro Legitimacy, and the Question of Micro Legitimacy. The Question of Micro Legitimacy is the most pressing of the three questions in the sense that the Question of Micro Legitimacy ought to be answered before answering the Question of Macro Legitimacy, and before answering the Question of Authority.

§2.1 Authority vs. Legitimacy

The Question of Micro Legitimacy is more pressing than the Question of Authority. As discussed in Chapter Three, even many skeptics about authority acknowledge that there are often content-dependent moral reasons to conform to law. For instance, A. John Simmons and Robert Paul Wolff accept that they should not drive on the left side of the road—not necessarily because it is the law but because they have moral reason to not put others at risk, and they would put others at risk by driving on the left side of the road. There are some laws that it would be impermissible for citizens to comply with or laws that citizens are obligated to disobey them. Think, for instance, of laws imposed by the Nazis requiring Jews and only Jews to wear a yellow Star of David (and the apocryphal story of the King of Denmark and other Danes who also wore the star) or Jim Crow laws that prohibited white establishments from serving black customers. In these cases, it is not implausible that there are moral obligations to disobey those laws. But if we put those sorts of cases to the side, the debate about authority concerns whether we are merely permitted or are obligated to

106 But even when we are skeptical that there are moral reasons to obey the law in particular instances, given its coercive character there are quite often prudential reasons to obey the law. Because we have these prudential reasons, it is not apparent that an adequate theory of authority would lead us to be inclined to behave differently than we already do, independently of the moral questions involved. For instance, imagine that I find out that the State does not have authority, or particular laws concerning speeding are not, in fact, authoritative. Insofar as there are sanctions attached to speeding, I will still be inclined to refrain from speeding—regardless of whether I determine that the law is authoritative or the State has authority.
conform to the law, and, if we are obligated to conform, whether this obligation has its source in authority or content-dependent, moral reasons. As such, whether the State has authority or a particular law is authoritative will often fail to make a difference as to what we morally ought to do, all-things considered.

Moreover given the sanctions attached to laws, there are very often prudential reasons to obey the law. Because we have these prudential reasons, it is not apparent that an adequate theory of authority would make much of a difference to our conduct—even for sincere citizens who only did what they were morally permitted and obligated to do. Consider Risk-Free Red Light again. Imagine that the driver knows that her State lacks authority, and there are no other salient moral considerations that obligate her to wait at the light. For many such morally sincere citizens, insofar as there are sanctions attached to running red lights, they will still be inclined to refrain from running the red light. That is, reasons of prudence will often count in favor of conformity to law, even if, from the perspective of morality, it is merely permissible rather than obligatory to conform.

The same points do not apply to the Question of Micro Legitimacy. Part of this is because of the difference in the deontic status we are asking about when we ask the Question of Micro Legitimacy rather than the Question of Authority. As noted above, while complying with the law is often permissible or obligatory (due to content-based reasons) for citizens, exercising coercive power strikes us as calling for moral justification because exercises of coercive power are typically impermissible. State actors interfere with or shape

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107 I have stipulated this example in part to avoid addressing the empirical literature that concerns whether people obey the law “because it is the law.” See, e.g. (Tyler 1990). Nonetheless, given critiques of arguments that people, in fact, tend to obey the law because it is the law—see, e.g. (Schauer 2015)—there is some reason to think that this example is not far-fetched.
our lives by exercising coercive power. Moreover, unlike the case of authority, there are not as many background reasons that straightforwardly count in favor of exercising coercive power as there are that count in favor of conforming to law. The best working theory of micro legitimacy might very well make a significant difference as to what state actors ought to do, all-things considered. And sincere state actors trying to determine what they are morally permitted to do would, presumably, find a theory of micro legitimacy to be importantly action-guiding in an interesting sense. Such a theory might lead them to discover that various actions they thought were permissible are, in fact, impermissible.

§2.2 Macro vs. Micro

Theorists of political morality ought to address Question of Micro Legitimacy before addressing the Question of Macro Legitimacy. This is for three reasons.

First, it is worth focusing on micro legitimacy given the results of existing theorizing that focuses almost exclusively on macro legitimacy. One way of capturing this point is as follows. There are significant problems with the Traditional Picture. Given these difficulties, there is at least some reason to suspect that theories of legitimacy that aim to satisfy the constraints of the Traditional Picture approach the Question of Legitimacy in a way that is likely to fail—because of the problems with the Traditional Picture. To put the point metaphorically, perhaps the history of attempts to develop a theory of legitimacy that satisfies the Traditional Picture amounts to the philosophical equivalent of a history of attempts to fit a square peg into a round hole. A radically different approach to the Question of Legitimacy might be more fruitful. This approach would not only ignore the Question of Authority, but it would also start ‘at the bottom,’ as it were.
Second, in addition to the history of inadequate attempts of theorizing about legitimacy, there are additional points that motivate an approach that starts at the bottom. It could be that we can learn more about macro legitimacy by focusing on micro legitimacy rather than the other way around. One way of making this point draws on discussions of virtue ethics. One natural worry about virtue ethics is that it provides a standard of right action that is insufficiently action-guiding. Consider the standard of right action popularly associated with virtue ethics, namely, “The right action is the one that the virtuous person would perform.” To determine which action is right, we need to be able to identify which person is virtuous. But if we lack moral knowledge and are looking for moral guidance, then presumably we do not already know which persons are virtuous; we face the challenge of identifying moral experts or exemplars. So, the objection concludes, virtue ethics provides a standard of right action that fails to be action-guiding.

One way to respond to this objection would be to argue that we can come to know which agents are virtuous by coming to learn more about the features of actions that virtuous persons characteristically perform—and that we can come to know these features without having to be able to identify which persons are virtuous. As we come to learn more about which actions have these features, we eventually become able to know which persons are virtuous. Returning to the context of legitimacy, we might think that by coming to learn which actions are micro legitimate and why they are micro legitimate, we will become better able to identify which states are macro legitimate and why they are macro legitimate.

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108 For an articulation of this objection, see (Hursthouse 1999, 28)
109 For something like this reply—although she does not ultimately endorse it—see (ibid., 38-39)
A distinct consideration that motivates starting at the bottom is not epistemic but meta-normative; it is worth considering the possibility that the macro legitimacy of the State is constituted by the aggregation of the micro legitimate actions, or that what makes actions micro legitimate ultimately makes the State macro legitimate. For another parallel from moral theory, a consequentialist might think that whether someone is a ‘good person’ is not determined by whether that person has a certain set of dispositions, but is instead ultimately determined by the aggregation of their various actions—how many actions are right or wrong, or how much overall good they have produced over the course of their life. On such a view, it is not merely that we need to know which actions are right and how to aggregate them to judge which persons are good. It is also the case that the goodness of the person is reducible to the goodness of their actions. In the context of legitimacy, it is worth seriously considering the position that the macro legitimacy of the State is ultimately reducible to the aggregation of the micro legitimate actions of particular state actors, or the aggregated consequences of those actions.\footnote{For a theory of state authority that is aggregative in some sense like this, see esp. (Perry 2013).}

A third reason that counts in favor of starting at the bottom is that even if we were to develop an adequate theory in reply to the Question of Macro Legitimacy and successfully used that theory to determine that a particular state was either legitimate or illegitimate, the Question of Micro Legitimacy would still remain. This is in part because macro legitimacy is obviously insufficient for micro legitimacy. To return to an example from Chapter Three, even if we developed a theory according to which we were able to determine that Sweden is macro legitimate, we would still need a theory of micro legitimacy, as there will be cases in
which it appears that particular state actors, such as the judge, are performing micro illegitimate actions. And since macro legitimacy is not obviously necessary for micro legitimacy, even if we failed to develop an adequate theory of macro legitimacy, the Question of Micro Legitimacy would still remain. To return to an example from Chapter Three, even if developed a theory according to which we were able to definitively determine that North Korea was macro illegitimate, we would still need a theory of micro legitimacy, as we will have cases in which it appears that particular state actors, such as traffic enforcement agents, are performing micro legitimate actions. Insofar as we want a theory of legitimacy to be action-guiding for state actors, then starting at the bottom is promising for such purposes.

§3 Starting at the Bottom

If we were to attempt to develop a theory of legitimacy that begins by attempting to answer the Question of Micro Legitimacy before proceeding to answer the Question of Macro Legitimacy, what might that theory look like?

To begin, it is worth emphasizing that the Question of Micro Legitimacy makes reference to one’s role:

*The Question of Micro Legitimacy:* Under what conditions, if ever, are particular exercises of coercive power by state actors in their role as state actors morally permissible, and why are they permissible?

Accordingly, an adequate theory of micro legitimacy will articulate what morally justifies the role occupant in acting in accord with their role. So what could morally justify one in acting in accord with one’s role?
§3.1 A Non-Starter: Appealing to the Intrinsic Aims of Roles

Some argue that there are professions—as distinct from mere jobs or occupations—and that one has particular role obligations in virtue of one’s membership in the profession. On this view, each profession has an intrinsic aim or telos, and this aim is ultimately what grounds particular codes of ethics and the permission or obligation to act in accord with the code. So, for instance, John Arras considers the position that part of what it is to be a doctor involves risking one’s life to cure the sick, and Leon Kass argues that doctors have, qua doctors, a role obligation to never kill patient. We might similarly think that various state actors—congressional representatives, judges, police officers, administrative officials, or public defenders, just to name a few—each is a member of a distinct profession, and each profession has its own intrinsic aim.

There are difficulties with this approach, difficulties that make it a non-starter. To begin, particular members of the profession can dispute that they are part of the profession in question. For instance, imagine a public defender, Darryl, is told by Evelyn that Darryl's ought to keep the confidences of his clients to provide the best possible defense for his clients. Darryl asks why this is the case. In reply, Evelyn says, “Being a public defender is a profession, and given the intrinsic aim of the profession, public defenders have a role obligation to provide the best possible defense for their clients.” Darryl, however, disagrees with this characterization of the profession, and he articulates a different intrinsic goal that does not ground a role-based obligation to keep the confidences of one’s clients. When Evelyn insists that if Darryl believes this then he is not truly a public defender, Darryl rolls

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111 For discussion of such views, see (Applbaum 1999), (Arras 1988), (Kass 1989), (Luban 1988).
his eyes and concedes as much—“Fine, I’m a shmuplic defender, then, and as a shmuplic defender I don’t have to keep the confidences of my clients.” The broader point is that claiming that a profession has a particular aim and code simply in virtue of its essence as a profession does not provide a plausible rationale for the permission or obligation to conform to that code.

A different problem arises insofar as the actions in question require moral justification; the Question of Micro Legitimacy is motivated by the need to morally justify exercises of coercive power. Even if one could avoid the previous objection, namely that an appeal to a profession cannot provide genuine justification, this need would still remain. To illustrate, let’s return to a case from Chapter Two, Water Theft, in which Beth arrests Albert for stealing a case of bottled water from his local Wal-Mart. Albert says “Hey—you can’t do that to me!” Beth replies, “Yes, I can. I am a police officer. And the intrinsic aim of the police is to protect and serve the community—which involves arresting people for theft. So, my action is morally justified.” In reply, Albert (correctly) objects, “Even if you are right about the intrinsic aim of your profession, there is a moral presumption against exercising coercive power. So, you might have a justification to perform coercive actions. But it is not the right kind of justification—the right kind of justification is a distinctively moral one.” For Beth to meet Albert’s demand for justification, if Beth wishes to appeal to the aim of her profession she needs to indicate why her profession itself is morally justified in exercising

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113 See, e.g. (Arras 1988) (Enoch 2006).
coercive power, and how this justification, in turn, justifies her to behave in the way she does.\textsuperscript{114}

So, the appeal to the intrinsic norms of a profession is not promising for developing a theory of micro legitimacy. Such a theory will fail to explain when and why state actors are morally permitted, as state actors, to exercise coercive power. What is needed for a theory of micro legitimacy is some justification for one’s actions in one’s role, a justification that appeals not to the intrinsic aim of the role, but to some moral reason outside of the role that justifies acting in accord with one’s role.

\textbf{§4 Will-Based Theories as Grounding Roles?}

Since so many existing theories of legitimacy are will-based, perhaps we can appeal to an act of will on the part of citizens to ground the moral permissibility of state actors to perform certain actions \textit{qua} state actors. For instance, despite the earlier canvassed objections, someone might appeal to some form of actual consent or agreement to claim that state actors perform a micro legitimate action if and only if they act in accord with a role that has been consented or agreed to by the relevant groups. Or one might argue that particular actions are micro legitimate if and only if they are in accord with a role that has been authorized by citizens.

Of course, I have discussed problems that face will-based theories in Chapter Two. Actual will-based views struggle to articulate necessary and sufficient conditions for the justification of particular actions. If the citizens of North Korea were to expressly and non-opaquely consent to government executioners carrying out executions, this would not justify

\textsuperscript{114} For a similar point, see (Luban 1988, 126-127).
the executions. Alternatively, we might think that North Korean traffic officials are permitted to act in accord with their role—even if North Korean citizens did not non-opaquely consent to this. Finally, just as we saw that ‘consenting to the State’ does not suffice for the legitimacy of particular actions, we should doubt that consenting to persons acting and occupying a role suffices to justify particular actions in accord with one’s role. For instance, imagine that Swedes expressly and non-opaquely consent to judges acting in accord with their role. We might still object that this does not justify, in a particular instance, a Swedish judge in imposing an exceptionally punitive sentence for a non-violent drug offense. Similarly, the opacity of consent would apply to roles and actions undertaken qua role occupant. I might consent or agree that police officers ought to be allowed to ‘protect and serve’ without intending or understanding myself to be consenting to various actions they undertake. The same points apply to democratic authorization views.

Moreover, we can worry that these problems for actual will-based views are even worse in the context of authorizing particular roles or actions by role-based actors in accord with their role. I will assume that we think some form of meaningful consent or agreement requires some degree of knowledge of what one is consenting or agreeing to, citizens lack the requisite information about various roles, codes for those roles, and particular role actions that role occupants undertake. But citizens lack the relevant knowledge—and it would be demanding and unrealistic to expect citizens to acquire such knowledge and then perform the relevant act of will. So, appealing to an actual act of will to justify acting in accord with one’s role does not appear promising.
Idealized counterfactual agreement theories are more promising, especially if the appeal to some form of idealized counterfactual agreement is being used as a heuristic for identifying various substantive moral norms. For instance, we might attempt to identify the right action for particular state actors by considering what persons would, if sufficiently informed, agree to at the level of individual conduct. There would still be a question about how to specify the appropriate framing of the action that persons would agree to. There would also be questions about what justifies the relevant idealization. Rather than explore or develop such a view and deal with these difficulties, however, I will assume it would be more fruitful to develop and explore other theories that have not been developed or discussed as much, especially since some of the purported advantages of will-based theories over other theories depended on accepting the Traditional Picture.

§5 Non-Consequentialist Substantive Theories

A different class of theories of legitimacy that could start at the bottom would involve appealing to a substantive value, but without endorsing consequentialism. On such a view, different role actors contribute to the realization of a morally desirable outcome, and the outcome is morally desirable not merely because citizens consent to, authorize, or would be able to endorse the relevant action. Arguing in defense of a particular substantive theory of micro legitimacy would involve showing that relevant substantive moral considerations meet the demand for justifying actions that are either coercive or that are backed by coercive force. To make this more concrete, it is worth briefly considering two distinct versions of such views, and some difficulties such views would face. These difficulties are not intended to be construed as insurmountable. They are meant to illustrate both how one would need to develop such views and to motivate opting for a consequentialist view like my own.
First, one might appeal to natural rights. More precisely, one might claim that particular actions by state actors are ultimately justified in virtue of protecting or securing or establishing natural rights.\textsuperscript{115} Such a view appears well-suited for justifying coercive power insofar as many accept that it is permissible to exercise coercive power to protect or enforce rights.\textsuperscript{116}

But there are two worries about a view with this form that are worth articulating. First, it is difficult to ground or explain particular natural rights.\textsuperscript{117} This claim has been made in more or less dramatic fashion—perhaps the most dramatic case is Jeremy Bentham’s infamous declaration that natural rights are ‘nonsense upon stilts.’ Less dramatically, the natural rights theorist owes an argument that shows that the relevant natural rights exist. Part of the difficulty is that rights typically involve a correlative obligation on the part of others. A longstanding challenge for natural rights theorists is to establish the bearers of the correlative obligation, especially if we think that among natural rights are positive entitlements, such as a right to an education or access to the internet.

A second worry is that the appeal to the protection of natural rights is too thin of a foundation to justify many particular actions by state actors—state actions that we think are, in fact, legitimate. That is, we think that state actors are permitted to perform various actions even though they do not seem integral to protecting or securing natural rights. One natural way to avoid the worry is to add additional natural rights to the list; that is, one might appeal

\textsuperscript{115} While discussions of legitimacy that focus on human rights views are concerned especially with the Question of Macro Legitimacy, they could be appropriated for purposes of thinking about micro legitimacy.
\textsuperscript{116} For some examples of this view, see (Buchanan 2002), (Griffin, 2008).
\textsuperscript{117} For a brief overview of such difficulties, see, e.g. (Nickel, 2017); (Wenar, 2015).
to additional natural rights to justify particular actions by state actors. But this highlights the first worry, and it calls for additional argument.

To show the connection between these two difficulties, consider the case of property rights. First, let us assume that we do not have natural rights to property. Nonetheless, those who grant as much often think that there are cases in which no human rights are violated, but some property rights are violated, and a state actor is permitted to make or enforce law concerning property. Accordingly, to claim that actions are micro legitimate insofar as they protect or secure human rights will fail to account for the legitimacy of various actions concerning property. One could attempt to claim that such actions are somehow necessary or integral or instrumental to protecting or securing other natural rights. But we ought to worry that such a claim will not be forthcoming or plausible for all of the instances in which we think state officials perform micro legitimate actions. The more actions we claim are instrumental or integral to protecting or securing natural rights, the more we should wonder whether ‘natural rights and the tasks needed to protect or secure them’ really amount to a proxy for some other view.

If, on the other hand, one insists that there are natural rights to property, one owes an explanation as to why and how we have natural property rights.\(^{118}\) This is a notoriously daunting task. For instance, arguments that appeal to self-ownership and the mixing of one’s

\(^{118}\)See, esp. (Nozick 1974). For significant challenges to the existence of natural property rights allowing for meaningful liberty, see esp. (Sobel 2012) and (Railton, 2013). For an interesting reply to these objections, albeit one that gives up on natural rights in favor of a form of conventionalism about rights, see esp. (Mack, 2015).
labor with natural resources, face significant obstacles—obstacles that Robert Nozick forcefully articulates, but, by his own admission, does not fully resolve.\textsuperscript{119}

A different attempt to ground natural rights would involve appealing to some other value that human rights ultimately protect. For instance, some appeal to agency or autonomy to account for the grounds of human rights. This view is not far off from the view I will ultimately defend, as I will argue that it is the production of autonomy that justifies particular political actions by state actors. But if we ground natural rights by appealing to some value such as agency or autonomy, there is an open question as to why we should not also attempt to produce the value in question—which might very well call for performing actions beyond protecting various rights.\textsuperscript{120}

A very different substantive but non-consequentialist theory would draw on perfectionism.\textsuperscript{121} On such a view, it would be the enabling of distinctively human excellences that justifies particular actions by state actors in their role as state actors. Just as the natural rights theorist needs to provide us with an argument as to which rights are natural and why

\textsuperscript{119}(Nozick 1974).
\textsuperscript{120} One could also develop a more conventionalist view about rights, and argue that these conventional rights are intrinsically enabling of some morally desirable capacities on the part of persons. For instance, some Kantians argue that for persons to enjoy external freedom, they must enjoy a scheme of rights, there must be a judiciary that resolves disputes about rights, and members of the executive branch ought to enforce those rights. See, esp. (Ripstein 2004; 2009) for a view like this. The main differences between such a view and my own view are as follows. First, the arguments that Kantians make typically don’t focus on the connection between micro legitimacy and macro legitimacy, although this could be amended. Second, they do not focus on the divisions of labor that I focus on as what justifies particular political actors. Third, my framework does not involve appealing to the innate right of nature. Fourth, in assessing whether some action or policy would promote Functional Autonomy, my view draws more on empirical work in a variety of fields—such as developmental psychology or developmental economics. Nonetheless, it is worth emphasizing that I take such a view to be an important rival to my own view, although it is beyond the scope of this dissertation to assess the two sorts of views side by side.
\textsuperscript{121} See, esp. (Hurka 1993; Raz 1986; Sher 1997).
they are natural, the perfectionist owes an argument as to what justifies their characterization of the good life, especially since we disagree about what constitutes a flourishing life. An additional worry arises for perfectionists insofar as we are attempting to justify coercive political power. That is, the connection between justified coercive enforcement and rights is somewhat straightforward—it is permissible to coercively enforce various rights persons have. The connection between justified coercive enforcement and flourishing or human perfection, by contrast, is less straightforward; we ordinarily do not think persons are permitted to undertake coercive measures to enable persons to flourish or lead a life in accordance with their nature.

Again, this is not a comprehensive overview of theories of legitimacy that begin ‘at the bottom,’ that do not appeal to acts of will and that are not consequentialist. And the problems canvassed for these views are not meant to be understood as insurmountable, but merely to point to directions in which these theories would need to be developed.

§6 Consequentialist Theories of Legitimacy Are Underrated: A First Pass

The claim that consequentialism is promising for purposes of developing a theory of legitimacy will strike at least some readers as odd. But in what follows, I will argue that at least some of the reasons that make consequentialism seem to be a non-starter do not count against it after all.

To begin, it is worth noting that apparent problems for the view depend on accepting the Traditional Picture. If we accept the Traditional Picture, an initial problem for a consequentialist theory of legitimacy is that the appeal to the production of good consequences does not straightforwardly ground some sort of ‘right to rule.’ For instance,
imagine that Mark Zuckerberg gives significant gifts to various people without extracting promises or anything similar. This does not ground his right to exercise coercive power over people in a territory. So, it might appear that a consequentialist theory of legitimacy will appeal to the wrong kind of consideration and therefore be a non-starter.

But I have defended Macro is Obviously Insufficient and Is Not Obviously Necessary for Micro, and I have argued that there is good reason to think it would be fruitful to treat the Question of Micro Legitimacy as the more fundamental than the Question of Macro Legitimacy. So, we should not think that the difficulty in straightforwardly grounding some sort of right to rule counts against the prospects of a consequentialist theory of legitimacy.

Similarly, if we accept the Traditional Picture, we might be skeptical about the prospects of a consequentialist theory of micro legitimacy because a consequentialist theory will not straightforwardly ground the authority of the State. It strikes many as implausible that mere production or receipt of benefits suffices to generate authority—even if we agree that the relevant consequences are good ones that ought to be produced. Imagine again that Mark Zuckerberg gives significant gifts to various people without extracting promises or anything similar. Perhaps those people owe Mr. Zuckerberg their gratitude, but he does not have some sort of moral power over them such that he could impose a moral obligation on them—even if he were to continue to provide those gifts moving forward, and it was common knowledge that he would do so. Of course, in reply to this concern, it is worth

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122 (Huemer 2013), (Nozick 1974), (Simmons 1979). This extends to cases where the benefit in question is greater likelihood in complying with what one has most reason to do. For this critique of Joseph Raz’s influential Service Conception of Authority—found in (Raz 1986)—see, esp. (Hershovitz 2010) and (Perry 2013).
emphasizing that the truth of the third thesis, Authority and Legitimacy Ought to Be Addressed Separately, renders this objection irrelevant. Even if consequentialist theories struggle to ground authority, this does not count against a consequentialist theory of legitimacy.

If we ought to accept the Traditional Picture, there would be good reason to be skeptical about the prospects of a consequentialist theory of legitimacy. But insofar as we ought to reject the Traditional Picture, these reasons for skepticism are not good ones. Moreover, given the prominence and influence of the Traditional Picture and will-based theories, there is good reason to think that consequentialist theories of legitimacy have been underestimated or overlooked precisely because they do not lend themselves to grounding the right to rule or the authority of the State.

A further reason to think consequentialist views will be appealing is that some of the problems for consequentialist views as theories of interpersonal morality do not apply to consequentialism as a theory of right action for state actors in their capacity as state actors.123 To illustrate, consider Bernard Williams’s influential critique of impartialist moral theories when he considered a case in which someone decides to rescue his wife over a stranger:

But this construction provides the agent with one thought too many: it might have been hoped by some (for instance, by his wife) that his motivating thought, fully

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123 Robert Goodin puts forward a very similar line of argument—see, esp. (Goodin 1995, 7-11).
spelled out, would be the thought that it was his wife, not that it was his wife and that in situations of this kind it is permissible to save one’s wife.\footnote{See, esp. (Williams 1981, 18).}

Consequentialism calls for impartiality, and so as a theory of interpersonal morality, it is vulnerable to this objection. But imagine, by contrast, that a judge deliberating about what sentence to impose, who thinks “This ruling is the one that is demanded of me given the fundamental importance of my wife in my life...and it is the just ruling.” To borrow a phrase from Bernard Williams's influential critique of impartialist theories of morality, this judge seems to be having ‘one thought too many’—qua judge, she should not be thinking about her wife but about the action required of her qua judge. This deliberation will include whether she should recuse herself from the case because she is incapable of judging impartially or perhaps cease to be a judge insofar as she recognizes that she will inevitably give weight to her ground projects rather than fulfilling her role. In short, what would be an objectionable feature of consequentialism as an interpersonal moral theory is an attractive feature in the context of political morality.

Finally, consequentialism would be well-suited for constructing a theory in which micro legitimacy, rather than macro legitimacy, is more fundamental. On such a view, particular actions are legitimate or illegitimate in virtue of their consequences. And the State, as a whole, is also legitimate or illegitimate in virtue of its consequences. Consequentialism is promising not only explaining the micro legitimacy of particular actions, but it also seems promising at explaining the connection between micro legitimacy and macro legitimacy in
terms of the production of good consequences: actions are legitimate because they produce good consequences, and the State is legitimate because it produces good consequences.

In summary:

A. Some of the purported disadvantages of a consequentialist theory of micro legitimacy would involve accepting the Traditional Picture—which we ought to reject.

And

B. Rival will-based theories of legitimacy—the most prominent class of theories of legitimacy—are subject to significant difficulties.

And

C. There is some reason to think that at least some of the problems that plague consequentialism as a theory of interpersonal morality might very well not apply in the context of micro legitimacy.

And

D. A consequentialist theory would lend itself well to treating micro legitimacy as more fundamental than macro legitimacy, and it could provide a principled explanation of the connection between micro legitimacy and macro legitimacy.

I submit that A-D gives us some reason to accept the first clause of the fourth thesis,

Consequentialist Theories of Legitimacy Are Underrated: Consequentialist theories of legitimacy have been underdeveloped and overlooked, and an appropriately
developed consequentialist theory of legitimacy would enjoy significant advantages over rival theories—especially rival will-based theories.

Of course, while the arguments I have made so far in favor of this fourth thesis, they do not constitute sufficient reason to accept it. This is for two reasons. First, we would need to see an adequately developed consequentialist theory of legitimacy. I attempt to develop such a theory in Part Two of the dissertation, a theory that emphasizes C and D. Second, we would need to assess whether such a theory of legitimacy can adequately respond to various problems, especially problems that have been perennial, significant challenges for consequentialism as a moral theory. It is worth briefly canvassing these objections before proceeding.

§6.1 Respect for Free and Equal Persons Who Disagree

As discussed in Chapter Two, our status as free and equal persons gives rise to the charge that there is something objectionable about justifying political power by appealing to the moral importance of respecting or producing substantive values. What makes this objectionable is spelled out in a variety of ways. And the class of objections is not unique to consequentialist theories of legitimacy; it applies to all substantive theories of legitimacy. Moreover, if we accept the first thesis, Will-Based Theories Are Overrated, we might think that even though substantive theories cannot fully meet this objection, they might still enjoy significant advantages over various will-based theories. Nonetheless, insofar as a consequentialist theory of legitimacy is a substantive theory, it faces this objection.
§6.2 The Separateness of Persons

One important, commonly raised objection arise because consequentialist theories typically ground various normative properties such as rightness or justice in producing the most overall value. The objection is that this feature of consequentialist theories embodies a failure of respect for the separateness of persons. Because of this failure, critics charge, consequentialist moral theories will erroneously claim that blatantly wrong actions are morally required, or that obviously unjust social arrangements are, in fact, just. In short, a theory that tries to justify actions that are ordinarily wrong by appealing to the production of the most overall good consequences would appear to be in danger of countenancing sacrificing individuals or distributive injustices for the sake of the ‘greater good.’

§6.3 Demandingness

Third, some object that consequentialism is an excessively demanding moral theory. I suggested in Chapter Two that one worry about consent-based theories is that such theories entail that, short of radically rearranging all institutions, all institutions, states, and actions are illegitimate. While this might ultimately be the correct conclusion to reach, it is a very strong one that many would reject, and it calls for defense. Similarly, we might think that because it is so demanding, a consequentialist theory of legitimacy will entail that all existing states, institutions, and actions are illegitimate. This would mean that this theory would do no better than rival will-based theories when it comes to avoiding such a strong conclusion. More generally, we might think that because it is so demanding, a consequentialist theory of legitimacy will erroneously deem various legitimate actions illegitimate, or various macro legitimate states macro illegitimate.
§6.4 Particularity

An additional problem arises insofar as we are committed to the claim that legitimacy is justified only vis-à-vis citizens, residents, or others who are within the territory of the country. This is a feature of the Traditional Picture mentioned in Chapter Two, but a feature that has not been discussed as much. The production of good consequences, however, does not respect territorial boundaries; just as calling for the maximization of impartial value does not accord special significance to personal projects or relationships, the maximization of impartial value does not respect conventional territorial boundaries. As such, if one were to appeal to the production of good consequences, this might have radically revisionary implications concerning the range or scope of the legitimacy or authority of various political institutions. The most benign version of these revisionary implications would be that governance would not merely concern citizens of a state, but would extend far beyond conventional territorial boundaries. The most malignant version of these revisionary implications would be that some form of colonialism or imperialism is morally justified—a conclusion that various consequentialists repugnantly endorsed.

The remainder of this dissertation will be devoted to developing a consequentialist theory of legitimacy, the Act-Focused Consequentialist Theory of Legitimacy. My aim is to motivate its plausibility and respond to these objections that are especially worrisome for a consequentialist theory of legitimacy.
PART TWO: THE ACT-FOCUSED CONSEQUENTIALIST
THEORY OF LEGITIMACY

According to [consequentialism], the effects of an action are everything. There are no actions which are, in and of themselves, morally right or wrong, good or bad. The only things that are good or bad are the effects that actions produce. That proposition runs counter to certain ethical intuitions which, at least in certain quarters, are rooted deeply. Those who harbor a Ten Commandments view of the nature of morality see a moral code as being essentially a list of "thou shalt"s and "thou shalt nots"—a list of things that are right or wrong in and of themselves, quite regardless of any consequences that might come from doing them.

That may or may not be a good way to run one's private affairs. Even those who think it is, however, tend to concede that it is no way to run public affairs. It is in the nature of public officials' role responsibilities that they are morally obliged to "dirty their hands"—make hard choices, do things that are wrong (or would ordinarily be wrong, or would be wrong for ordinary private individuals) in the service of some greater public good. It would be simply irresponsible of public officials...to adhere mindlessly to moral precepts read off some sacred list, literally "whatever the consequences." Doing right though the heavens may fall is not (nowadays, anyway) a particularly attractive posture for public officials to adopt.

—Robert Goodin, *Utilitarianism as a Public Philosophy*
Chapter Five: Axiology and Functional Autonomy

Introduction

In Chapter Four, I argued that theories of legitimacy ought to treat the Question of Micro Legitimacy as more pressing than the Question of Macro Legitimacy. I briefly sketched various theories, and I gave some reasons to accept the fourth thesis of this dissertation, *Consequentialist Theories of Legitimacy Are Underrated*. The rest of this dissertation is devoted to developing a consequentialist theory of legitimacy and responding to objections to it, which will provide additional support for this thesis. Because it begins with micro legitimacy rather than macro legitimacy, I label it an ‘Act-Focused’ theory of legitimacy; because it is a consequentialist theory of legitimacy, its title in full is “The Act-Focused Consequentialist Theory of Legitimacy.”

Since it is a consequentialist theory, the Act-Focused Consequentialist Theory of Legitimacy claims that it is the production of good consequences that ultimately justifies the exercise of coercive power. This naturally leads to the question: what good consequences could legitimate coercive power? I argue that the good consequences in question are the Functional Autonomy of persons, where ‘Functional Autonomy’ refers to the ability to successfully act on one’s authentic values, at least up to a reasonable threshold. My argument in defense of the claim that Functional Autonomy is the appropriate good to be produced proceeds in three stages.

In the first stage, I argue that given the problem that motivates the Question of Micro Legitimacy—that state actors exercise coercive power—there is a particular range of values that would be appealing candidates for the good to be produced on a consequentialist
theory of legitimacy. This range of values pertains to freedom in a broad sense. I will argue that autonomy is one such candidate and that it is an especially appealing value within this range. In the second stage, I argue that autonomy is an appealing value for a consequentialist theory of legitimacy because part of the motivation for the Question of Micro Legitimacy is that we have significant disagreements about what is valuable. Autonomy is a particularly appropriate value to produce given these disagreements. In the third stage, I specify a particular conception of autonomy that ought to be produced, Functional Autonomy: the ability to successfully act on one’s authentic values, at least up to a reasonable threshold. I then consider and respond to the objection that instead of producing Functional Autonomy, the appropriate value to be produced is some combination of Functional Autonomy and Perfect Autonomy—the ability to perfectly act on one’s authentic values. Before concluding, I indicate how one might measure Functional Autonomy. In Chapter Six, I turn to discuss how the production of Functional Autonomy justifies coercive power and then provide a standard of micro legitimacy and a standard of macro legitimacy.

§1. Consequentialism, Autonomy, Coercive Power, and Moral Powers

Insofar as we think that the problem of legitimacy is a distinctive problem that calls for its own theory, an axiology for a consequentialist theory of legitimacy ought to articulate a value that, if produced, would meet the demand for justifying coercive power in particular. This is a reason, not a decisive reason but a reason nonetheless, in favor of narrowing the class of values to be considered for a consequentialist theory of legitimacy. For instance, producing artistic value does not appear to be the appropriate kind of value to justify coercive power. Similarly, there is reason to think that it would be inappropriate to treat hedonic utility as the good to be produced, as the sense in which coercive power is utility-undermining is not
interesting or distinctive. That is, we can assess coercive actions in terms of their effects on overall hedonic utility, but there is no reason to think that coercive actions or coercive power, in particular, deserve a distinct or special kind of justification. The hedonic utilitarian will claim that coercive actions or other actions backed by coercive force are justified or unjustified in virtue of the same considerations that justify any and all other actions that persons perform—they are justified or unjustified in virtue of whether they maximize overall utility. An additional worry is that since we are beings capable of acting on reasons, making plans, and who come to different judgments about the good, utility is not the right kind of value to produce on a consequentialist theory of legitimacy. Our status as free and equal persons—rather than beings capable of enjoying utility—after all, seems to be what motivates the Question of Macro Legitimacy and the Question of Micro Legitimacy; our status as free and equal persons with our own plans are important, and the coercive power associated with governance is thought to be somehow in tension with such status and our plans.

One possible reply to this objection would be to insist that for the state to best produce the good, it ought to limit itself to producing autonomy or liberty or something similar. Arguably, John Stuart Mill offers an argument along these lines in (Mill 1978). Accordingly, his version of utilitarianism would not be subject to the relevant objection. Perhaps various other welfarist versions of utilitarianism could also avoid the force of this objection.

I focus on hedonic utilitarianism, in particular, because it is especially subject to this charge. Perhaps some objective welfarist theories of utility or preference-satisfaction views would not be as straightforwardly subject to them. One worry about objective welfarist theories of utility, however, is that they depend on contentious claims about well-being. Insofar as we might think that respecting disagreement is desirable in a theory of legitimacy, the promotion of autonomy could enjoy an advantage over objective welfarist theories, as we might think that autonomy is a more ecumenical theory of the good than a theory of human welfare. With regard to preference-satisfaction views, by contrast, we might wonder why satisfying preferences is intrinsically valuable, especially if such preferences are not connected to an agent’s values in the right way. For instance, we might question whether there is value in satisfying the heroin addict’s preference for heroin, in satisfying the preferences of someone with maladaptive preferences, or in satisfying the preferences of someone who temporally discounts or is suffering from weakness of will in some other sense.
If these concerns are correct, then the appropriate sorts of values for a consequentialist theory of legitimacy will have to relate to justifying coercive power specifically. Some natural values that could fulfill this function are those that concern freedom in a broad sense. Coercive power involves threats that raise the costs of performing various actions. When successful, such threats interfere with or undermine our freedom by prompting us to act in ways that we otherwise would not have. So, freedom-related values are promising for the purposes of developing an axiology for a consequentialist theory of legitimacy.

§1.1 Autonomy

Autonomy is one such freedom-related value. Before arguing that autonomy is an especially appropriate value to be produced on a consequentialist theory of legitimacy, it is worth saying a little bit more about it. Autonomy, in the sense I am using the term, is the ability to successfully act on one’s authentic values. Successfully acting on one’s authentic values consists of four different sorts of success.

127 Somewhat similar consequentialist arguments include (Mill 2002), (Pettit 1999) and (Sen 1982). For a perfectionist argument of this sort, see e.g. (Raz 1986). Others have made similar arguments in a Kantian framework—see especially (Ripstein 2009). For a broadly Rawlsian view that claims coercive power undermines autonomy, see (Blake 2002). One class of views that challenges the connection between autonomy and coercion argues that what makes coercion wrongful is that the act being threatened is in itself wrongful, perhaps by violating some substantive right, or preventing persons from exercising moral powers over some rights. See, e.g. (Pallikkathayil 2011). Stephen J. White offers a slightly different argument from Pallikkathayil’s, albeit one that also emphasizes that coercion prevents people from exercising various moral powers over rights. Yet White emphasizes that these rights are meant to define autonomy in particular. See (White forthcoming).

128 For one such discussion of this feature of coercion and how it pertains to law, see, (Schauer 2015).

129 The sense of autonomy I have in mind does not make essential reference to governing one’s conduct in accord with moral requirements. For such theories of autonomy, see, e.g. (Kant 1996), (Korsgaard 1996; 2009) (O’Neill 1989).
First, agents successfully form authentic values or identify with them. Imagine, for instance, that through reflection and exposure to a variety of ways of life, Deidre comes to find being a member of a religious community to be meaningful, and she comes to accept many of its values—or at least, her interpretation of its values. She decides that the tenets of that religious community ought to inform her life. In this case, she has formed or identified with certain authentic values. Second, agents successfully deliberate about how to realize these values. For instance, Deidre might come to recognize that to act in accord with her religious values, she needs to dedicate a day each week to religious worship, or she should refrain from consuming various animal products.

Third, agents successfully form the relevant intentions and longer-term intentions, or plans to act on their values. Having recognized that she needs to dedicate a day of each week to religious worship, Deidre forms the plan to attend services on a particular day of the week. When she guides her deliberation and forms other plans, they are constrained by this commitment—she guides her deliberations by various norms of practical rationality.

Fourth, agents successfully execute their plans and intentions by performing actions. For instance, Deidre might be tempted to go to the beach instead of attending religious services, but she successfully maintains her plan to attend services. Imagine next that Deidre is paralyzed from the waist down. To successfully act on her plan to attend services, she’ll need

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130 Here I have in mind Harry Frankfurt’s influential treatment of higher-order desires, the role of values in Gary Watson’s work, or the role of self-governing policies in Michael Bratman’s planning theory of agency—see (Bratman 2007), (Frankfurt 1988), and (Watson 1975; 1987). There is an ongoing debate as to whether these accounts are incomplete. For instance, we might think a truly deferential spouse is one such non-autonomous agent, or that individuals with maladaptive preferences don’t count as autonomous. See e.g. (Benson 1991), (Westlund, 2003).

131 See especially (Bratman 2007).

132 See (Bratman 2007).
means of transportation, such as a wheelchair, and perhaps an automobile that can accommodate her wheelchair. She'll also need her center of worship to be wheelchair accessible. If Deidre lives in an environment that is not wheelchair accessible, however, then she will not be able to successfully act on her authentic values that involve attending religious services.

§1.2 Coercive Power Calls for Justification When Used Against Autonomous Persons

Threats are straightforwardly wrongful only if directed at autonomous persons because only autonomous persons will respond to threats in the causally relevant way. For instance, it is not obviously objectionable to threaten someone or something that is incapable of acting on reasons. To threaten an entity capable of autonomous action, by contrast, calls for a distinct kind of justification. Similarly, carrying out threats against non-agents is often wrongful, but the wrongfulness of such actions is contingent on its effects. For instance, imagine a moral patient—some entity we have moral obligations to but is not a moral agent, such as a very young child or a severely cognitively disabled individual—is in danger of harming themselves, thereby reducing their welfare, and confining them in a padded room would best protect them. There is nothing obviously intrinsically wrongful in doing this. We might think that given persistent epistemic obstacles or the history of mistreatment of these moral patients—especially the egregious history of mistreatment of severely cognitively disabled individuals—such an action will not promote or protect the patient’s welfare. But this is not to say that there is something intrinsically objectionable about the action; it is that such actions do not, contingently, promote or protect the patient’s welfare.
Imagine, by contrast, a person capable of autonomous action is in danger of seriously harming themselves, thereby reducing their welfare, and confining them in a cell would prevent them from harming themselves. Imagine that confining this person in the padded room does, actually, prevent them from harming themselves. Obviously, there are different contending positions concerning the moral permissibility of paternalistic action in cases like this. But there is a distinctive demand for justification that does not arise in the previously discussed case of the moral patient—which is attested to precisely by the fact that there are such extensive debates about the permissibility of paternalistic action towards autonomous persons. That is, we might think that even if putting the person in the padded cell prevented them from harming themselves, the action is wrongful. The most plausible explanation of the difference between our verdicts about these two case, then, is the presence of autonomy.

§1.3 Coercive Power as Undermining or Interfering with Autonomy

Autonomy also stands in an important relationship to coercive power in a different respect. Not only does the autonomy of persons raise a distinct demand for justifying the use coercive power against them, but there is also good reason to think that coercive power calls for justification because it interferes with or undermines autonomy. To illustrate this claim, consider Chapter Ten of The Little Prince, which was quoted as an epigraph to Part One of the dissertation. In this chapter, the titular prince meets a king on a planet. The planet is empty except for a rat and the king. The prince yawns, at which point the king says, “It is contrary to etiquette to yawn in the presence of a king. I forbid you to do so.” The prince replies “I can’t help it. I can’t stop myself.” “Ah then,” the king says. “I order you to yawn...Come now! Yawn again! It is an order.” The prince replies “That frightens me...I
cannot any more...” The king replies “Hum! Hum! Then I—I order you to sometimes yawn and sometimes not...” To entice the prince to stay, the king offers to make the little prince a minister of justice, which would require the prince to pass judgment on a rat, sentence the rat to death and then pardon the rat every day.

Presumably, the king’s directives are not backed by threats of force in *The Little Prince*, or at the very least the directives backed by threats of force only concern a (presumably) heteronomous rat. Imagine that the king’s commands were backed by threats to exercise coercive force, but the king still required persons to perform actions that they already intended to do. Moreover, imagine it was common knowledge that persons intended to perform the very actions that the king commanded. And the king would not, even if he could, exercise coercive force against persons if they were to choose to perform some action that they did not already intend to do. We might object to the king’s conduct as rude, or think that its objectionable as an expressive act in some sense. But his conduct would not require justification in the way that coercive power ordinarily does. In this case, the king’s issuance of threats does not appear to shape or interfere with the ability of others to successfully act on their authentic values.

This discussion gives us reason to think that exercising coercive power over persons does not merely require a special justification only for persons who are autonomous; it is also the case that the reasons that count against exercising coercive power arise insofar as coercive action interferes with or undermines the autonomy of persons. Insofar as coercive action interferes with or undermines the autonomy of persons. Insofar as coercive action interferes with or undermines the autonomy of persons. Insofar as coercive action interferes with or undermines the autonomy of persons. Insofar as coercive action interferes with or undermines the autonomy of persons.

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133 Such actions would include changing one’s mind about what one intended to do. For instance, if I were to intend to go meet friends for a reading group, the king would command me to do so. But if I were to change my mind and decide that I needed to prepare for class instead, the king would order me to not attend the reading group, and to prepare for class instead.
power calls for justification because it interferes with or undermines autonomy, there is reason to think that autonomy is the appropriate kind of value such that its production could justify the exercise of coercive power. In other words, coercive action undermines autonomy—and this is what makes it call for special justification. If persons lack autonomy, however, then exercises of coercive power are not straightforwardly wrongful. Moreover, it would seem that if we think that the problem with coercive action involves a loss of autonomy, then the absence of autonomy ought to strike us as morally undesirable. That is, if one objects to depriving others of autonomy, then one ought to object to conditions in which persons lack autonomy, even though they could come to enjoy it. In short, insofar as we accept that the wrong-making features of exercises of coercive power are tied up with depriving persons of autonomy in some sense, then the production of autonomy is a promising candidate for justifying exercises of coercive power.

A natural objection to this line of argument is that the prospect of producing some value along one dimension does not necessarily reduce value along that same dimension. In other words, just because exercising coercive power is wrong because it reduces autonomy, it does not follow that exercising coercive power is permissible because it increases autonomy. I will return to this objection in Chapter Seven when the Act-Focused Theory of Legitimacy has been presented in full.

§1.4 Autonomy is a Precondition for Moral Powers

I have focused on how coercive power can undermine autonomy. In what follows, I will consider something like the flip side of that coin: autonomy is necessary for the exercise of moral powers. As mentioned in Chapter Two, we think that acts of will work ‘moral magic’
only if such acts of will are undertaken by agents who have an appropriate array of options and information. Someone who lacks certain competencies cannot meaningfully consent to various courses of action that we think require consent—such as euthanasia or sexual activity. Possessing autonomy when consenting to such actions is surely necessary for the moral magic of consent to occur—even if we think it is not sufficient.\textsuperscript{134}

Similarly, save for a few exceptions\textsuperscript{135}, most do not think that when staring down the barrel of a gun, there is the possibility of genuine consent.\textsuperscript{136} And if material conditions are sufficiently dire, then it is an open question as to whether verbal consent counts as a genuine instance of moral magic. Consider, for instance, someone who consents to a lopsided contract because she has very good reason to think that she will not be able to feed herself if she does not consent to it. In such conditions, at least some would object that the relevant form of moral magic does not take effect. Because autonomy is necessary for exercising our moral powers, then if we are concerned with the importance of our ability to exercise our moral powers, then we ought to think that autonomy is an especially appropriate good to be produced.

One upshot of this claim is that even for those sympathetic to will-based theories, the production of autonomy should be an appealing kind of consideration for justifying coercive power. The act of will that purportedly justifies coercive power performs the relevant moral magic only if persons are as autonomous. So, for an act of will to legitimate political power, then, the will-based theorist ought to be committed to ensuring that

\textsuperscript{134} See (Beauchamp and Faden, 1986).
\textsuperscript{135} See, esp. (Hobbes 1994).
\textsuperscript{136} For a discussion of the different ways in which we might think these sorts of threats interfere with choice, see (Pallikkathayil 2011).
members of the community enjoy autonomy. Of course, the consequentialist theorist need not care whether persons actually perform acts of will vis-à-vis their government. As seen above, one of the motivations for opting for a consequentialist theory of legitimacy is that Will-Based Theories Are Overrated. But it would count in favor of claiming that autonomy is the value that legitimates political power if even rival, will-based theories had to accept that the production of autonomy justifies the possession and exercise of coercive power.

§2 Consequentialism, Autonomy, and Distinctly Political Considerations

There is a second, different set of arguments that count in favor of selecting autonomy as the value to be produced on a consequentialist theory of legitimacy. These arguments turn on distinctly political considerations.

§2.1 When We Disagree About Legitimacy, We Disagree About Autonomy

If we are already arguing about the appropriate scope of government activity in terms of producing or undermining a particular value, then that value is a natural candidate for justifying coercive power. As discussed earlier, part of the appeal of will-based theories is that they are in keeping with our public political culture—the idea that the ‘consent of the governed’ or the ‘will of the people’ is what legitimates political power. Let us assume that we should accept this as a reason in favor of will-based theories. If this is correct, then if we were to find that our political discourse about legitimacy concerns a particular substantive value, then this finding would count as a reason in favor of theories that answer questions of legitimacy by appealing to that substantive value. Our disagreements about legitimacy are, often, disagreements about autonomy. So, there is some reason to accept theories of legitimacy that appeal to the production of autonomy.
The force of this argument should not be overstated. Just as it might be the case that some value with no connection to freedom justifies coercive power, it might be the case that producing some value that does not animate our political discourse and disagreements would similarly suffice to justify exercises of coercive power. For instance, when Harry Lime from *The Third Man* gives his infamous speech, he could be appropriated to articulate the claim that coercive power is ultimately justified by its production of aesthetic value or great human achievements:

You know what the fellow said—in Italy for thirty years under the Borgias, they had warfare, terror, murder, and bloodshed, but they produced Michelangelo, Leonardo da Vinci and the Renaissance. In Switzerland, they had brotherly love, they had five hundred years of democracy and peace—and what did that produce? The cuckoo clock.137

But while one could certainly advocate for a theory of legitimacy like this, it is at a disadvantage compared to a theory that appeals to a value that already animates our political discourse. Proponents of a theory like Harry Lime’s owe an error theory as to why the folk are so systematically confused in their disagreements about which value justifies the possession or exercise of coercive power by state actors. So, if we are to claim that the production of some substantive value justifies exercises of coercive power, there is some reason to think autonomy is a promising value—on the assumption that autonomy does play this role in political discourse.

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137 (Reed et. al., 1949).
And autonomy does play this role in political discourse. Even though people disagree about the necessary conditions for autonomy, this disagreement mirrors existing political disagreements about political legitimacy. For instance, one way of construing the debate about the appropriate role of the State vis-a-vis the economy is as a debate as to whether various economic conditions enable or undermine the ability to successfully act on our authentic values.

It is natural to interpret various views on the left as at least partly concerned with how private actors—individual and collective—can preclude individuals from enjoying the requisite means to act on their authentic values. Those on the left sometimes construe the proper role of the State as ensuring that individuals are not easily exploited or oppressed, as such exploitation and oppression can preclude them from successfully acting on their values. Think, for instance, of someone who has to choose between either engaging in long hours of drudgery, or being unable to afford medical care. On such a view, a laissez-faire capitalist state is an obstacle to one’s ability to successfully act on one’s values insofar as it exercises coercive power in support of powerful private actors that oppress or exploit those without power. For instance, those on the left sometimes object that in a laissez-faire capitalist state, state actors are called in to disrupt employees who attempt to secure acceptable working conditions, and that various government actors (legislators, prosecutors, judges, bureaucrats, police officers) act to preserve a status quo in which very few have the requisite means to successfully act on their authentic values.

138 See, e.g. (Anderson 2017).
In addition to objecting that the State undermines the ability of people to act on their authentic values insofar as it precludes them from enjoying an adequate array of opportunities or resources, those on the left sometimes object that because of its toleration of great material inequality, the laissez-faire State upholds conditions in which some have to depend on the goodwill of others—thereby further undermining autonomy. Employees, on this view, have to conform their behavior to please their economic overseers, and their actions are not self-governed but are instead governed by some external, powerful person.\textsuperscript{139}

Those on the left do not merely criticize capitalist regimes for precluding individuals from possessing the requisite means to successfully act on their authentic values; they also criticize such regimes on the grounds that such regimes render people’s values inauthentic. Think of the critique that capitalism, consumerism, materialism, and individualism all work in concert to alienate us from our authentic values.\textsuperscript{140} And those who initially find various

\textsuperscript{139} For a similar discussion, albeit in terms of freedom as non-domination rather than autonomy, see, e.g., (Pettit 1997). While Pettit’s view is appealing and similar in certain respects to my own, I depart from him for two reasons. First in the paragraph that follows, my argument gives us at least some reason to think that freedom as non-domination, or external freedom, will not capture our political discourse as well as the value of autonomy. This is because of the authenticity component of autonomy, a component that is not present in Pettit’s definition of freedom as non-domination. Second, Pettit’s view faces a significant challenge insofar as he claims that it is being subject to the arbitrary will of another. In particular, it seems that Pettit is forced to claim that persons who are, appropriately, found guilty of a crime and locked in a cell are free insofar as they are subject to the non-arbitrary will of others. For an expanded version of this critique, see esp. (List and Valentini 2016).

\textsuperscript{140} One way we might read some of Karl Marx’s earlier work—such as The German Ideology or The Economic and Philosophical Manuscripts from 1844—is that we are able to act on our authentic values when we engage in meaningful work. Expressing ourselves through our work is deeply important to us given our nature. On this reading, one reason why various economic arrangements are so objectionable is that they preclude us from acting on certain fundamental values we all have in virtue of being human—ultimately alienating us from them. See (Marx 1983). To illustrate the same point with a popular culture reference, consider the lyrics to the song “No Shelter” by the leftist musical group, Rage Against the Machine: “Empty ya pockets son, they got you thinkin’ that/What ya need is what they selling/Make you think that buying is rebelling/From the theaters to malls on every shore/Chained to the dream they got you searchin’ for/The thin line between entertainment and
oppressive working conditions to be at odds with their authentic values might very well eventually come to adapt their preferences, and thereby come to have values that are arguably inauthentic.\footnote{Jon Elster, for instance, links a lack of options to adaptive preference formation—which he claims ultimately undermines autonomy. See (Elster 1983). For an overview of work by feminists on adaptive preferences as undermining authenticity—including challenges to the claim that adaptive preferences undermine authenticity—see esp. (Stoljar 2015).}

Those in favor of something closer to a laissez-faire capitalist regime, by contrast, are fruitfully interpreted as construing the threat to autonomy in the form of the state interfering with the \textit{negative} liberty of private individuals.\footnote{For a classic statement of the distinction between negative and positive liberty, see (Berlin 1958). It is worth emphasizing, however, that Berlin did not intend his defense of negative liberty to be a defense of a laissez-faire capitalist state.} Rather than claiming that autonomy requires that individuals be protected from constraining effects of free markets, proponents of free markets sometimes argue for the opposite conclusion—namely, that something like a laissez-faire capitalist state is necessary for people to genuinely enjoy autonomy.\footnote{Some, such as John Tomasi, have argued that free market rights are necessary to the development and exercise of one’s capacity for self-authorship—which is akin to autonomy in the sense that I have discussed. See esp. (Tomasi 2012). For a critique of this argument, see (Melenovsky and Bernstein 2014).} From this perspective, the regulation of free market liberties precludes individuals from entering into freely made agreements—thereby objectionably reducing their ability to successfully act on their authentic values that require freedom from government interference. And critiques of leftist regimes often hold that the State’s attempt to realize positive freedom precludes individuals from forming and acting on their authentic values.\footnote{For an early articulation of this worry, see, again, (Berlin 1958).} As Isaiah Berlin influentially...
argued, the appeal to positive liberty has been used as propaganda or to convince persons to alienate themselves from their partial pursuits and passions in favor of the purported common good.

In summary, those in favor of both leftist institutional arrangements and more laissez-faire capitalist arrangements often frame their arguments as protecting the autonomy of individuals—either in the form of protecting their opportunities for meaningful work, freedom to pursue their authentic values, or in the form of ensuring that individuals are not subjected to a state that alienates them from their authentic values.\footnote{A similar diagnosis is apt when thinking about feminist discussions of the appropriate role of the State. Of particular concern interest is whether the public/private distinction is enabling of, or undermines, autonomy, whether various ‘adaptive preferences’ are instances of inauthentic values, or—especially in early liberal feminist writings—whether oppressive social conditions have prevented women from becoming autonomous. See, e.g., (Cudd 2004), (Mill 2006), (Nussbaum 2004), (Okin 1989).}

§2.2 Autonomy: an Appropriate Value in the Face of Normative Disagreement

A distinct reason to think that autonomy, rather than some other value, is the appropriate value for a consequentialist theory of legitimacy is that it is an appropriate value to produce in the face of disagreement about what is valuable. Recall from Chapter Two that one motivation for endorsing a will-based theory as an answer to the Question of Legitimacy or the Question of Authority is that free and equal persons disagree about normative issues. Substantive theories of legitimacy, including consequentialist ones, might seem objectionable because they appeal to a particular substantive value or conception of the good, a conception of the good that is not necessarily shared by all members of society. And various will-based theorists, such as Gaus and Waldron, charge that to attempt to realize a particular
conception of the good in the face of such disagreement is to fail to respect persons who do not share that conception of the good.

In reply, autonomy seems to be an appropriate good to produce because it is relatively ecumenical. Autonomy involves, in part, the ability to critically evaluate one’s values. It also involves the ability to pursue one’s own conception of the good. Producing autonomy also does not force people to pursue a particular conception of the good; it allows people to use their autonomy to pursue a variety of different conceptions of the good. In short, producing autonomy amounts to producing a good that enables people to choose which conception of the good to pursue, rather than producing particular conceptions of the good. And producing the ability to successfully act on one’s authentic values does not amount to producing the exercise of this ability. That is, coercive power should not be used to force people to act on their authentic values, but only to ensure that they have the ability to do so.

To illustrate this reason as to why autonomy is an appropriate good to be produced in the face of normative disagreement, it is worth turning to a debate in a different context. Mark Sheldon considers the case of Jehovah’s Witnesses who argue that their children will not be able to enter heaven if they receive blood transfusions. Some have replied that the State is permitted to protect the fundamental interests of children, and this, in turn, justifies doctors in overriding the wishes of parents or legal guardians who wish to deny blood transfusions to their children. Sheldon objects, however, that this begs the question against

\footnotesize{146 For a somewhat similar argument albeit in a different context, see esp. (Nussbaum 1999) \(\text{ibid}\); (Nussbaum 2006). \(\text{Macklin 1977}\).}
the Jehovah’s Witness who claims that the best interest of the child is to enter heaven. The Jehovah’s Witness accepts that death is not in the child’s interest. But the Jehovah’s Witness insists that not enjoying eternal life is worse. Accordingly, we should doubt that an appeal to the welfare of the child is successful as a justification for forcing the children of Jehovah’s Witnesses to receive blood transfusions. If such a justification is successful, it is because we are assuming that Jehovah’s Witnesses have false beliefs, or are likely to have false beliefs. Needless to say, if one is concerned with respecting disagreement between free and equal persons, one should be reluctant to justify exercises of coercive power by appealing to the falsity of a religious doctrine.

Sheldon’s own reply to this argument is to grant that the State does not necessarily know whether it is in the best interests of the child to die or to receive a blood transfusion. But, Sheldon continues, neither does anyone else know what’s in the child’s best interests—including the parents. It is ultimately up to each individual to decide what is in their best interests. To make this decision, however, individuals need to possess various competencies. Sheldon argues that really the decision about whether blood transfusions preclude eternal life should be up to the children, but since they lack the competence to make such judgments, children need to be able to develop the relevant competencies associated with autonomy. If children die due to refusing a medically necessary blood transfusion, then they will not develop these competencies. Accordingly, Sheldon argues that the State is permitted to ensure that children develop to the point at which they can develop relevant autonomy-based competencies—which in turn will enable them to judge their interests for themselves.
Regardless of whether one thinks Sheldon’s argument succeeds in the context of justifying the provision of blood transfusions to children of Jehovah’s Witnesses, his argument highlights an important insight. The fact that there is such normative disagreement about what is valuable counts in favor of treating autonomy as the value to be promoted, as autonomy is necessary to make competent judgments about what is of ultimate value, and to ultimately pursue what one authentically values.

The claim that autonomy is the value to be produced on a theory of legitimacy should also be appealing to those sympathetic to value pluralism. One can accept that there are many different values that are irreducible to one single value while also insisting that autonomy is an especially appropriate value to produce. By calling for some entity to ensure persons are autonomous, persons are thereby enabled to organize their lives around different values and realize various values.

§2.3 Communitarians, Multiculturalists, Marxists, and Non-Liberal Feminists

Admittedly, many will find these arguments unconvincing. Communitarians, certain multiculturalists, various Marxists, some non-liberal feminists, certain religions, and others object to treating autonomy as a value to appeal to in justifying exercises of coercive power. Moreover, at least some of these critics will charge that the celebration of autonomy is a relatively recent, modern, Western, liberal phenomenon, and that it is a far less ecumenical value than I have claimed.

150 See, e.g. (Taylor 1994).
151 See, e.g. (Jagger 1983), (Schwartzman 2006).
Moreover, some of these critics might continue, it is pernicious to claim that autonomy ought to be produced. Communitarians or multiculturalists, for instance, might worry that the promotion of autonomy comes at the expense of various traditional ways of life, in which communal authority enjoys a central place.\textsuperscript{153} As such, the production of autonomy \textit{precludes} individuals from pursuing various conceptions of the good. Others might object that to justify political power by appealing to the production of autonomy is an exercise in ideology and serves to defend a deeply oppressive status quo.

In reply, however, it is worth emphasizing a few points. The first is that at least some of these critiques, such as the Marxist concern about ideology, might be best interpreted as mere disagreement about what is \textit{required} for autonomy, rather than whether autonomy is the appropriate value to justify coercive power. As argued in the previous section, there is a history of leftist critiques of capitalism on the grounds that capitalism alienates persons from their authentic values, and that even if persons can still form authentic values, capitalist regimes create material conditions that preclude the working class from successfully acting on their authentic values. Similarly, various liberal feminist critiques of patriarchal arrangements are expressly concerned that women are able to enjoy conditions in which they are able to successfully act on their authentic values.\textsuperscript{154}

A second point turns on the framing of the problem we aim to address. I have assumed that the Question of Macro Legitimacy and the Question of Micro Legitimacy arise in an interesting, distinctive way because they concern coercive power. I have joined others

\textsuperscript{153} For some endorsements of something like this conclusion, see (MacIntyre 1981; 1988), (Sandel 1982; 1996), (Taylor 1989; 1994). For an objection against multiculturalism, see esp. (Okin 1999).
\textsuperscript{154} See, esp. (Cudd 2004), (Mill 2006), (Nussbaum 2004), (Okin 1989; 1999).
in arguing that coercive power calls for special justification only if persons are autonomous and that coercive power is objectionable, at least in part, because it interferes with or undermines our autonomy in some way. If one wishes to deny that there is a presumption in favor of autonomy when responding to the Question of Macro Legitimacy or the Question of Micro Legitimacy, then it is natural to ask in what sense the Question of Macro Legitimacy and the Question of Micro Legitimacy are normatively pressing. In other words, those who deny that autonomy is, in fact, an appropriate value to justify coercive power need to provide an alternative diagnosis as to why coercive power calls for justification, and how it can come to be justified.

One possible reply to this challenge involves offering a rival diagnosis of the normative problem with coercive power and then offering a theory as to what can address this normative problem. For instance, perhaps some communitarians would argue that the real problem with coercive power does not concern its tension with autonomy, but the threat it poses to traditional ways of life or human flourishing. Perhaps Marxists of various stripes would argue that the problem of coercive power is its role in preserving oppressive economic or social conditions—although, for such a view to be distinctive, such conditions are not objectionable because they are autonomy undermining. Just as it is beyond the scope of this dissertation to weigh the merits of the Act-Focused Consequentialist Theory of Legitimacy against the merits of, say, Kantian theories of legitimacy, it would also be beyond the scope of this dissertation to do so for various communitarian, Marxist, feminist, or multiculturalist theories. To fully assess such rival theories against my own, we would need to assess them with an eye to their competing diagnoses of the problem with coercive power and their competing responses to the purported problem.
A different reply would be to insist that questions concerning the justification of coercive power are not interesting or distinctive from a normative point of view. If an interlocutor were to insist that questions about what justifies coercive power are, themselves, uninteresting and that we should be asking questions other than the Question of Micro Legitimacy or the Question of Macro Legitimacy, this would call for a different debate that concerns how to frame various fundamental questions of political morality. I will proceed on the assumption that questions of legitimacy are sufficiently interesting and important to develop a theory in reply to them.

§3 Functional Autonomy and the Tasks Needed to Produce It

So far, I have argued that autonomy is an especially appropriate value for a consequentialist theory of legitimacy. But there are additional questions about what it means to produce autonomy. One question concerns the different sorts of successes outlined in §1. Agents can do better or worse along any of the four dimensions of autonomy. All agents uncritically accept or fail to identify with at least some of their values, although some are better at forming authentic values than others. All agents make errors when they engage in practical deliberation, such as when they overlook important means to fulfill their ends or form inconsistent plans, although some of us are better at practical reasoning than others. Sometimes, despite reasoning well, we form intentions or plans that do not enable us to successfully act on our authentic values. All agents sometimes fail to execute their intentions

155 Consider also our tendency to affirm the consequent, our tendency to rationalize, and our proclivities that make the careers of behavioral economists.
and plans, such as when they suffer from weakness of will. Here, again, individual agents vary in terms of their ability to execute their plans and intentions.

Finally, agents can also fail to successfully act on their authentic values if they lack the requisite material means or they encounter some external obstacle, such as a curb without a wheelchair ramp, or a gunman. And, perhaps most obviously, agents differ significantly vis-à-vis what sorts of means they have available to act on their authentic values, and what sorts of external obstacles they encounter in the course of attempting to act on their authentic values.

To enjoy what I will call ‘Functional Autonomy’ is to be able to successfully act on one’s authentic values, at least up to a reasonable threshold. Being able to successfully act on one’s authentic values, at least up to a reasonable threshold, requires enjoying the ability to succeed at each of the four dimensions, at least to some reasonable degree. This means that persons need to be able to have at least some values that are authentic. They also need to be relatively competent at practical reasoning, and they need to enjoy various psychological abilities that allow them to fulfill their intentions with relative consistency. They also need to enjoy various environmental conditions, since one cannot successfully act on one’s authentic values if the world does not cooperate with one’s plans.

There are paradigmatic conditions that are incompatible with enjoying Functional Autonomy. Being subject to extreme abuse and severe deprivation or being trapped in a pit

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156 See, e.g., (Holton 2009).
157 See, esp. (Pettit 1999). See also (List and Valentini 2016).
are incompatible with possessing Functional Autonomy.\(^{158}\) There are also less obvious, more contested conditions that could be construed as requirements for Functional Autonomy. We will disagree about such cases, and what constitutes a reasonable threshold for success along these four dimensions, a point noted in §2 when discussing how the value of autonomy animates our political disagreements. But rather than addressing the normative significance of this disagreement here, I will make Functional Autonomy more concrete by proposing some candidate conditions that produce or reduce overall Functional Autonomy, and various tasks that some entity or group of entities need to undertake to produce Functional Autonomy.

To begin, whether an individual enjoys Functional Autonomy will be profoundly affected by their early stages of development. Consider early exposure to certain abusive conditions or being deprived of certain goods. These can lead to various, significant psychological problems as one becomes an adult, psychological problems that undermine Functional Autonomy. As such, the Acr-Focused Consequentialist Theory of Legitimacy will be especially concerned to ensure that children are afforded the requisite safe conditions.

Our abilities to learn and know gives rise to one category of considerations relevant to the production of Functional Autonomy. Access to a quality education can enable individuals to develop cognitive abilities integral to deliberating and forming values, such as the ability to gather, synthesize, and evaluate information. In addition to developing the ability to gather, evaluate, and synthesize information, a quality education also provides individuals with information that will, itself, enable them to successfully form authentic

\(^{158}\) The pit example comes from (Raz 1986).
values and successfully engage in practical deliberation. Even with a quality education, however, almost all individuals will lack expertise in a number of areas integral to successfully acting on their values. For example, many will not be able to determine the possible side effects of various drugs and their likelihood of occurring, or whether the water that comes out of their faucet is potable. Individuals are less likely to err in their practical deliberations about these issues if they can rationally defer to the judgments of experts. In addition to being more likely to avoid error, being able to defer to these experts frees individuals from having to spend their time acquiring the relevant information—time that they could devote to other projects and plans.

Our embodied nature and vulnerability to a relatively dangerous natural environment gives rise to a distinct category of considerations relevant to the production of Functional Autonomy. Individuals need food and potable water to successfully act on their plans and intentions. Given our embodied nature, illness and disability can also undermine Functional Autonomy. Living in an environment that is not conducive to using one’s wheelchair precludes one from taking the necessary actions to realize one’s authentic values. Being prone to contagious disease due to a lack of herd immunity, or lacking access to medical care can both preclude us from successfully acting on our authentic values.

The example of infectious diseases suggests an additional category of considerations that are relevant to the production of Functional Autonomy. We are social creatures that live in close proximity to one another. This fact is important for Functional Autonomy insofar as meaningful relationships feature among the objects of our authentic valuing, and we can

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159 For an account of how to make sense of this connection between agency and health, see, e.g. (Prah Ruger 2010).
better realize our authentic values by relying on others to co-deliberate or jointly execute our intentions. But living among others also gives rise to various challenges to successfully acting on our authentic values. If agents are constantly subject to the prospect of being harmed, then this will shape their deliberations and values in various ways, and they will not be able to act on various intentions. Moreover, the awareness of threats of harm can undermine our ability to deliberate and execute our intentions.\[160\] This discussion suggests that justifiably feeling safe from harm—enjoying what John Kleinig labels ‘social peace’—is integral to Functional Autonomy.\[161\]

It is worth emphasizing that some entity or set of entities needs to perform various tasks to produce Functional Autonomy. To ensure that the relevant actors have the requisite resources and can devote the requisite time to producing social peace or a clean water supply, they will need to acquire funds from somewhere. If some wealthy person or group of persons will not voluntarily pay for such tasks, then there will need to be taxation.\[162\] And, assuming that there is some amount of non-compliance, some entity will need to issue and carry out threats to deter persons from violating the relevant rules, or from undermining

\[160\] See, for instance, Elizabeth Anderson’s discussion of the psychological effects of living in a neighborhood in which there is a high crime rate and there is not a responsive police force. (Anderson 2010).

\[161\] See (Kleinig 1996).

\[162\] Insofar as one can get placed in prison if one doesn’t pay taxes, I’ll assume taxation is an exercise of coercive power. But one could dispute that taxation amounts to an exercise of coercive power—especially if one construes coercion as necessarily violating rights, and one has certain commitments about property rights. See, for instance, (Murphy and Nagel 2002). Importantly, claiming that taxation is coercive is also compatible with claiming that property rights are, themselves, coercive; people are permitted to possess and exercise certain sorts of power to protect their property, and state actors are also permitted to do so. In other words, just because one accepts that taxation is coercive, it does not follow that the government ought never tax, or that there is some sort of presumption in favor of property regimes endorsed by libertarians or classical liberalism property. For further discussion of the ways in which private property rights are coercive, see e.g. (Freeman 2001).
them as they perform the tasks. The people performing these tasks, in turn, need oversight such that they can’t abuse their power; they need to be subject to coercive power in turn. In short, for many of the tasks needed to produce Functional Autonomy, the tasks will be better accomplished if the entity attempting them exercises coercive power—a claim I will return to and develop in the next two chapters.

§4 Why Not Functional Autonomy and Perfect Autonomy?

Even if one accepts the argument that autonomy is a value to be produced, one might still worry that this does not justify the production of Functional Autonomy and only Functional Autonomy. Someone might argue that autonomy ought to be produced beyond the reasonable threshold articulated in the definition of Functional Autonomy. This objection would proceed as follows. I have claimed that for the Act-Focused Consequentialist Theory of Legitimacy, autonomy is the appropriate value to be produced. But claiming that autonomy ought to be produced only up to a reasonable threshold—i.e., producing Functional Autonomy—is under-motivated. If autonomy is the good, then why not think that the argument counts in favor of producing as much autonomy as possible, rather than autonomy at least up to some reasonable threshold? To illustrate, it is worth considering a similar objection in the context of moral theory. Satisficing consequentialism claims that an act is right if and only if it produces the good at least up to some threshold. Some have objected that this is under-motivated. In particular, producing the good beyond the threshold seem to be the right action, since the act consequentialist claims that what makes actions morally
right is that they produce value—and one ought to always perform the action that produces more value than less.\textsuperscript{163}

So, to return to the discussion of autonomy, we should similarly conclude that producing more autonomy is better than producing less. In particular, one might think that Perfect Autonomy, being able to successfully act on one's authentic values as often as is possible for an individual, ought to also be produced. The assumption here is that while individuals may vary in terms of how often they can successfully act on their authentic values, for each person, there is some maximal amount of autonomy they can enjoy. So, for instance, one might think that some have greater ability to withstand temptation than others; some small children can pass the marshmallow test, whereas others fail in comical fashion, and there are similar individual differences concerning willpower.\textsuperscript{164} Perhaps we could create social conditions in which all of us were better able to successfully act on our authentic values by, say, requiring some to take Ritalin or something similar.

Insofar as our preference for autonomy is monotone—i.e., it is rational to prefer larger bundles of autonomy to smaller bundles—then Perfect Autonomy possesses more value than Functional Autonomy. So, the appropriate value to produce is not merely Functional Autonomy, but to produce as much overall autonomy as possible, where this will involve producing some Functional Autonomy, and autonomy beyond that threshold. To summarize, this objection would be as follows:

**From Functional Autonomy to Perfect Autonomy**

\textsuperscript{163} For an articulation and critique of satisficing consequentialism, see (Bradley 2006).
\textsuperscript{164} See, esp. (Holton 2009).
P1. All else equal, on a direct consequentialist theory, agents ought to produce more value rather than producing less value.


P3. The maximization of overall autonomy—which will include producing both Functional Autonomy and Perfect Autonomy—produces more value than the maximization of Functional Autonomy.

C. So, if autonomy is the value to be produced on a direct consequentialist theory of legitimacy, then Functional Autonomy and Perfect Autonomy ought to both be produced.

Some, especially those with perfectionist leanings, might be happy with the conclusion of *From Functional Autonomy to Perfect Autonomy*. Others, however, would object that such a view is problematic. As noted in §2, one reason to think that autonomy, rather than some other value, ought to be produced is that it is an appropriate value to produce in the face of divergent views about what’s valuable. A view that claims that we ought to produce Perfect Autonomy, however, would seem to call for realizing an objectionably contentious ideal, thereby undercutting the claim that autonomy is a relatively thin good and is thus compatible with respect for normative disagreement.

§4.1 Against the Claim that Perfect Autonomy is More Valuable

In reply, however, we do not need to accept the conclusion of *From Functional Autonomy to Perfect Autonomy*, because we should reject P2 and P3.
I will begin by objecting to P2—


Imagine some person who prefers the state of affairs in which she can pursue ends, at least up to some reasonable threshold, to the state of affairs in which she does not possess the ability to pursue their ends. That is, some prefer the state of affairs in which they enjoy Functional Autonomy to the state of affairs in which they lack Functional Autonomy—what I will label ‘Dysfunctional Heteronomy.’ I will assume that all of us do or would be rational to prefer the state of affairs in which we are Functionally Autonomous to the state of affairs in which we are Dysfunctionally Heteronomous.\(^\text{165}\) Given this assumption, Functional Autonomy and Dysfunctional Heteronomy are *commensurable:* that is, there is some value in virtue of which the realization of Functional Autonomy is better than the realization of Dysfunctional Heteronomy.

One might think that if one prefers Functional Autonomy over Dysfunctional Heteronomy, it would be irrational to prefer Functional Autonomy over being maximally able to pursue one’s ends—i.e., it would be irrational to prefer Functional Autonomy over enjoying Perfect Autonomy. And if this were the case, then it would seem that Perfect Autonomy and Functional Autonomy are commensurable, and Perfect Autonomy is more valuable than Functional Autonomy—i.e., that *Perfect Autonomy is More Valuable* is true.

\(^{165}\) There might be some conditions in which this isn’t the case. For instance, imagine you are in a world in which persons who enjoy Functional Autonomy are somehow also in excruciating pain, and if one were to take a pill that reduces one to Dysfunctional Heteronomy, the pain would cease. For such cases, this argument does not apply.
In reply, it would be too quick to accept this. This is because Perfect Autonomy is either co-extensive with Functional Autonomy, and accordingly, the objection merely amounts to a verbal dispute, or Perfect Autonomy is More Valuable is false.

To illustrate, imagine a person who prefers being Functionally Autonomous over being Dysfunctionally Heteronomous because Functional Autonomy enables her to successfully pursue her ends. But she finds the prospect of enjoying Perfect Autonomy unappealing. She enjoys facing temptation and sometimes succumbing to it, being able to uncritically accept certain customs or traditions in her society, and sometimes failing at means-end reasoning. This way of being in the world is the one that is familiar to her, and she does not like the prospect of shifting from Functional Autonomy to Perfect Autonomy. This person is offered two pills, one of which will keep her at enjoying Functional Autonomy, and the other which will make her enjoy various psychological abilities necessary for Perfect Autonomy. She opts for the Functional Autonomy pill and declines the Perfect Autonomy pill.

What should we say about this case? One possibility is that the person authentically values not enjoying the relevant psychological abilities, and this is why she declines to take the pill. Were she to be forced to take the pill, she would not gain autonomy, as taking the pill would place her in circumstances where she was unable to successfully act on her authentic values; she authentically values not being perfectly autonomous, but the pill has rendered her perfectly autonomous. On this reading, there is not really a difference between Perfect Autonomy and Functional Autonomy. Moreover, by forcing her to take the pill, we would be reducing her autonomy. On such a view, then, there is not a meaningful difference
between Functional Autonomy and Perfect Autonomy, and the objection **From Functional Autonomy to Perfect Autonomy** does not get off the ground because P2 is false—it amounts to the claim “Perfect Autonomy possesses more value than Perfect Autonomy” or “Functional Autonomy possesses more value than Functional Autonomy.” Producing as much overall autonomy as possible, on this view, is not objectionably perfectionistic, and it still makes sense to say that the good in question is a relatively thin, ecumenical one. That is, on this view, there is no difference between Perfect Autonomy and Functional Autonomy.

The other possibility is that the individual who declines the Perfect Pill does *not* authentically value the state of affairs in which she lacks the improved psychological abilities. She just prefers the state of affairs in which she is not maximally autonomous. Moreover, she is not committing any kind of error in means-end reasoning, nor does she have a relevant false belief; her preference is not irrational in any straightforward sense. Perhaps she is a hedonist who recognizes that she needs to be able to successfully act on her authentic values to achieve pleasure, but if she was to gain the requisite abilities associated with willpower or means-end reasoning, she would no longer be able to lead her hedonistic lifestyle—or, at the very least, she would not be better able to lead her hedonistic lifestyle. For instance, being able to consistently deliberate correctly as to how to realize her values, and enjoying the ability to always withstand temptation, no matter how strong, would not straightforwardly yield greater hedonic satisfaction.

If this is the case, then I have presented the example of an agent who appears to rationally prefer Functional Autonomy to both Dysfunctional Heteronomy, and to Perfect Autonomy. As a general claim, if some person x rationally prefers state A over state B, then,
it is not the case that B is always more valuable than A along the same dimension of value. For instance, if some person is offered $5 or $10, and they choose the $5, then, on the assumption that it is rational to maximize value, this is irrational. But I have suggested that the person is not irrational and prefers Functional Autonomy over Perfect Autonomy; this is not akin to choosing $5 over $10. If that is correct, then we have reason to think that it is not merely the case that Perfect Autonomy and Functional Autonomy stand in a relationship in which Perfect Autonomy possesses all of the value of Functional Autonomy and some additional value along the same dimension. As such, we have good reason to doubt that Perfect Autonomy and Functional Autonomy are commensurable; that is, we have good reason to doubt that there is some value in virtue of which the realization of Perfect Autonomy is better than the realization of Functional Autonomy.

Perhaps someone would try to resist this argument by attempting to show that all agents are rationally committed to preferring Perfect Autonomy over Functional Autonomy, and so there is not an agent who is rationally committed to preferring Functional Autonomy over Perfect Autonomy. For instance, some Kantian perfectionists argue that we are rationally committed to preserving our own agency. And, they attempt to argue from this, that we are rationally committed to valuing the perfection of our agency-related abilities. But these perfectionist arguments have been met with skepticism because we can easily conceive of agents who are not irrational, who do not value possessing perfected agency-related abilities, but who also value the preservation of their own agency up to some

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For an example of a view that attempts to show that our commitment to our own agency entails a reason to perfect our rational agency, see, e.g. (Brink 1997). For a different sort of perfectionist argument, see (Hurka 1993).
threshold. To return to the case of the hedonist, the hedonist can value her own agency insofar as it enables her to gain pleasure, but she is not irrational in failing to value the perfection of her rational abilities.\textsuperscript{167}

So far I have argued against—

P2. \textit{Perfect Autonomy is More Valuable}: Perfect Autonomy possesses more value than Functional Autonomy—

by motivating the claim that Functional Autonomy and Perfect Autonomy are incommensurable in value. There is also a different argument in defense of my rejection of P2—Namely, we can conceive of at least some people for whom Functional Autonomy and Perfect Autonomy have \textit{incomparable} value. Two values are of incomparable value if “no positive comparative judgment of their value is true,” where positive comparative judgments are judgments that one good is more valuable than another.\textsuperscript{168} For instance, someone might think a career as a classical musician and a career as an academic philosopher have incomparable value—neither has more value than the other. Some support for the claim that Perfect Autonomy and Functional Autonomy have incomparable value is as follows. Imagine an agent is offered two pills, one of which will keep her at enjoying Functional Autonomy, and the other which will make her enjoy various psychological abilities necessary for Perfect Autonomy. She is indifferent between the two options and sees value in each. On the one hand, she recognizes that if she takes the Perfect Autonomy pill, she will be less likely to make errors in practical reasoning or to suffer from weakness of will. At the same

\textsuperscript{167} See (Dorsey 2010).
\textsuperscript{168} See (Chang 2012).
time, however, she recognizes that such a pill would involve a very different psychology from her current psychology. And she enjoys having the psychological outlook she currently does—warts and all. She concludes that she is indifferent between the two options. Just as she reaches this conclusion, she is offered $10 to take the Functional Autonomy pill over the Perfect Autonomy pill—although she may still take the Perfect Autonomy pill if she so chooses. She remains indifferent between the two options. While one might insist that she's by definition irrational at this point, this would beg the question against the person who argues that the two values are incomparable. As such, it is not the case that she views Functional Autonomy and Perfect Autonomy as possessing equal value—instead, she views them as possessing *incomparable* value.\(^{169}\)

§4.2 Maximizing Autonomy as Maximizing Functional Autonomy

So, if Perfect Autonomy does not have more value than Functional Autonomy or if Perfect Autonomy and Functional Autonomy have incomparable value, then we should reject P2 of *From Functional Autonomy to Perfect Autonomy*. But I will grant P2 of *From Functional Autonomy to Perfect Autonomy* for the sake of argument—that is, I will grant both that (a) Perfect Autonomy and Functional Autonomy are, in fact, commensurable, and (b) Perfect Autonomy is more valuable than Functional Autonomy. There is still good reason to think that we ought to reject P3 of *From Functional Autonomy to Perfect Autonomy*—

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\(^{169}\) For this sort of argument, see e.g. (Hare 2010).
P3. The maximization of overall autonomy—which will include producing both Functional Autonomy and Perfect Autonomy—produces more value than the maximization of Functional Autonomy.

One reason for rejecting P3 is that gains or losses of Functional Autonomy involve much more value than gains or losses of Perfect Autonomy. That is, if it makes sense to talk of gains in autonomy beyond Functional Autonomy, then these gains have diminishing marginal returns in value.

To illustrate this claim, imagine again that there are pills that can affect various abilities individuals possess. One pill, “The Bad Perfect Pill” would reduce someone from enjoying Perfect Autonomy to merely enjoying Functional Autonomy. The other pill, “The Bad Functional Pill” would reduce someone from Functional Autonomy to Dysfunctional Heteronomy. If it is wrong to take either pill, it certainly seems far worse to take the Bad Functional Pill. That is, the loss in value from Perfect Autonomy to Functional Autonomy is far less than the drop in value from Functional Autonomy to Dysfunctional Heteronomy. And the best explanation as to why is that this is the case is that we find Dysfunctional Heteronomy to be far worse than lacking Perfect Autonomy. Moreover, the resource costs in getting someone beyond the reasonable threshold contained in Functional Autonomy are greater than the costs in getting someone from Dysfunctional Heteronomy to Functional Autonomy. For instance, getting people shelter, water, or protecting them from physical abuse is far less costly than ensuring that someone never suffers from weakness of will or never makes a mistake in means-end reasoning.
So, even if we assume Perfect Autonomy is More Valuable, there is still good reason to think that what will produce the most value will be to produce as much Functional Autonomy as possible, rather than attempting to produce some combination of Functional Autonomy and Perfect Autonomy. As such, we should not worry that the theory will have objectionably perfectionistic implications.

§5 Measuring Functional Autonomy

It is beyond the scope of this chapter (and this dissertation) to give a metric for measuring Functional Autonomy. The Act-Focused Consequentialist Theory of Legitimacy is ultimately a framework, and there are multiple metrics of Functional Autonomy that are consistent with this framework. But I will articulate some guidelines for deciding between different metrics for Functional Autonomy. This requires beginning by addressing the fact that we disagree about what is necessary for Functional Autonomy.

§5.1 Disagreement and Necessary Conditions for Functional Autonomy

As noted above in §2, we disagree about what sorts of conditions produce or reduce Functional Autonomy—in fact, I have suggested that this is one fruitful way to make sense of disagreements about what legitimates political power. I have presented some examples of social conditions that are necessary for Functional Autonomy, but others might dispute that these social conditions are, in fact, necessary for Functional Autonomy. It is difficult to determine whether someone can successfully act on their authentic values. But it is not as though this epistemic difficulty or our disagreement warrants the claim that there is no fact of the matter. We ought to simply argue about what is required for Functional Autonomy,
rather than claiming that this disagreement itself determines or constitutes the requisite conditions for Functional Autonomy.

One can certainly imagine cases in which a populace is deeply resistant to the implementation of various conditions that are necessary to enjoy Functional Autonomy. But this, itself, on a consequentialist framework, is simply one more consideration to canvas when assessing what ought to be done. If people are likely to resent the realization of various conditions because it does not accord with their mistaken view of Functional Autonomy, then that ought to be factored into determining whether attempts to realize those social conditions will be successful or contribute to the enjoyment of Functional Autonomy, objectively.

So, how ought we to go about determining what sorts of conditions are required for Functional Autonomy? There are several considerations that ought to shape this inquiry.

First, there will have to be philosophical argument and appeals to intuition to motivate the claim that Functional Autonomy requires having access to various resources. For instance, I motivated this claim by pointing to the case of someone trapped in a pit, but who possesses various psychological abilities and authentic values. Second, any particular metric ought to be responsive to work in developmental psychology, developmental economics, and sociology. A third guideline for deciding between different metrics for Functional Autonomy is that such theorizing will need to be context-sensitive. The requisite social conditions for the ability to successfully act on one’s authentic values in a small agrarian society are different from the requisite conditions in a contemporary, post-industrialist nation-state.
§5.2 An Illustration: The Capabilities Approach

To illustrate how these guidelines could support a particular metric for Functional Autonomy, I will draw on the capabilities approach. A capability is defined as “an opportunity or ability to a functioning.” A functioning, as Amartya Sen has defined it, is any state of ‘being’ or ‘doing’.

There are a few distinct reasons to think that the capabilities approach could be especially fruitful when it comes to operationalizing Functional Autonomy. First, the capabilities approach allows for a distinction between a functioning and a capability. A capability is merely an opportunity or ability to a functioning rather than the actual functioning. If an individual enjoys the capability of health, then she has an opportunity or ability to enjoy relatively good health. But an individual can enjoy the relevant capability without enjoying the functioning. Devina has access to healthy foods and opportunities to exercise, but she chooses to spend her time drinking beer and playing board games instead. She enjoys the capability of health despite being unhealthy. To take another example, we can distinguish between the case of someone who lacks the capability of adequate nutrition because she does not have access to enough healthy food, and the case of someone who lacks the function of adequate nutrition because she decides to fast out of religious conviction. The former lacks the capability to adequate nutrition, whereas the latter possesses that capability, but chooses not to exercise it.

Because the capabilities approach draws this distinction between an opportunity and a state of being, it is well-motivated to claim that state actors are permitted to produce Functional Autonomy rather than Perfect Autonomy. Moreover, this distinction is consonant

with the claim that Functional Autonomy is a relatively ecumenical good rather than a contentious theory of the good life. State actors are permitted to ensure that Devina enjoys the capability of health, but they are not permitted to exercise coercive power to ensure that she realizes the function of health.

A second reason to utilize the capabilities approach for measuring Functional Autonomy is that Functional Autonomy is defined in terms of various abilities, some of which are intimately tied to specific social conditions. The capabilities approach is a metric of abilities with this feature.\(^{171}\) Third, Functional Autonomy concerns enjoying the ability to successfully act on one’s authentic values, at least up to some reasonable threshold. We can make sense of that threshold in terms of possessing a capability. Persons either possess that capability or do not. A final reason that counts in favor of utilizing the capabilities approach is that there are already developmental economists who make extensive use of it. Given that determining the requisite conditions for Functional Autonomy ought to be informed by various social sciences, including developmental economics, the fact that the capability theory is already used by various developmental economists makes it appealing.

Before moving to the next chapter, it is worth emphasizing two differences between standard uses of the capabilities approaches and my proposed appropriation. First, many capabilities theorists propose using the capabilities as a metric of well-being or flourishing.\(^ {172}\) I am proposing, by contrast, that measuring whether individuals have various capabilities will be a useful metric to determine whether they enjoy Functional Autonomy. Second, some employ the capabilities approach as part of a theory of justice and argue that the social

\(^{171}\) Martha Nussbaum talks about capabilities as “combined” for this very reason. (Nussbaum 2006).

\(^{172}\) See, e.g. (Nussbaum 2006); (Robeyns 2003).
product to be fairly distributed ought to be capabilities rather than, say, income. The Act-Focused Consequentialist Theory of Legitimacy remains uncommitted as to what fair terms of cooperation are.
Chapter Six: Micro Legitimacy and Macro Legitimacy

Introduction

In the previous chapter, I argued that Functional Autonomy is the appropriate good to be produced on a consequentialist theory. I have claimed that to produce Functional Autonomy, some entity or entities will need to perform various tasks. But, nothing has been said nothing about the State or why state actors are the appropriate entities to perform the various tasks. The next step in developing the Act-Focused Consequentialist Theory of Legitimacy requires saying more about why state actors, in particular, are justified in producing Functional Autonomy, and the conditions under which they are justified in doing so. I use ‘state actors,’ to refer to individuals who occupy various legally defined roles, regardless of whether those roles are themselves morally justified and regardless of whether the persons who occupy those roles are morally justified in occupying those roles. For instance, North Korean prosecutors—actors in a putatively macro illegitimate state—and Swedish judges—actors in a putatively macro legitimate state—all count as state actors.

The argument for the claim that state actors and only state actors ought to perform various tasks that would produce Functional Autonomy is relatively simple:

**Why State Actors?**

P1. There is strong moral reason to maximize overall Functional Autonomy.

P2. In some circumstances, C: If state actors and only state actors attempt to perform some set of tasks, \( \{S\} \), this will maximize overall Functional Autonomy.
C. So, in some circumstances, there is strong moral reason for state actors and only state actors to attempt to perform the set of tasks, \( \{S\} \).

With regard to P1, “strong moral reason” is intentionally open. This is on purpose; the view is meant to be ecumenical with regard to which theory of interpersonal morality one wishes to adopt. The strongest version of P1 would be that what everyone ought to do, always, is maximize overall Functional Autonomy—this would be a comprehensive form of consequentialism. A weaker version of P1 is that we have many different moral reasons, but one strong moral reason everyone has is to maximize overall Functional Autonomy. Such an interpretation of P1 would be compatible with a variety of interpersonal moral theories.\(^{173}\) I have provided part of an argument in support of P1 in the previous chapter insofar as I have argued that Functional Autonomy is the appropriate value to be produced for a consequentialist theory of legitimacy. I will build on these arguments in Chapter Seven. P1 is also subject to additional significant objections, objections familiar from debates about distributive justice and interpersonal morality. I will return to such objections in Chapter Seven and Chapter Eight once I have presented the Act-Focused Consequentialist Theory of Legitimacy in full.

In §1, I defend P2 of Why State Actors by appealing to two divisions of labor that will enable the production of Functional Autonomy. In §2, I will make an important objection to P2 of Why State Actors—namely, the objection that state actors are never or are only rarely sufficiently competent in the relevant ways.

\(^{173}\) A third possibility, one that I believe ought to be taken seriously but that I do not fully develop, is that political actors are subject to an entirely different moral code than private individuals, and this code is a consequentialist one. For a development of this view, albeit in a utilitarian vein, see, esp. (Goodin 1995).
On its own, **Why State Actors?** merely shows that under some circumstances state actors and only state actors are morally permitted to fulfill various tasks needed to produce Functional Autonomy; it does not tell us what these circumstances are. As such, it does not suffice as a theory of legitimacy, especially if we wish for our theory of legitimacy to be action-guiding. Accordingly, I build on **Why State Actors** in §3 to articulate a standard of micro legitimacy. In §4, I present a standard of macro legitimacy. In §5, I indicate how the proposed standards ought to guide the deliberation of state actors. This will give a complete presentation of the Act-Focused Consequentialist Theory of Legitimacy.

**§1 Functional Autonomy and Two Divisions of Labor**

To support P2 of **Why State Actors**—

P2. In some circumstances, C: If state actors and only state actors attempt to perform some set of tasks, \( \{S\} \), this will maximize overall Functional Autonomy—

I will indicate why we should think state actors, in particular, ought to undertake the various tasks needed to produce Functional Autonomy. Imagine that instead of having certain persons in formal roles subject to oversight, everyone *individually* performed actions that produced Functional Autonomy and *directly* deliberated about which action would produce the most overall Functional Autonomy. Imagine someone endorses this approach as the one that would produce the most overall Functional Autonomy. I will label this view the ‘Individual Direct Approach.’ The Individual Direct Approach is subject to at least three problems.
First, we ought to worry that persons do not have the appropriate motivational profile for the Individual Direct Approach to maximize overall Functional Autonomy. Without various incentives to produce Functional Autonomy, individuals will, presumably, be less inclined to do so, and without some form of oversight or formal set of rules governing their conduct, we have good reason to worry that individuals will be especially likely to indulge in their tendencies to partiality or moral licensing. Presumably, there are some individuals who are especially virtuous and resilient in the face of these temptations. But we lack a reliable decision-procedure or device to identify these individuals and allow them (and only them) to directly and individually attempt to maximize overall Functional Autonomy. Given that we cannot count on especially virtuous and resilient persons to be the ones who attempt to directly and individually produce overall Functional Autonomy, there is something an assurance problem; absent various forms of oversight and other formal incentives, individuals attempting to produce Functional Autonomy lack assurance that others will also do their part in producing Functional Autonomy—which can have demoralizing effects.

This point about assurance leads to the second problem with the Individual Direct Approach: producing Functional Autonomy requires the coordination of multiple actors to successfully perform various tasks. Regardless of how well motivated or informed, individual agents like us are unable to unilaterally perform the requisite tasks for persons to enjoy Functional Autonomy—tasks such as producing a clean water supply or ensuring that a

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174 These claims do not rest on assuming egoism or an unduly selfish depiction of human psychology. For instance, even John Locke, who claimed that we know and are motivated by natural law, pointed to these sorts of considerations to argue that we ought to leave the state of nature—see (Locke 1982).
community enjoys social peace. If we were very physically powerful and could produce such conditions unilaterally, then the Individual Direct Approach would avoid this problem. But there are not such agents among us—or, if there are, we have yet to identify them. So, the only way to produce the relevant goods is to have many actors coordinate to perform joint actions. But given this need for many individuals to perform actions, the individual dimension of the Individual Direct Approach will not produce much overall Functional Autonomy.

The third problem with the Individual Direct Approach stems from our limitations as practical reasoners. Imagine that each agent was to directly deliberate about what would produce the most Functional Autonomy, and then perform that action. Even if we accept that what justifies an action is the maximization of the good, it is not necessarily the case that one ought to deliberate about what will best produce the good and then act on the results of one’s practical deliberations. Instead, in certain contexts, employing various rules of thumb and indirect deliberative strategies will better produce the good. This point is often invoked when defending consequentialism as a theory of interpersonal morality. For instance, some argue that it is self-defeating, vis-à-vis the production of the most overall good, to deliberate directly with an eye to whether helping your loved ones or sacrificing one to save five will promote the most overall good. So-called ‘sophisticated consequentialists’ claims that one

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175 I wish to remain neutral as to whether we should claim that there are genuine collective agents, as some authors argue—see, esp. (List and Pettit 2011). For present purposes, the sort of joint action I have in mind could be accounted for in terms of a somewhat minimal social ontology—see, esp. (Bratman 1999; 2014).

176 See e.g. (Luban 1988; 1990), (Mill 2001), and (Raz 1986). Another way of capturing this distinction is to distinguish subjective consequentialism, and objective consequentialism—see, esp. (Railton 1984).

177 For early articulations of this point, see esp. (Mill 2001).
ought to reason in accord with and be motivated by conventional moral rules rather than the consequentialist standard of right action, and that this will maximize the good consequences.

We might wonder whether act consequentialists can plausibly endorse this approach to deliberation in the context of interpersonal morality. Regardless of where one lands on the viability of adopting a form of sophisticated consequentialism in the context of interpersonal morality, however, calling for a form of sophisticated consequentialism is viable in the context of the Act-Focused Consequentialist Theory of Legitimacy. As a theory of political morality, the Act-Focused Consequentialist Theory of Legitimacy claims that the right actions involve contributing to tasks that require massive coordination and overcoming significant epistemic obstacles. Some such obstacles arise with regard to accomplishing particular tasks—such as determining what sorts of policing policies will best produce social peace. But there are also epistemic obstacles for directly deliberating that arise insofar as the various tasks needed to produce Functional Autonomy can be in tension. For instance, it might produce a great deal of social peace to institute strict curfews. But, absent emergency or other special circumstances, this would also reduce Functional Autonomy insofar as individuals would not be able to act on intentions or plans that involve going out at night. In short, directly deliberating about what will best produce Functional Autonomy will be fraught with difficulties given our epistemic limitations and the nature of the tasks that are integral to producing Functional Autonomy.

The best way to produce Functional Autonomy that avoids these difficulties involves implementing two divisions of labor. First, there ought to be an institutional division of
labor,\textsuperscript{178} in which different political institutions are charged with accomplishing different tasks needed to produce Functional Autonomy. For instance, an Environmental Protection Agency ought to focus on the task of ensuring that individuals have access to potable water, and the police ought to produce social peace. Second, within different institutions, there ought to be a role-based division of labor for the actors who occupy various institutional roles. A role-based division of labor is constituted by different actors deliberating and acting in specialized ways within different institutions. For instance, when deciding whether to stop a particular person, we might think that police officers will better produce social peace—and Functional Autonomy—if they guide their reasoning and action by a standard of reasonable suspicion rather than attempting to directly determine what will produce the most social peace or the most Functional Autonomy. These actors who occupy specific roles and follow various deliberative rules are state actors.

If these two divisions of labor are successfully implemented, the three problems with the Individual Direct Approach are avoided. The two divisions of labor will assign many individuals to jointly fulfill tasks that can’t be accomplished by an individual acting in isolation, thereby avoiding the problems associated with the individual dimension of the Individual Direct Approach. The two divisions of labor will also assign specialized forms of deliberation and action to different actors, and thereby mitigate the difficulties associated with the direct dimension of the Individual Direct Approach. And by having formalized expectations, oversight, some form of assurance that others will cooperate, individuals have incentives to perform joint actions that will maximize overall Functional Autonomy.

\textsuperscript{178}See, e.g. (Luban 1988), (Murphy 1999).
§2 Competence, State Actors, and the Contingency of Legitimate Action

A natural objection that I have not considered rests on the claim that state actors are not, in fact, very competent, and so we should reject P2 of Why State Actors:

P2. In some circumstances, C: If state actors and only state actors attempt to perform some set of tasks, \{S\}, this will maximize overall Functional Autonomy.

One might object that in all realistic circumstances C, leaving all of the tasks in \{S\} to private actors and free markets would maximize overall Functional Autonomy. Perhaps some would charge that this because state actors lack the requisite ability to successfully coordinate, or the knowledge to perform these tasks as competently as free markets and private actors.\(^{179}\) So, state actors ought not to attempt the various tasks I have outlined—those tasks should, instead, be left to private actors and groups.

In reply, if the empirical claim in this objection is correct, then the Act-Focused Consequentialist Theory of Legitimacy claims that states should be minimal and state actors are not morally justified in attempting to fulfill some of the tasks articulated in the previous section. This is not an objection to the Act-Focused Consequentialist Theory of Legitimacy but is instead indicative of one of its virtues. The Act-Focused Consequentialist Theory of Legitimacy does not offer an \textit{a priori} defense of particular tasks and institutional arrangements. Instead, it is responsive to empirical considerations in three distinct ways.

First, the Act-Focused Consequentialist Theory of Legitimacy is responsive to empirical considerations about circumstances. If persons in some geographical region

\(^{179}\) While none of the following authors argue for this exact claim, they each could be thought to raise such an objection—see (Brennan 2016), (Cochrane 2015), (Stringham, 2015).
become sufficiently altruistic, knowledgeable, or powerful to enjoy Functional Autonomy such that tasks in \( \{S\} \) are not needed to produce Functional Autonomy, then nobody—private actors or state actors—would be justified in using coercive measures in performing tasks in \( \{S\} \). Since we lack the requisite motivational, physical, and epistemic abilities, however, and insofar as we think that it is good to have coercive power in the hand of some actors subject to various forms of coercive sanctions and oversight for the sake of at least some of the tasks in \( \{S\} \), then it is plausible to claim that individuals need state actors and only state actors to perform at least some of these tasks. We have seen as much from the discussion from shortcomings of the Individual Direct Approach.

Second, the Act-Focused Consequentialist Theory of Legitimacy is responsive to empirical considerations about what will produce the most overall Functional Autonomy—this is what determines which tasks ought to be included in \( \{S\} \). Where we land on this empirical question will determine whether there should be a more expansive state or a less expansive one. Finally, the Act-Focused Consequentialist Theory of Legitimacy is responsive to empirical considerations about particular states—or the circumstances, \( C \). The sorts of tasks that state actors in Canada may undertake might differ from those that state actors in the United States or Pakistan may undertake. This point is well-motivated given the theory on offer; presumably, the institutional and role-based divisions of labor in some contexts are better able to fulfill various tasks that produce Functional Autonomy.

This response to the worry about incompetence highlights the contingency of legitimacy on the Act-Focused Consequentialist Theory of Legitimacy. On the proposed

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180 For a somewhat similar depiction of the contingent usefulness of the State, see (Hume 1994)
181 See, e.g. (Schauer 2015)
view, state actors merely happen to be better at accomplishing various tasks than private actors or groups. I have proposed that this contingency is due to enduring problems that arise for creatures like us given our motivational, physical, and epistemic makeup, and the features of the environment we inhabit. What sorts of tasks will produce Functional Autonomy will vary depending on various empirical considerations about our psychological development or the measures needed to ensure individuals enjoy a relatively physically safe environment. It will also depend on whether various coercive measures are, in fact, effective at producing Functional Autonomy.

This is worth emphasizing, in part, because other views do not make the justification of the State or particular actions by state actors nearly as contingent as the Act-Focused Consequentialist Theory of Legitimacy. For instance, on some Kantian views, the role of the State is not to produce some good that could be produced with other arrangements. Instead, the State is uniquely suited to perform the relevant task: to establish a system of rights such that persons can comply with the moral law. Established rights necessarily bestow upon the holders of the rights an entitlement to coerce others who violate the right in question. That is, on such views coercive power is not merely instrumental towards accomplishing some end but is instead intrinsically justified given the nature of the rights established by the State. For such Kantian views, the tasks of the State are determined largely *a priori*, and

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182 See (Ripstein 2009).
183 See, esp. (Ripstein 2004, 7-11).
184 (Ripstein 2009).
185 Kant does allow for contingency to play a role in determining the tasks of the State. For instance, the State has to establish a system of rights because we live on a sphere and, accordingly, cannot avoid interacting with one another. See, e.g., (Kant 1996, 6:352). I thank Carlos Pereira di Salvo for emphasizing this point in conversation.
there is no other set of arrangements that could perform the various tasks that various
Kantians think are necessary for persons to live in a rightful condition.\textsuperscript{186}

\textbf{§3 Micro Legitimacy}

So, I have argued in defense of the claim that in some circumstances, if state actors and only
state actors perform various tasks, this will maximize overall Functional Autonomy. I argued
in support of this claim by appealing to the institutional division of labor and role-based
division of labor. In virtue of these two divisions of labor, state actors have distinct roles to
fulfill, roles that are justified in virtue of their contribution to their institution’s fulfillment of
its task. These tasks are justified, in turn, by their contribution to the production of
Functional Autonomy.

With this argument in place, we are now in a position to answer one of the main
questions that motivates this dissertation, the question articulated in Chapter Three—
namely,

\textit{The Question of Micro Legitimacy:} Under what conditions, if ever, are particular exercises
of coercive power by state actors in their role as state actors morally permissible, and
why are they permissible?

The answer to this question is as follows. Given the institutional and role-based divisions
labor, state actors ought to deliberate and act in specialized ways, as this will maximize

\textsuperscript{186} See, e.g. (Ripstein 2009). Perhaps one way a Kantian like Ripstein would resist this
characterization would be to emphasize the importance of independence in a broadly republican
sense. To ensure that persons are not subject to the arbitrary will of others, for instance, we might
think that Kantians might similarly say the role of the State can vary significantly depending on the
threats to independence in a particular society.
overall Functional Autonomy. Because acting and deliberating in these specialized ways are justified by the good effects of acting as a role-based actor, I will refer to these reasons of state actors as ‘role-based reasons’ for purposes of brevity and exposition, although they are ultimately moral reasons. Role-based reasons are the reasons that persons have *qua* role occupants, such as the reasons of doctors to improve their patients’ health, the reasons of teachers to help their students learn, or the reasons of criminal defense attorneys to secure a good defense for their clients—even when their clients appear guilty. Insofar as the Act-Focused Consequentialist Theory of Legitimacy claims that different role occupants need to perform different actions to contribute to the fulfillment of institutional tasks, the particular state actor’s role and the institution to which the role belongs will be causally important vis-à-vis how the agent can best produce Functional Autonomy. This, in turn, affects the content of their role-based reasons.

Various role-based reasons will differ not just in content, but in strength or weight as well. For instance, a police officer’s role-based reasons that count in favor of showing up to work at a certain time are presumably weaker than her role-based reasons that count in favor of turning on her body cam. It is the production of Functional Autonomy that ultimately justifies particular exercises of coercive power, various institutional tasks are (causally and contingently) indispensable to producing Functional Autonomy, and certain actions better

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187 While I label these reasons ‘role-based reasons,’ I do not mean that these role-based reasons are grounded by the role itself, a view articulated by, e.g. (Hardimon 1994). Instead, the roles and the accompanying role-based reasons under discussion have normative force in virtue of a role-independent moral reason—namely, the role-independent moral reason to produce Functional Autonomy. So, strictly speaking, what I’m referring to ‘role-based reasons’ are a specific sort of role-independent reason. There are also various role requirements that are relevant here, but for purposes of simplicity, I won’t discuss them and how they figure into the account of micro legitimacy I’m proffering. These role obligations would be what Colin Macleod labels ‘pragmatic role obligations.’ See (MacLeod 2010).
contribute to the fulfillment of the institutional task than others. So, the appropriate way to make sense of the weight of one’s role-based reason is that the weight is a function of the extent to which performing the relevant action contributes to fulfilling one’s institutional task.\textsuperscript{188} I will capture this as follows:

\textit{Micro Weight}: The weight of a state actor’s role-based reason is a function of how much it contributes to the fulfillment of the appropriate institutional task.\textsuperscript{189}

The Act-Focused Consequentialist Theory of Legitimacy assesses the micro legitimacy of particular actions with an eye to whether the relevant state actor(s) have sufficient role-based reason to perform the relevant action. If the state actors have sufficient role-based reason to perform the relevant action, then it is micro legitimate.

But in assessing whether a particular action is micro legitimate, it would be wrong to merely consider various role-based reasons and their weight. As noted in Chapter Four’s discussion of the roles we are concerned with call for a distinctly moral justification, and appealing to the intrinsic aims of a role do not suffice to justify exercises of coercive power. An assassin’s weighty role-based reasons to poison someone do not suffice to morally justify dropping cyanide in a victim’s drink. This is because there are role-independent moral

\textsuperscript{188} For a somewhat similar view with more of a rule-consequentialist flavor, see especially (Luban 1988; 1990). One reason to opt for my act consequentialist view rather than a rule-consequentialist view is that it does not need to address various difficulties for rule-consequentialists, such as what rules one ought to follow in conditions where others are not conforming to the relevant rule contained in the ideal code. See, e.g. (Arneson 2005), (Hooker 2005).

\textsuperscript{189} An alternative way of construing the weight of reasons bears more similarity to rule-consequentialism. I’d capture this view as follows: The better the relevant institution would fulfill its task if similar role occupants in similar circumstances performed a similar action, the weightier a state actor’s role-based reason is to perform that action. One could develop this alternative approach. I develop the act-based approach partly for the sake of simplicity.
reasons to consider as well—reasons that agents have *qua* moral agents rather than *qua* role occupants. An agent’s action is morally permissible if and only if her role-based reasons are not outweighed by the role-independent moral reasons that count against performing the action. To return to the assassin, there are role-independent moral reasons that count against poisoning people, reasons that (presumably) outweigh the assassin’s role-based reasons. Given the initial motivation for thinking about the Question of Micro Legitimacy, there are also role-independent moral reasons that count against exercises of coercive power—such as placing someone in handcuffs or ordering that someone be confined in a cell if they perform certain actions or voting in favor of a law that leads to that outcome. But if arresting someone contributes to fulfilling the institutional task—producing social peace—on the proposed view, one’s role-based reasons could outweigh these role-independent moral reasons.

Given the conclusion to *Why State Actors* and the argument for the two divisions of labor, the role-based reasons are grounded by the production of Functional Autonomy. Given Micro Weight, the weight of these reasons is determined by how well the action contributes to the fulfillment of one’s institutional task. Putting these pieces together, we arrive at a standard of micro legitimacy:

*Act Consequentialist Standard of Micro Legitimacy:* An action is micro legitimate if and only if the state actor’s role-based reasons to perform the action are not outweighed by the role-independent moral reasons that count against the action.

190 For this distinction, see, e.g. (Applbaum 1999), (Kleinig 1996) and (Luban 1988; 1990)
The Act Consequentialist Standard of Micro Legitimacy is part of a theory of micro legitimacy that answers the Question of Micro Legitimacy:

*The Question of Micro Legitimacy:* Under what conditions, if ever, are particular exercises of coercive power by state actors in their role as state actors morally permissible, and why are they permissible?

The Act Consequentialist Standard of Micro Legitimacy answers the first component of the Question of Micro Legitimacy, which concerns the conditions under which particular exercises of coercive power by state actors in their role as state actors are morally permissible: exercises of coercive power by state actors in their role as state actors are morally permissible when (and only when) the state actor’s role-based reasons to perform the action are not outweighed by the role-independent moral reasons that count against the action. The Act Consequentialist Standard of Micro Legitimacy also answers the second component of the Question of Micro Legitimacy by figuring into an explanation as to what makes these actions legitimate: when exercises of coercive power by state actors are morally permissible, they are morally permissible in light of being justified by role-based reasons, and these role-based reasons are ultimately grounded in the production of Functional Autonomy.

§4 Macro Legitimacy

It is worth emphasizing that the answer to the Question of Micro Legitimacy that I have articulated does not hold that the legitimacy of the State grounds the legitimacy of particular actions by state actors. Instead, the legitimacy of particular actions has its source in a specific moral reason that pre-exists the State—the moral reason to maximize overall Functional Autonomy. The apparatus of the State, on the proposed view, can be a very useful *instrument*
for successfully maximizing overall Functional Autonomy. But the relevance of the State to the legitimacy of particular actions is causal and contingent rather than normative. Particular actions are not legitimate in virtue of the macro legitimacy of the State; they are not particular exercises of some sort of ‘right to rule’ on the part of the State.

To illustrate by analogy, assume that we have strong pre-institutional moral reasons, or a natural duty of rescue, such that we are obligated to save people in danger of drowning when doing so does not expose us to risk. In discharging that duty, our deliberations and actions should be informed by the circumstances around us. This includes the tools that we have available for rescue; if there is a life preserver that you can toss to a drowning person, it would be silly to think that your duty of rescue requires you to dive into the water and swim out to persons. And if you could save more lives using the life preserver than by swimming, there is a sense in which you are liable to criticism when you swim out to rescue individuals. Various governmental institutions and roles are analogous to the life preserver. The existence of various complicated rules and roles affects how one ought to act by creating a causal pathway to effectively act on a pre-institutional moral reason.

Nonetheless, it is worth saying more about what the Act-Focused Consequentialist Theory of Legitimacy has to say in response to the Question of Macro Legitimacy—

The Question of Macro Legitimacy: Under what conditions, if ever, is a state morally justified in possessing and exercising political power over persons within its jurisdiction, and why is it morally justified?

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191 See, e.g. (Bradley 2006).
There are two distinct reasons to answer this question. The first reason is that one might worry that if I were to merely address the Question of Micro Legitimacy, I would be guilty of changing the subject that legal and political philosophers have in mind when they discuss legitimacy—which, as discussed in Chapters Two through Four, is macro legitimacy. But I take myself to be offering a rival theory to existing theories of legitimacy rather than changing the subject. And if the Act-Focused Consequentialist Theory of Legitimacy has the resources to answer the Question of Macro Legitimacy, this should assuage those who worry that I have objectionably changed the subject. The Act-Focused Consequentialist Theory of Legitimacy can answer the Question of Macro Legitimacy, so worries about changing the subject are unwarranted. The second reason for articulating an answer to the Question of Macro Legitimacy is that a theory of macro legitimacy is important for purposes of guiding practical deliberation. I will attempt to make good on this claim in §5.

§4.1 Scalar Consequentialist Standard of Macro Legitimacy

I propose that the extent to which a state produces Functional Autonomy will determine the degree of macro legitimacy of that state:

Scalar Consequentialist Standard of Macro Legitimacy: The degree of macro legitimacy of a state is a function of how much Functional Autonomy it produces. The more Functional Autonomy a state produces, the more macro legitimacy that state enjoys.¹⁹²

¹⁹² For a somewhat similar thesis about authority, see Stephen Perry’s ‘aggregative’ conception of state authority— (Perry 2013, 8).
To claim that a state enjoys more or less macro legitimacy is to claim that the moral justification for the State’s possession of a monopoly on coercive power is stronger or weaker.

To make this view more concrete, it is worth contrasting it with scalar-act consequentialism as a moral theory. Scalar act consequentialism as a moral theory holds that actions are better or worse depending on how much good they produce. This amounts to eschewing traditional deontic categories—permisssible, impermissible, supererogatory, and obligatory—in favor of providing merely comparative judgments of different actions. Scalar act consequentialism holds that there are simply better and worse actions, and consequentialism ought to be construed as providing a framework for evaluating the goodness of actions rather than for assessing actions in terms of various deontic categories, such as impermissible, permissible, obligatory, and supererogatory. For such a view, the best action is the one that produces the best consequences, but one does not act impermissibly if one fails to perform the best action.

The Scalar Consequentialist Standard of Macro Legitimacy is like a scalar act consequentialist theory of interpersonal morality insofar as it abandons the claim that the State is legitimate, full stop, only if it is arranged in the way that would maximize the production of Functional Autonomy. Unlike scalar act consequentialist theories of interpersonal morality, however, the Scalar Consequentialist Standard of Macro Legitimacy assesses institutional arrangements rather than particular actions.

The rationale for adopting this position is as follows. What ultimately makes coercive actions morally permissible is the production of Functional Autonomy. And, as stated in P1
of Why State Actors, there is strong moral reason to maximize Functional Autonomy. The same rationale applies to organizing institutions. Producing more Functional Autonomy is better than producing less. States that produce more Functional Autonomy, then, are more morally justified in possessing and exercising coercive power than states that produce less Functional Autonomy.

Assessing how much macro legitimacy a state enjoys requires assessing both how many people enjoy Functional Autonomy, and also the extent to which a state is causally contributing to this enjoyment of Functional Autonomy. Assessing a state’s contribution will require assessing the consequences of having institutions arranged in their current form. Such an assessment will be quite epistemically challenging. It will require drawing on work in sociology, economics, and political science—work that attempts to disentangle the effects of various institutional arrangements from other causes. But the fact that social scientists already investigate these issues means that theoretical resources are already available for this assessment. Fully developing a method of assessment is a separate book-length project in itself, one that depends on accepting the viability of the Act-Focused Consequentialist Theory of Legitimacy. And many will charge that this theory is not viable.

§4.2 Degrees of Macro Legitimacy and Changing the Subject

Some would object that this theory is non-viable because of the claim that different states admit of degrees of macro legitimacy, rather than being macro legitimate or macro illegitimate, full stop. Various objections have been raised to scalar act consequentialism in

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193 For an example of such research, see Jean Drèze and Amartya Sen’s work on whether democracy prevents famine, Drèze and Sen (1991).
the context of interpersonal morality, and it is worth considering whether they are similarly problematic for the Scalar Consequentialist Standard of Macro Legitimacy. Perhaps the most pressing one of these objections is as follows. Scalar act consequentialism fails to address the question that motivates most theories of right action insofar as it abandons various traditional deontic categories. Instead of assessing actions as permissible, impermissible, obligatory, or supererogatory, actions are only assessed as better or worse. The objection continues that this changes the subject in an objectionable way. In the context of interpersonal morality, we are attempting to give a theory of right action. To be an error theorist about various deontic categories and instead insist that actions are merely better or worse does not answer the question that motivates theorists of right action who appeal to these deontic categories. To illustrate, imagine that the scalar act consequentialist is pressed as to whether one ought to maximize the good. In reply, the scalar act consequentialist can claim that it is better to produce more of the good than less. So, the best action is the action that produces the most value. The question then arises, “Shouldn’t the agent perform the best action?” If the answer is “no,” then there’s a natural question as to why she should not. And if the answer is “yes,” then it seems that the view, in the end, is extensionally equivalent to maximizing act consequentialism vis-à-vis its claims as to what agents morally ought to do.₁⁹⁴

But even if we grant that this objection is compelling in the context of interpersonal morality, it is not nearly as powerful in the context of macro legitimacy. This is for two

₁⁹⁴ For one such articulation of this objection, see (McElwee 2010, 397). One reason why this would be a worrisome outcome is that proponents of scalar act consequentialism are sometimes motivated to adopt the position to avoid the charge that maximizing act consequentialism is excessively demanding.
reasons. First, adopting scalar consequentialism about macro legitimacy does not involve abandoning other deontic categories. This is because macro legitimacy concerns an evaluation of states and state institutions rather than particular actions. The fact that scalar act consequentialism as a theory of interpersonal morality require us to jettison our deontic categories is objectionable because the theory is supposed to provide an answer to the question about those deontic categories concerning actions.

If, by contrast, we employ scalar consequentialism merely for the purposes of evaluating the legitimacy states and state institutions rather than state actions, then it is not at all apparent that abandoning the deontic category of ‘macro legitimate, full stop’ is objectionably subject-changing or failing to address the question that motivated the discussion. If macro legitimacy were sufficient or necessary for the legitimacy of particular actions, then the subject-changing charge would be correct. But, as argued in Chapter Three, Macro is Obviously Insufficient and is Not Obviously Necessary for Micro. As I have argued, the question of whether particular state actions are legitimate is a question that is best addressed by a standard of micro legitimacy—which was provided above.

Perhaps in reply to this defense against the subject-changing charge, a critic might grant that opting for the Scalar Standard of Macro Legitimacy does not change the subject by abandoning traditional deontic categories. But she might still insist that the Scalar Consequentialist Standard of Macro Legitimacy changes the subject because legitimacy is a threshold concept—states are either legitimate or are not. I will label this intuition ‘the binary intuition.’ Since it provides no account of the necessary and sufficient conditions for the State to be macro legitimate, full stop, the Scalar Consequentialist Standard of Macro
Legitimacy fails to accommodate the binary intuition. As such, someone might object that I have changed the subject from legitimacy to some other non-threshold concept.\(^{195}\)

In reply, there are four considerations worth canvassing, all of which mitigate the force of the charge that I have changed the subject from legitimacy to some other non-threshold concept. First, I have already provided a standard of micro legitimacy, a standard that holds that particular actions are either legitimate or illegitimate. So, the view can accommodate the binary intuition—at the level of micro legitimacy rather than macro legitimacy. Second, as argued in Chapter Four, addressing whether state actors are morally permitted to perform an action is more pressing than addressing whether the state has some property such that it crosses some threshold to count as ‘macro legitimate.’ Third, as we have already seen, even if there were a threshold for macro legitimacy, meeting that threshold is obviously insufficient and is not obviously necessary for the micro legitimacy of particular actions. Fourth and finally, given the scant attention paid to the distinction between macro legitimacy and micro legitimacy, we might think that the binary intuition about macro legitimacy is a remnant of traditional discussions that focus solely on macro legitimacy, which I have argued has been a shortcoming of such discussions and has left us without an adequate theory of legitimacy. Given that individuals either consent or they do not, and given the influence of will-based theories of legitimacy, it makes sense that we might think that macro legitimacy is binary, rather than merely admitting of degrees. That is,

\(^{195}\) This is an objection that Simmons would most likely raise—(Simmons 1999). Simmons would claim I am discussing justification, and that there is a sharp distinction between legitimacy and justification. I do not discuss this purportedly sharp distinction for two reasons. First, what Simmons labels ‘legitimacy’ refers to both macro legitimacy and authority. Second, the concept of micro legitimacy is distinct from what Simmons calls ‘justification,’ insofar as micro legitimacy concerns individuals being morally justified in their role as state actors. I thank George Sher for pressing me on this point in conversation.
it might be that the binary intuition is an artifact of the most influential theories of legitimacy and the Traditional Picture rather than a pre-theoretical desideratum for any theory of macro legitimacy. So, I propose that we should give up the binary intuition.

Perhaps more strikingly, accepting the Scalar Consequentialist Standard of Macro Legitimacy and giving up the binary intuition is quite appealing because it can accommodate two intuitions we have about legitimacy. First, the theory can accommodate the intuition that some institutions and states are more legitimate than others, what I will call ‘the comparative intuition.’ To illustrate, consider several different institutions or states, Sweden, the United States, China, and North Korea. It is intelligible and plausible to claim that some of these are more legitimate than others. For instance, some might judge that Sweden is more legitimate than the United States, which in turn is more legitimate than China, which in turn is more legitimate than North Korea. Or we might claim that the criminal justice system in Sweden is more legitimate than the criminal justice system in France, which in turn is more legitimate than the criminal justice system in the United States, which in turn is more legitimate than the criminal justice system in North Korea.

How might we accommodate the comparative intuition? The Scalar Consequentialist Standard of Macro Legitimacy can do so straightforwardly. Namely, as a state or political institution better produces the good, that state or institution gains additional degrees of macro legitimacy. And the Scalar Consequentialist Standard of Macro Legitimacy enjoys an advantage in accommodating for the comparative intuition over, say, various will-based theories of macro legitimacy. For instance, if we think that it is the fact that suitably idealized individuals would consent or agree to some institutional arrangements or to be governed by
one’s state, it is not immediately apparent how such views can straightforwardly accommodate the comparative intuition. Perhaps the best option would be to attempt to provide an ordinal ranking of institutions that the suitably idealized individual would agree to and then gauge the degree of legitimacy based off of where the institutions landed vis-à-vis this ordinal ranking. While it is not necessarily infeasible to do this and thereby accommodate the comparative intuition on a will-based theory of legitimacy, the Scalar CONSEQUENTIALIST Standard of Macro Legitimacy can straightforwardly accommodate the comparative intuition, and at least some rival views will not be as straightforwardly able to do so.

A second attraction of the view and its endorsement of a scalar standard is that it is promising at accommodating the intuition that at least some existing states and institutions enjoy some degree of legitimacy—the ‘non-anarchical intuition.’ As discussed in Chapter Two, will-based theories—especially ‘thin’ will-based those that appeal to an actual act of will or a minimally idealized conception of the value sets of agents—are often committed to the claim that anarchism is normatively appropriate. Insofar as we care about accommodating the non-anarchical intuition, then, the fact that the Scalar CONSEQUENTIALIST Standard of Macro Legitimacy can do so counts in its favor.

§5 Macro Legitimacy and Practical Deliberation

If one accepts the arguments that macro legitimacy is neither necessary nor sufficient for micro legitimacy, one might wonder why a standard of macro legitimacy is interesting or worth developing. In this section, I will answer this worry by arguing that a standard of macro legitimacy is interesting insofar as it ought to inform the practical deliberations of
state actors. This is not intended to be the only consideration that might motivate developing a theory of macro legitimacy. We can accept that macro legitimacy is neither necessary nor sufficient for micro legitimacy but still think a theory of macro legitimacy is informative insofar as we are interested in answering questions that concern institutional design and reform, questions about revolution or other forms of regime change, and questions about international relations. Because the focus of the theory has been on the moral permissibility of state actors exercising coercive power, however, I will limit my focus to the import of the present theory of macro legitimacy for purposes of informing the deliberations of state actors.

In §1, I argued that it would be inefficient for each state actor to directly deliberate about what would produce the most Functional Autonomy. A similar point applies to directly deliberating about the Act Consequentialist Standard of Micro Legitimacy and Micro Weight. It is often the case that state actors shouldn’t be engaged in direct, explicit weighing of role-based reasons and role-independent moral reasons. Instead, for many state actors, various conventional role-based rules ought to guide their deliberation. Whether and when state actors ought to treat conventional rules as a decision procedure depends on the state actor’s role, the amount of discretion it allows, and the circumstances under which the role occupant has to make decisions.

I suggested above that police officers will better fulfill their task if they treat ‘reasonable suspicion’ as the criterion for stopping individuals than if they deliberate directly as to whether stopping a particular person will contribute to social peace. Police officers often have to make quick decisions with relatively limited information. So, for such
individuals, the best decision-procedure will not be to directly assess the weight of one’s role-based reasons and then weigh them against role-independent moral reasons. Other roles, by contrast, are designed to allow state actors to take their time deliberating and to exercise more discretion, such as when prosecutors decide whether to press charges. While these role occupants are subject to conventional constraints, they enjoy time and discretion such that it is not obviously self-defeating to deliberate about what will best advance their institutional tasks. Moreover, police officers know that these persons occupy these roles, that these other role occupants have been charged with deliberating more directly, and that they have been trained to deliberate about these questions. So, even if the police officer was competent at making judgments about the weight of role-based reasons, there is an efficiency-based presumption against the police officer performing such deliberations as well, so long as the there is good reason to think that there are other competent state actors who are better positioned to engage in such deliberation.

Of course, police officers do not always know that others who occupy the relevant role do will do the right thing. This is where the Scalar Consequentialist Standard of Macro Legitimacy becomes relevant. If a state or state institution is doing quite well on the macro legitimacy scale, then there is some reason to believe that the institutional division of labor and role-based division of labor are functioning well and that deliberating and acting in accord with their role contributes to the fulfillment of the institutional task. This reason is

196 Here it is worth including the qualification that ‘macro legitimacy’ could refer not only to the legitimacy of the State, but also the legitimacy of particular institutions. So, for instance, we could think of macro legitimacy with regard to the EPA, a police force, or branches of government. There is nothing, in principle, that restricts the assessment of the macro just to ‘the State.’ This is relevant and important insofar as some of the arguments that I make below might better apply if we take the relevant object of macro legitimacy to be particular state institutions rather than the State. I thank Carlos Pereira di Salvo for pressing me to clarify this point.
certainly not decisive; as argued in Chapter Three, macro legitimacy is obviously insufficient for micro legitimacy, and it is not the case that macro legitimacy grounds micro legitimacy. But if one has good reason to think the State is macro legitimate, then it is more likely that acting in accord with one’s role is micro legitimate insofar as the institutional division of labor is producing good consequences. So, in such circumstances, treating various conventional rules as decision-procedures afford the benefits of having a system of rules in place that one can expect others to follow—it affords the benefits of institutional and role-based divisions of labor. Moreover, if one’s state is doing reasonably well on the macro legitimacy scale, state actors ought to worry that flouting various conventional rules can lead to political instability, and such instability will undermine Functional Autonomy.

If a state or particular institution is not doing well on the macro legitimacy scale, however, then state actors ought to deliberate differently. The Act-Focused Consequentialist Theory of Legitimacy claims that states meet the demand for justifying coercive power by producing Functional Autonomy. And states are more or less macro legitimate depending on how much Functional Autonomy they produce for those in their jurisdiction. Accordingly, if a state is doing poorly on the macro legitimacy scale, state actors have less reason to believe that the institutional division of labor and role-based division of labor are functioning well. So, reasoning and acting in accord with one’s role is less obviously justified by appealing to its contribution to the production of Functional Autonomy. In these conditions, state actors ought to deliberate more explicitly with an eye to their institutional task and role-independent moral reasons. If the relevant institutions are doing sufficiently poorly at their tasks and a state actor ought to know this, then she ought to at least doubt that compliance with her conventional code is contributing to the production of Functional Autonomy. The
way state actors ought to deliberate does not merely depend on their role but also on the extent to which their institution is succeeding in its task, and the degree of macro legitimacy their state enjoys.

To make this discussion concrete, I will return to the case that I considered in Chapter Two:

*Water Theft*: A private citizen, Albert, steals a case of bottled water from his local Wal-Mart. A police officer, Beth, witnesses this, and says to Albert, “Stop, or I will make you stop!” She then places Albert in handcuffs, walks him to her police car, and drives him to the local police precinct. A prosecutor, Cary, then decides whether to press charges against Albert. If he’s found guilty, Albert will have to pay a fine and perform community service. If he disobeys or resists at any stage in this process, he will be subject to further sanctions, including imprisonment.

For reasons discussed in Chapter Five, access to potable water and knowledge as to whether water is potable significantly affects one’s ability to successfully act on one’s authentic values. I will assume that there are role-independent moral reasons against using various coercive measures against Albert if he takes potable water from some entity or person who has an excess of potable water. In support of this claim, imagine that in a stateless condition, there was some individual with a great excess of water—more water than he could consume on his own over the course of his life. Others do not have this excess; they have to travel long distances to secure enough potable water to survive. It seems that there are weighty role-
independent moral reasons that count against exercising coercive power against someone in dire need who is attempting to steal water from someone with an excess of water.\textsuperscript{197}

Consider Water Theft in two contexts, Stockholm, Sweden in 2014, and Flint, Michigan in 2014. I will assume that the majority of citizens in Stockholm enjoyed Functional Autonomy during this time, and this is at least partly because state institutions are successfully performing the requisite tasks. In Flint, by contrast, residents didn’t have access to free potable water, and state officials were actively deceiving them as to whether the water in their homes was potable. Furthermore, 41.2\% of Flint residents lived below the poverty line, and thus couldn’t easily afford bottled water.\textsuperscript{198} Given the Scalar Consequentialist Standard of Macro Legitimacy, Sweden enjoys a large degree of macro legitimacy, and the United States enjoys significantly less macro legitimacy.\textsuperscript{199}

As a police officer, Beth’s role calls for her to contribute to the institutional task of producing social peace. Enforcing the property rights of business owners in Sweden allows them to feel free from harm and threats of harm. Presumably, private persons recognize that they will be arrested for shoplifting, and at least some individuals will be deterred from performing the relevant action—where such deterrence can be direct or indirect. So, in light of Micro Weight, it seems that Beth has weighty role-based reason to arrest Albert. But Beth should not directly deliberate with an eye to whether the particular arrest will produce social peace. She has to make a decision quickly. Moreover, she knows that other state actors, such

\textsuperscript{197} Some libertarians who endorse strong natural property rights might disagree with this claim. See, e.g (Mack 2010).
\textsuperscript{199} An important question, again, concerns the appropriate ‘jurisdiction,’ and whether we should construe that as some sort of world state, a confederation of states, the US, Michigan, or Flint.
as Cary, can gather more information and make a decision as to whether Albert ought to be sanctioned, and if so, what sanction is appropriate. And insofar as the institutional division of labor is doing quite well at producing Functional Autonomy, and insofar as the criminal justice system is doing quite well at producing social peace, Beth has good reason to trust that acting in conformity with her role will contribute to producing Functional Autonomy. So, she has good reason to treat the conventional rules that apply to this situation as a decision-procedure and to arrest Albert.

If Water Theft took place in Flint, by contrast, because the relevant institutions are not functioning well and the state of Michigan, at the very least, does not enjoy that much macro legitimacy, Beth has reason to doubt that the institutional division of labor is functioning well. So, she has less reason to deliberate with an eye to conventional rules, and more reason to deliberate directly about role-independent moral reasons and her role-based reasons than she would if she were a police officer in a state that enjoyed more macro legitimacy.

Beth’s practical reasoning could go as follows. On the one hand, arresting shoplifters might increase social peace in general. If it became common knowledge that shoplifters were going unpunished, this might incentivize residents to steal potable water from stores—and this could lead to increased social instability and a lack of safety from harm. But there is also reason to worry that to arrest Flint residents for acquiring basic necessities when the state fails to provide them with such necessities will undermine community trust in the police, thereby making it more difficult for the police to successfully accomplish their institutional task. Moreover, using coercive measures to prevent individuals from meeting their basic
needs poses a double threat to the Functional Autonomy of persons—both in the form of the coercive power and in the form of denying access to various necessities that are integral to successfully acting on one’s authentic values. And, unless there is good reason to believe that other officials in the criminal justice system will take this into account when they decide on how they’ll treat Albert, Beth ought to worry that her action is not helping to accomplish a morally justified task—a task that promotes Functional Autonomy. She should be concerned that her action is not contributing to the production of Functional Autonomy but to its reduction. If Beth knows that Albert’s case will go to Cary, that Cary is a reasonable prosecutor, and that similar cases have been handled with leniency in the past, this will give her some reason to arrest Albert and allow Cary to make decisions as to how to respond to the case.

But let us imagine that Beth has very good reason to think that Cary will impose a harsh sentence on Albert. In these circumstances, Beth’s arrest of Albert cannot plausibly be construed as contributing to the fulfillment of her institutional task. And since it cannot plausibly be construed as contributing to the fulfillment of her institutional task, her role-based reason has very little weight. Because her role-based reason has very little weight, then it is outweighed by the relevant role-independent moral reasons—i.e., the reasons that count against placing Albert in handcuffs and subjecting him to additional forms of coercive power if Albert takes potable water from some entity with an excess of potable water. So, if the prosecutor is disposed to be excessively harsh or the relevant institutions are doing poorly at their tasks, then Beth is not morally permitted, qua state actor, to arrest Albert. Moreover, Beth ought to be aware of these features of her institutions and guide her deliberation accordingly.
Returning to the context of Sweden, given its large degree of macro legitimacy Cary has reason to trust that the institutional division of labor and the role-based division of labor are functioning well. Cary’s role affords her time to investigate Albert’s circumstances and to deliberate about whether to press charges against him. Insofar as Sweden enjoys a large degree of macro legitimacy, it is appropriate for Cary to treat various rules as authoritative, and she need not engage in extensive, explicit moral reasoning about whether her role-based reasons are outweighed by role-independent moral reasons. But insofar as her role is structured to allow for more discretion and affords more time to deliberate than Beth’s, it would be appropriate to investigate Albert’s specific circumstances and deliberate as to what sanction is appropriate.

In Flint, on the other hand, imagine that Beth ultimately arrests Albert, and Albert’s case goes to Cary. The appropriate action for Cary to perform will be context-sensitive, and her role affords her additional time to investigate the relevant features and deliberate. Imagine that Albert has a family that does not have access to affordable, potable water. If it became precedent for prosecutors to press charges against persons who had stolen potable water when none was readily available, the populace would come to be more inclined to resent and fear the criminal justice system rather than trusting it; it would be a threat to social peace rather than producing it. The role-based reasons to perform the action are outweighed by the weighty role-independent moral reasons against exercising coercive power against someone in dire need who is attempting to steal water from someone with an excess of water. Imagine, by contrast, that Albert is a moderately well-off adult from Detroit. There would be less weighty role-independent moral reasons against punishing an individual who
performed a theft under such circumstances, and thus it is more plausible that sanctioning him would be micro legitimate.

§6 Conclusion

In this chapter, I have articulated a theory of legitimacy, the Act-Focused Consequentialist Theory of Legitimacy. This theory builds on the arguments that Functional Autonomy is the appropriate good to be produced according to a consequentialist theory of legitimacy. This is because the production of Functional Autonomy can meet the demand for justifying coercive power. The demand for justifying coercive power is what ultimately motivates the questions that I began with in this dissertation: the Question of Legitimacy—which was then broken into the Question of Macro Legitimacy and the Question of Micro Legitimacy. The Act-Focused Consequentialist Theory of Legitimacy answers all three questions by appealing to the production of good consequences, although it treats the Question of Micro Legitimacy as the more pressing, fundamental question.

Despite having presented the Act-Focused Consequentialist Theory of Legitimacy and provided reasons to think it is appealing and enjoys various advantages over rival theories, in Chapter Four, I noted that there are significant objections to consequentialist theories of morality and political morality. If the Act-Focused Theory of Legitimacy lacked the resources to adequately respond to these objections, then we would have good reason to reject the Act-Focused Theory of Legitimacy and the thesis Consequentialist Theories of Legitimacy are Underrated. In the following two chapters, I will articulate and reply to what I take to be such especially pressing objections for the Act-Focused Consequentialist Theory of Legitimacy, objections that arise precisely because of its consequentialist dimensions.
Chapter 7: The Separateness of Persons and the AFCTL

Introduction

I have presented a theory of legitimacy, The Act-Focused Theory of Legitimacy (AFCTL), one that answers the Question of Micro Legitimacy and the Question of Macro Legitimacy. The AFCTL is a consequentialist theory; I have claimed that it is the production of a good that ultimately legitimates coercive political power. As such, the theory is subject to difficulties that arise for consequentialist theories. In Chapter Four, I suggested that at least some of these problems that are quite pressing in the private interpersonal context are not, in fact, problems in the context of political morality. But other problems require attention.

The problems mentioned in Chapter Four included satisfying a requirement of respect for free and equal persons who disagree about normative issues, respect for the separateness of persons, demandingness, and particularity. In Chapter Five, I responded to the objection that consequentialist theories would not adequately respect normatively disagreement between free and equal persons. I argued that the value of autonomy is the appropriately respectful value to produce.

A different but closely related problem, a problem that I have mentioned but not adequately addressed, is that consequentialism is insensitive to the separateness of persons, either at the level of particular actions or at the level of arranging institutions. If the AFCTL cannot adequately respond to these objections, then despite various theoretical advantages I have canvassed, it is subject to significant theoretical disadvantages compared to rival theories, such as will-based theories. Moreover, if the AFCTL cannot respond to these
objections, then we have less reason to accept my fourth thesis from Chapter Four, Consequentialist Theories Are Underrated.

In what follows, I will spell out three different versions of the worry that consequentialism is insensitive to the separateness of persons. The first worry is that it is mistaken to claim that what justifies coercive political power is producing Functional Autonomy. In particular one might think while there are moral reasons to respect Functional Autonomy, the production of Functional Autonomy is the wrong consideration to justify the exercise of coercive power. The second worry is that the standard of micro legitimacy will countenance particular actions that strike us as obviously micro illegitimate. The third worry is that the standard of macro legitimacy will countenance states as enjoying large degrees of legitimacy when they strike us as obviously illegitimate.

§1 Micro Legitimacy, Functional Autonomy, Respect, and Production

An initial worry stems from the idea that the role-based reasons to produce Functional Autonomy can outweigh other reasons. In other words, P1 states that there is strong moral reason to produce Functional Autonomy. Someone might grant that there is a reason to produce Functional Autonomy. But, this objection would continue, the reason to produce Functional Autonomy is very weak, not strong.200

In reply, there are a few points worth mentioning. First, as already argued in Chapter Five, Functional Autonomy is an especially compelling consideration vis-à-vis grounding the role-based reasons that legitimate particular actions. Second, others have made arguments about various other moral reasons associated with a role that would, ultimately, justify acting

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200 I thank Ketan Ramakrishnan for pressing this objection in conversation.
in ways that are ordinarily prohibited by role-independent moral reasons. Doctors, therapists, lawyers, and a host of others have role-based reasons or obligations, ones that appear to conflict with role-independent moral reasons. To take one example, these role occupants have role-based reasons to keep the confidences of their clients or patients in a wide variety of circumstances—even when, ordinarily, we would think that it would be permissible or even obligatory to share that information. If one wishes to insist that the reason to produce Functional Autonomy is too weak to outweigh the moral presumption against exercising coercive power, then presumably the role-based reasons of these other role actors are not sufficiently strong to outweigh various role-independent moral considerations. To claim as much is not infeasible. But it requires additional argument as to why we should revise our intuitions about role-based reasons more generally.

§1.1 Respect and Production of Functional Autonomy

A different, more pressing worry is as follows: one might grant that autonomy or Functional Autonomy ought to play a central role in justifying political power. But, this objection would continue, autonomy or Functional Autonomy is a value to be respected rather than produced. That is, one might object to P1 of the argument from the previous chapter, Why State Actors—

P1. There is strong moral reason to maximize overall Functional Autonomy.

According to this objection, the possession and exercise of coercive power are objectionable because they are incompatible with respecting the choices of individuals who possess

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Functional Autonomy. This interlocutor would go on to insist that the various conditions needed to produce Functional Autonomy (such as enjoying access to potable water) are not necessary for respecting Functional Autonomy, and thus state actors are not permitted to possess and exercise coercive power to accomplish the sorts of tasks that are needed to maximize Functional Autonomy. The objection would continue that state actors wrong persons by producing Functional Autonomy because the possession and exercise of coercive power, even if it produces Functional Autonomy, fails to respect Functional Autonomy. That is, even if there is reason to produce Functional Autonomy, this moral reason can never outweigh the moral prohibition against coercive actions, insofar as coercive actions fail to respect Functional Autonomy. So, the production of Functional Autonomy is the wrong consideration for justifying undertaking various tasks, tasks that are ultimately backed by coercive power. I will capture this claim as follows:

Respect Overrides Production: The moral reason against interfering with Functional Autonomy cannot be outweighed by the reason to produce Functional Autonomy.

Respect Overrides Production is subject to a dilemma: it either has unpalatable implications, or it is at a disadvantage compared to views like the Act-Focused Consequentialist Theory of Legitimacy, which holds that it is the production of Functional Autonomy that justifies coercive power.

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I'll assume that if someone allowed that respecting Functional Autonomy also required performing the various tasks discussed under the heading of producing Functional Autonomy, then there wouldn’t be an interesting difference between a view that claimed the State is morally permitted to possess and exercise coercive power only insofar as it respects Functional Autonomy, and a view that claimed the State is morally to possess and exercise coercive power only insofar as it produces Functional Autonomy.
§1.2 Respect Overrides Production and Unpalatable Implications

To illustrate the unpalatable implications horn of the dilemma, we can consider two scenarios. First, imagine a stateless condition in which private actors respect Functional Autonomy, but only a few individuals possess Functional Autonomy. Second, consider a minimal state in which state actors and non-state actors only use coercive power to ensure that Functional Autonomy is respected by preventing actions from violating Functional Autonomy. In either case, Respect Overrides Production would prohibit using coercive power to protect persons from infectious disease and natural disaster. If this is what is required by a principle of respect for Functional Autonomy, then we have arrived at an unpalatable view. In some conditions, then, it would appear that our reasons to respect Functional Autonomy can be outweighed by reasons to produce of Functional Autonomy.

Next, consider a state that protects various negative rights, including property rights, and some small set of the tasks outlined. Such a state is engaged in some of the tasks associated with the production of Functional Autonomy. Insofar as Respect Overrides Production entails that states are merely permitted to respect Functional Autonomy but not produce Functional Autonomy, this state already seems impermissible. Nonetheless, even if we grant that such a state would, in fact, be appropriately respecting Functional Autonomy in performing these tasks, those in this somewhat minimal state who lack Functional Autonomy have a genuine moral complaint against those who coercively enforce negative rights. If private persons are maintaining large compounds and hiring armed guards, this surely counts as possessing and exercising coercive power over others. And if coercive power requires justification because it interferes with or fails to respect Functional Autonomy, then this call for justification extends to private exercises of coercive power.
Consider someone who puts up a sign that says, “If you come onto my land, I will use force against you until you leave.” This certainly seems like a prototypical exercise of coercive power; it involves making threats to use physical force, and it is a threat that is intended to raise the costs of performing specific actions. If instead of private guards, the wealthy rely on their state to exercise coercive power to protect their property and preserve the status quo, then the non-wealthy have a genuine moral complaint against their state’s exercise of coercive power. So, we should reject Respect Overrides Production even if we grant that what is required for respect extends to securing various negative rights.

§1.3 Respect Overrides Production as Justifying the Same Tasks?

Consider, by contrast, the claim that respect for Functional Autonomy requires state actors to perform various tasks discussed. According to this claim, respect for Functional Autonomy is incompatible with states of affairs like the ones I just described as unpalatable—large compounds with private guards, a state that merely enforces minimal property rights or a state that does not employ coercive measures to prevent outbreaks of infectious diseases. On such a view, Respect Overrides Production is true but without unpalatable implications. And we should reject the claim that the production of Functional Autonomy justifies coercive power. Presumably, for this objection to have much bite, the claim would have to be that a principle requiring respect for Functional Autonomy requires a different set of tasks and institutional arrangements than a principle requiring the maximization of overall Functional

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203 For similar arguments in different contexts, see, e.g. (Daniels 1975), (Rawls 1993). One could deny this argument if one claimed that we have quite strong natural, negative rights, and the only appropriate role of the State is to protect those rights. This sort of view wouldn’t claim that coercion is objectionable because of our autonomy, but instead claim that coercion is only wrongful because it violates rights. See, e.g. (Mack 2010), (Nozick 1974). It’s beyond the scope of this paper to adequately address such views.
Autonomy. So, the objection would be, Respect Overrides Production is true, the State is not permitted to use coercive measures to maximize overall Functional Autonomy, but we are not left with unpalatable implications.

In reply, there are a few points worth making. The first turns on what language is felicitous to use when describing what government actors are doing. Imagine that someone is being informed of a tax that will be implemented to fund the EPA. If she does not pay, then she will face various sanctions, culminating in the exercise of physical force. When that person asks about what justifies such actions, it would be odd to describe such actions as respecting her and everyone else’s Functional Autonomy. We can see this point if we turn to other debates. Philip Pettit defines freedom as ‘not being subject to the arbitrary will of another.’ While there are a variety of specifications of the ‘arbitrariness’ component, this definition faces a significant objection: someone who is, non-arbitrarily but justifiably, locked in a cell counts does not count as unfree. The person is not subject to the arbitrary will of another. But it would be infelicitous if we were to describe her as free—or not unfree due to being locked in a cell. To return to the case of Functional Autonomy, it seems more felicitous to say that state actors are producing Functional Autonomy than respecting the Functional Autonomy of citizens.

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204 (Pettit 1997).
205 For this objection, see, esp., (List and Valentini 2016, 1058-1065).
206 A similar point applies to at least some of the tasks in question. Performing actions to ensure that persons have access to clean water or clean air sound like actions that are producing good states of affairs. While one could insist that these actions are right because they are required by a principle of respect for persons, it sounds more natural to say that such actions are right because they are producing goods.
The second reason why we should accept that the relevant sorts of tasks as producing rather than respecting Functional Autonomy turns on various actions undertaken with an eye to those who currently lack Functional Autonomy. For instance, let’s assume that in some circumstances, it will be the case that very young children will best develop the ability to successfully act on their authentic values only if the State creates various social conditions. There is a straightforward sense in which the State can be said to be producing Functional Autonomy by ensuring that very young children come to develop Functional Autonomy. It is less straightforwardly the case that by creating such social conditions the State is respecting their Functional Autonomy since very young children do not possess Functional Autonomy.

This second point about producing instead of respecting the Functional Autonomy of children leads to a third consideration. If we lived in conditions in which all persons enjoyed Functional Autonomy, then these replies would not work, and respect would be the appropriate moral concept to appeal to. Insofar as we are concerned with conditions in which many people do not enjoy Functional Autonomy due to their social or physical environment, however, the appropriate role of the government is to bring about the state of affairs in which those persons do enjoy Functional Autonomy. Thinking of this task in terms of production rather than respect seems apt insofar as we are concerned with this transition.

§2 Micro Legitimacy and the Agent-Centered Restriction Worry

Some, especially those with Kantian sympathies, will not be satisfied with this response to worries about the separateness of persons. A different way of articulating the worry about the consequentialist dimension of the theory arises not because of the claim that Functional
Autonomy ought to be produced; some will acknowledge this, and agree that various tasks ought to be undertaken to produce Functional Autonomy and that a principle of respect does not preclude the State from accomplishing various tasks. Nonetheless, some would object to the claim that there is strong moral reason to maximize Functional Autonomy. A natural, pressing worry for the Act-Focused Consequentialist Theory of Legitimacy is that in at least some circumstances, this premise will entail that there are conditions under which persons have strong moral reason to sacrifice the Functional Autonomy, well-being, or even lives, of some to yield greater overall Functional Autonomy. To make this more concrete, consider the following case:

Angry Mob: A prison warden faces an angry mob that demands that he surrender a prisoner so that the mob can kill him. The mob threatens to do severe damage to the town’s water supply and to burn down its school if the warden does not surrender the individual. These actions would undermine various social conditions that are integral to persons enjoying Functional Autonomy.

Many would think that in response to a case like Angry Mob, a consequentialist theory of micro legitimacy like AFCTL would entail that the judge ought to surrender the person, on the assumption that this would yield the greatest overall Functional Autonomy. Moreover, one might continue, this claim is erroneous. As a more general objection, we could capture the charge as follows:

Agent-Centered Restriction Worry: Consequentialist theories of micro legitimacy will struggle to claim that political officials ought to act in conformity with various agent-
centered restrictions. And, in almost all cases, political officials ought to act in conformity with various agent-centered restrictions.

The action that produces the best consequences will not necessarily be the action that conforms to agent-centered restrictions. In cases like Angry Mob, maximizing consequentialist theories might be committed to the claim that the warden ought not to conform to agent-centered restrictions. But we think that it is immoral to violate various agent-centered restrictions. So, due to the Agent-Centered Restriction Worry, we should reject consequentialist theories of micro legitimacy—including the one on offer. In reply, there are three points worth emphasizing as to why this is not as objectionable for AFCTL as it might appear.

§2.1 Role-Based Reasons and Role-Independent Moral Reasons

The first point concerns the relationship between role-based reasons and role-independent moral reasons. Recall that AFCTL claims that a state actor’s action is micro legitimate if and only if her role-based reasons are not outweighed by role-independent moral reasons. That is, the view does not identify what an agent has most all-things considered reason to do with maximizing Functional Autonomy. Instead, what one morally ought to do in one’s capacity as a state actor is a function of both role-independent moral reasons and role-based reasons. On any plausible moral theory, there are very strong role-independent moral reasons that count against facilitating the death of a morally innocent person. These role-independent moral reasons, then, count against sacrificing a person to an angry mob.

In Chapter Six, I argued the weight of role-based reasons is determined as follows:
**Micro Weight**: The weight of a role actor’s role-based reason is a function of how much it contributes to the fulfillment of the appropriate institutional task.

I have argued that one’s role-based reasons can outweigh various role-independent moral reasons. So, for the warden’s role-based reasons to justify sacrificing a person to the mob, then, the action would have to contribute significantly to the fulfillment of the task of the criminal justice system. To fully make the case that the AFCTL would be committed to claiming that the warden is permitted to sacrifice the prisoner to the mob, we would need to say more about the role-independent reasons and just how much value is at stake in this decision, and the strength of the reason to maximize Functional Autonomy. But the fact that there are other role-independent moral considerations should give us reason to hesitate to accept the claim that the view will fall prey to the Agent-Centered Restriction Worry.

§2.2 Deliberation and Role-Based Agent-Centered Restrictions

This point about predicting the effects of extraordinary measures leads to a third consideration in reply to the Agent-Centered Restriction Worry. Even in non-extraordinary cases, state actors face significant epistemic challenges. This was one of the main reasons offered in support of institutional and role-based divisions of labor rather than the Individual Direct Approach, as discussed in Chapter Six. Accordingly, AFCTL provides significant reason to deliberate in accord with various conventional rules, especially when the two divisions of labor are functioning well. The conventional rules that govern various state actors, such as the prohibition on sacrificing individuals to mobs, are agent-centered restrictions. There are often good reasons for state actors to treat these rules as binding. The production of Functional Autonomy requires extensive coordination between different
institutional actors who are making small individual contributions to the performance of a complex institutional task. The difficulty in predicting the consequences of actions that violate conventional rules count against such violations. So, wardens will have good reason to not even deliberate with an eye to whether sacrificing one person to the mob will have the best overall outcome.

Of course, these claims about the importance of rules are, as discussed in Chapter Six, partly contingent on how well one’s institution is doing at its institutional task, and how well one’s state is doing vis-à-vis the macro legitimacy standard. If one has good reason to believe that one’s institution does poorly at its task or that one’s state is not doing well on the macro legitimacy scale, then one has less reason to think that deliberating in accord with conventional rules will lead to the performance of a micro legitimate action. And in especially bad cases, where institutions are failing to perform their tasks, state actors might have to make difficult decisions that will sometimes call for violating conventional rules. As I argued in Chapter Six, however, this does not seem to be an objectionable feature of the theory, but one of its virtues. The theory can give a principled rationale as to why compliance with conventional codes is sometimes appropriate for state officials without lapsing into a form of uncritical conservatism or status-quo bias. When our institutions have broken down, it is less obviously appropriate for state actors to continue complying with their conventional codes. In those unfortunate circumstances, there is less reason to think that a role-based reason outweighs role-independent moral reasons. Insofar as we think that we have strong role-independent moral reason to comply with agent-centered restrictions, in such circumstances, it is even less likely that the AFCTL is committed to claiming that
individuals should violate agent-centered restrictions. Accordingly, the Agent-Centered Restriction Worry is less pressing than one might think.

§2.3 Threshold Deontology and Extraordinary Circumstances

But despite these previous two points, there is a final point worth making: It is not implausible or objectionable if a theory claims that under some circumstances, it is morally permissible for the warden to sacrifice the individual to the mob. The context in which the theory will make this claim is the case in which the mob is poised to wreak extraordinarily bad consequences, the warden’s decision to sacrifice the person to the mob will not set a dangerous precedent, and the warden knows all of this. So, in such extraordinary cases, the theory will claim that the role-based reason of the warden outweighs the role-independent moral reasons, and the warden should sacrifice the person to the mob. Recall Goodin’s remarks that served as the epigraph to Part Two of the dissertation:

It would be simply irresponsible of public officials...to adhere mindlessly to moral precepts read off some sacred list, literally "whatever the consequences." Doing right though the heavens may fall is not (nowadays, anyway) a particularly attractive posture for public officials to adopt.\(^\text{207}\)

In keeping with this line of thought, if a theory of micro legitimacy claims that when faced with extraordinarily bad consequences state actors are permitted to perform an action that appears to be prohibited by an agent-centered restriction, it is not apparent that this counts against the view. In fact, this will strike many as counting in its favor. At least some have the intuition that in extraordinary circumstances, extraordinary measures are sometimes

\(^{207}\) (Goodin 1995, 10).
permissible—that is, at least some are threshold deontologists. That is, at least some of us think that it would be wrong to not dirty one’s hands when the alternative was sufficiently dire.

To return to the case of the Kantian who objects to the maximizing feature of the view, Kant notoriously insists that it is wrongful to lie to the murderer at the door. Many have found this to be a highly counterintuitive feature of the theory because it treats conformity to a categorical and universal prohibition—regardless of the consequences of that conformity—as overriding other normative principles or considerations. Similarly, we should think that agent-centered restrictions that preclude the realization of Functional Autonomy on principle run the risk of erroneously adhering to stringent ideals even when this has extraordinary costs.

It is also worth noting that much of our disagreement about extraordinary cases concerns whether we are in extraordinary circumstances. And the best answer is almost always ‘no, we are not in extraordinary circumstances.’ To illustrate, consider how, after September 11th, 2001, officials within the Bush administration, such as John Yoo, insisted that we were in a state of emergency and that, accordingly, President Bush enjoyed certain emergency powers. Yoo claimed that these emergency powers, in turn, would justify various the use of ‘enhanced interrogation’—a euphemism for torture—against suspected unlawful combatants. In reply to this historical development, some made deontological

\[\text{\textsuperscript{208}}\text{For a discussion of threshold deontology, see, e.g. (Alexander 2008).}\]
\[\text{\textsuperscript{209}}\text{See, esp., (“Standards of Conduct for Interrogation Under 18 U.S.C. sections 2340-2340A} \]
arguments. However, others objected to this expansion of government power by disputing the claim that we were in the relevant extraordinary circumstances, and that, accordingly, state actors were not permitted to engage in the relevant behavior.

Similarly, there are debates about the extraordinary measures themselves and whether they will have the relevant good effects. When contemplating extraordinary measures, we ought to worry about setting a dangerous precedent, and whether the measures are, in fact, effective. For instance, some opposed to the use of torture argue that such a practice would create a dangerous precedent that would ultimately lead to greater harms for Americans, or that torture would not reliably yield useful intelligence.

So, if, in extraordinary circumstances, a theory of legitimacy claims that state actors ought to violate various agent-centered restrictions by taking extraordinary measures, this does not render it obviously incorrect. If anything, this seems to accord with the intuitions of many, and the objection from an emphasis on respect as a constraint on permissible action can seem unduly idealistic and out of place when thinking about political morality. The real relevant question is whether we are in the relevant extraordinary circumstances. The answer is—perhaps by definition—almost always ‘no.’ And even if the answer is ‘yes,’ one has to consider longer-term effects of the extraordinary measures. In particular, we should ask whether the actions of the warden or members of the Bush administration lead to worse

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outcomes by setting a precedent, incentivizing actors to engage in similar behavior, or if we have sufficient epistemic warrant to employ such measures.

§3 Separateness of Persons and Macro Legitimacy

Let us turn now from the context of micro legitimacy to the context of macro legitimacy, as we might find that while the separateness of persons charge does not have much force in the micro context, it does have force in the macro context. This worry is often construed in terms of a failure of distribution sensitivity. To illustrate, consider two communities. In Community A, institutions are set up in a way that will most likely yield 901 units of utility for one person, and one unit of utility for the other 99 members enjoy one unity of utility. In Community B, institutions are set up in a way that will most likely yield ten units of utility for each of the 100 members of the community. The worry is that the consequentialist cannot claim that Community A is arranged in a way that is unjust. Moreover, it seems that the consequentialist is forced to say that a community in which institutions are arranged in a way that will most likely yield 902 units of utility for one member and one unit of utility for the other 99 is morally better or more just than a community in which each member enjoys ten units of utility. One might worry that a similar worry arises for AFCTL. In particular, one might worry that the institutional arrangements that would maximize overall Functional Autonomy would be insensitive to how Functional Autonomy is distributed.

It is worth spending a little more time specifying this objection. Functional Autonomy concerns the ability to successfully to act on one’s authentic values, at least up to a reasonable threshold. Because Functional Autonomy has a built-in threshold, maximizing

\[212\text{ The classic formulation of this objection comes from Rawls—see (Rawls 1971).}\]
Functional Autonomy involves getting as many people as possible up to the threshold. That means there cannot be an entity like the one who enjoys 900 units of utility—there cannot be a ‘Functional Autonomy’ monster.²¹³

Moreover, even independently of the issue of the threshold, wherever it is set, we saw in Chapter Five that autonomy is a good with diminishing marginal returns. That is, it is not as though devoting more and more resources to one person will significantly increase their autonomy. While one could devote lots of resources to ensuring that one person has as many options available as she so desired or to perfecting her capacity for deliberation, this would not produce nearly as much overall autonomy as spending such resources in a way that is more distribution sensitive. So, even if one were to claim that we ought to maximize overall autonomy rather than overall Functional Autonomy, given the diminishing marginal returns for producing autonomy, there would not be an ‘autonomy monster.’

For a separateness of persons objection at the level of macro legitimacy to really have bite, then, it will have to be modified. The real worry should be that the view would countenance institutional arrangements in which some people do not enjoy Functional Autonomy for the sake of a larger number of persons enjoying Functional Autonomy. That is, the objection will not charge that certain people will get to enjoy a vast amount of Functional Autonomy while others do not. The relevant case should be as follows. Consider two sets of institutional arrangements, A and B. There is more Functional Autonomy in A than in B. However, A is arranged in a way such that some persons enjoy Functional Autonomy at the expense of others. B, by contrast, does not involve this set of

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²¹³ This talk of an autonomy monster is meant to be a parallel to Robert Nozick’s discussion of the ‘utility monster.’ See (Nozick 1974, 41).
arrangements. But there is less overall Functional Autonomy insofar as fewer overall persons who enjoy Functional Autonomy. To claim that A is more legitimate than B, the objection would conclude, must be false. However, AFCTL is committed to claiming that A is more legitimate than B. So, we should reject AFCTL.

In reply, the various tasks needed to produce Functional Autonomy centrally involve ensuring that individuals have access to certain social conditions and physical environments. Many of these institutional tasks involve producing public goods or solving various other coordination problems. And it would be implausible to claim that institutions would better be able to fulfill these tasks if they deprive some of Functional Autonomy. The production of social peace, for instance, does not readily admit of cases in which some communities are enjoying social peace at the expense of others such that this maximizes overall Functional Autonomy. Of course, almost all states currently do have institutions arranged in ways that produce social peace for some but not for others—the wealthy enjoy more social peace than the poor, and in the United States whites enjoy more social peace than people of color. However, this should be condemned on the theory of macro legitimacy insofar as more Functional Autonomy would be produced if those individuals also enjoyed conditions of social peace. That is, it is not as though there is more overall social peace and Functional Autonomy in the United States due to racist policing policies. There would be more overall social peace and Functional Autonomy if there were no such policies.

The same point applies for various other tasks that institutions need to perform to produce Functional Autonomy, such as providing access to clean water or clean air, or ensuring that persons are not exposed to contagious diseases that are debilitating. Here,
again, there are undoubtedly vast inequalities in terms of the extent to which these tasks are successfully performed, and who gets to enjoy these conditions. In Chapter Six, I discussed Flint, Michigan, where individuals lacked access to potable water. This lack of access did not lead to the maximization of overall Functional Autonomy.

More generally, the thought is, at the level of institutional assessments, there are no plausible scenarios in which institutions are arranged in ways such that unfair distributions will lead to overall gains in Functional Autonomy. Instead, the unfair deprivations in question appear to reduce overall Functional Autonomy—and, accordingly, reduce overall macro legitimacy.

§4 Conclusion

In this chapter, I have articulated an important objection to my theory, an objection that arises for consequentialist theories more generally: consequentialist theories they fail to respect the separateness of persons. In reply, I have argued that the AFCTL has resources to address this objection. Some of these claims turned on the value to be produced on the theory, Functional Autonomy. Other claims turned on the standard of micro legitimacy and the forms of deliberation that such a standard recommends. The ability of the theory to respond to these objections not only gives us additional reason to accept the AFCTL but also some reason to accept the fourth thesis of the dissertation,

Consequentialist Theories of Legitimacy are Underrated: Consequentialist theories of legitimacy have been underdeveloped and overlooked, and an appropriately developed consequentialist theory of legitimacy would enjoy significant advantages over rival theories—especially rival will-based theories.
Chapter 8: Demandingness and the AFCTL

Introduction

One objection that often arises for consequentialism is that the theory is too demanding. There are a variety of ways to make sense of this objection, but in short, the thought is that the theory ought to be rejected because it is mistaken in its evaluation of the moral status of actions, or it is mistaken about what one ought to do, all-things considered. This objection might seem troubling for a consequentialist theory of legitimacy like the AFCTL as well.

This objection is also troubling for AFCTL given one criticism I raised against various will-based theories, such as express consent theories. Namely, I objected that such theories of legitimacy are somewhat implausible because they ultimately have anarchical implications—all states, state institutions, and particular actions are illegitimate because persons do not non-opaquely and expressly consent. One might think that a similar charge arises for the AFCTL. Namely, we should doubt that AFCTL is a good theory of legitimacy because it will similarly claim that no states enjoy almost any degree of legitimacy and almost no actions are legitimate. If will-based theories like express consent theories are objectionable because they have anarchical implications, then consequentialist theories are also objectionable if they have anarchical implications.

In what follows, I delineate different senses of the demandingness objection in the context of moral theory in §1. In §2-§3 I consider the unreasonably demanding version of the demandingness objection, and I spell out different ways in which it applies to the theory of legitimacy I have articulated, before defending it against the charge of being unreasonably demanding. In §4, I consider the erroneously demanding version of the demandingness
objection, and I articulate ways in which it might apply to the theory of legitimacy I have defended, and I defend my theory against the charge that it is erroneously demanding.

§1 Demandingness and Consequentialism

There are different specifications of the objection that consequentialism is objectionably demanding, so it is appropriate to be a bit more precise about what one might have in mind before assessing the extent to which this objection applies to AFCTL.

Drawing on Tim Mulgan’s work, we can identify the six features of “Simple Consequentialism” as a theory of right action:

1. **Impartiality**: Simple Consequentialism assesses the value of an outcome from an impersonal point of view, rather than from the perspective of the agent.

2. **Maximization**: Simple Consequentialism claims the agent is morally required to perform the action that will produce the best possible outcome, or that has highest expected outcome.

3. **Individualism**: Simple Consequentialism assesses an action by looking at the consequences of that action being performed on a particular occasion by a particular agent. The focus is on individual actions rather than on collective patterns of behavior.

4. **Directness**: Simple Consequentialism claims that the best action is the one with the best consequences, not the action prescribed by some optimal rule.
5. **Act Focus**: Simple Consequentialism focuses on assessing acts as opposed to rules, dispositions, or motives.

6. **Normative Authority**: Simple Consequentialism claims that what we are morally required to do is what we have most reason to do.\(^{214}\)

Because Simple Consequentialism is **Individualist**, **Act-Focused**, and **Direct** it assesses the rightness of each particular action we undertake with an eye to the consequences to be produced. Because the value to be produced is **Impartial** and **Maximizing**, Simple Consequentialism will not give any special weight to the agent’s projects and partial values, but will instead call for producing impartial value—even if this comes at the expense of the agent’s pursuit of her own projects and partial values, such as emotionally fulfilling relationships with family and friends. And because of **Normative Authority**, Simple Consequentialism entails that the agent always has most reason to maximize impartial value.

Given these features of Simple Consequentialism, it demands a great deal on the part of agents. For instance, rather than buying myself a cup of coffee at a coffee shop, I could donate the $3 to GiveDirectly. Doing so would produce more good than buying the coffee. Insofar as this action is the one that is claimed to be right given the six features of Simple Consequentialism, then buying the coffee is impermissible, and donating to GiveDirectly is obligatory. The same point is true for many, if not most, of my choices. But why might this

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\(^{214}\) See (Mulgan 2001, 38). Mulgan does not expressly include **Normative Authority** in his definition of Simple Consequentialism, but I have included it insofar as many discussions of the demandingness objection arise because critics of consequentialism assume **Normative Authority** to be the case. For an argument that the **Normative Authority** facet of consequentialism should be construed as distinct from a consequentialist theory of right action, see esp. (Dorsey 2012).
be an objectionable claim of Simple Consequentialism? Here there are two objections that critics often have in mind, and it is worth delineating them.215

The first version of the demandingness objection is that Simple Consequentialism makes erroneous claims about our moral obligations. Following Doug Portmore, I will label this the ‘erroneously demanding’ version of the objection. Those who press the erroneously demanding objection claim that the Simple Consequentialism is implausible insofar as it ends up claiming that we are required to do far more than we intuitively think. For instance, it strikes many as implausible that the relatively affluent are required to give away most of their wealth to relieve suffering and death. The objection continues that we should revise or abandon Simple Consequentialism rather than our intuitions.216 In short, the erroneously demanding objection charges that consequentialist theories erroneously claim that certain demanding actions are obligatory when, in fact, these actions are supererogatory, merely permissible, or perhaps even impermissible.

The second version of the demandingness objection is not that consequentialism makes erroneous claims about our moral obligations. Instead, this objection charges, consequentialism is mistaken insofar as it accepts Normative Authority.217 The objection is that treating the maximization of impartial value as what we have most all-things considered reason to do—as opposed to what we have most moral reason to do—will get the wrong

215 (Portmore 2011, 26). See also (Mulgan 2001, esp. 4, 15)
216 Many find this version of the objection question-begging. For a diagnosis of the dialectic, see esp. (Mulgan 2001)
217 Some articulate this objection by arguing that consequentialism leads to a repugnant disposition, or a deeply disharmonious life. For early articulations of this objection, see e.g. (Williams 1981), (Stocker 1976).
results vis-à-vis what we have most all-things considered reason to do.\textsuperscript{218} Following Portmore, we can refer to this as the ‘unreasonably demanding’ version of the objection. To illustrate, imagine that you are faced with the choice between saving your spouse and saving five strangers. Most agree that you have most reason, all-things considered, to save your spouse. Moreover, we can say as much even if we also agree that one has most moral reason to save the strangers. But because of \textbf{Normative Authority}, Simple Consequentialism precludes non-moral reasons from overriding or outweighing moral reasons. So, Simple Consequentialism implausibly claims that you fail to do what you have most reason to do if you save your spouse rather than five strangers. Thus, Simple Consequentialism is unreasonably demanding because even though it might give the correct claim as to what we have most moral reason to do, it assigns insufficient normative significance to non-moral reasons, and prohibits our pursuit of various projects and partial values unless doing so happens to maximize the good.

\section*{§2 The Unreasonably Demanding Objection and Impartial Value}

In the context of legitimacy, there are two ways of specifying the unreasonably demanding version of the demandingness objection. The first is that \textit{AFCTL} precludes state actors, institutions, and the State from pursuing various relationships, values, or projects that ‘make

\textsuperscript{218} See also (Scheffler 1981, 56-57) (Mulgan 2001, 15-16) (Portmore 2011). I take it that the primary strategies consequentialists employ to respond to this objection are some sort of satisficing act consequentialism, scalar act consequentialism, Portmore’s dual-ranking act-consequentialism, Scheffler’s hybrid view that includes an agent-centered prerogative, and Railton’s claim that cultivating various dispositions towards acting on the basis of agent-centered prerogatives is necessary for an agent to maximize the good. A different strategy, embraced by Dale Dorsey, is to note that the unreasonably demanding version of the demandingness objection arises only if one is a rationalist about moral norms—i.e., if one thinks that moral requirements are also requirements of reason—and then to reject rationalism. See (Dorsey 2012).
life seem worth living.\textsuperscript{219} When it comes to the unreasonably demanding version of the demandingness objection in the context of micro legitimacy, however, this is not compelling, for reasons suggested in Chapter Four. We do not think that, while on the job, state actors have most reason to pursue various ground projects. Think, again, of a judge who is deliberating about what sentence to impose and has one thought too many—where the thought too many concerns the spouse rather than the legitimate action to perform. The focus of the Act Consequentialist Standard of Micro Legitimacy on promoting impartial value is a feature rather than a bug of the theory. Thus, this specification of the unreasonably demanding version of the demandingness objection is not a problem for the AFCTL.

A similar point applies in the context of macro legitimacy. In pressing the unreasonably demanding version of the demandingness objection, one might begin by claiming that the State or particular state institutions have various projects. And, the objection would continue, any theory of legitimacy that requires political institutions to produce the good at the expense of pursuing these projects is an unreasonably demanding theory of legitimacy. Accordingly, one might conclude, a theory of macro legitimacy shouldn’t assign \textbf{Normative Authority} to the production of the good. And, accordingly, we might think, \textit{AFCTL} is unreasonably demanding. For instance, perhaps England might deeply care about its relationship with the United States given its shared history, cultural affinities, or some other set of reasons. The Scalar Consequentialist Standard of Macro Legitimacy yields the claim that institutions would be more legitimate if they were arranged in a way that precludes this, if such arrangements would better produce Functional

\textsuperscript{219} (Williams 1981)
Autonomy. But such a result does not preclude a state from existing in a way that makes its ‘life seem worth living.’ In fact, it would strike some as objectionably self-indulgent for the British to foster such a relationship when doing so comes at the expense of Functional Autonomy. As such, it is a feature, not a bug, of the Scalar consequentialist standard of Macro Legitimacy that it accords **Normative Authority** to the production of impartial value.

§3 The Unreasonably Demanding Objection and Particularity

The discussion of the demandingness objection so far has focused on the importance of pursuing various projects that do not necessarily have the most impartial value. I have argued this is not a compelling objection to *AFCTL*. A different, more pressing way one might raise the unreasonably demandingness objection emphasizes the importance of producing impartial value *for* certain persons. In particular, one could object that a theory of legitimacy would be unreasonably demanding if it were to claim that the Functional Autonomy of citizens and permanent residents ought to be weighted equally with the Functional Autonomy of non-citizens. Similarly, we might think it would be unreasonably demanding to insist that the weight of role-based reasons of state officials to perform actions ought to be assessed against the standard of producing the Functional Autonomy of all persons, rather than just that of citizens. This version of the objection amounts to the charge that consequentialist theories of legitimacy cannot be appropriately responsive to our intuition that there is a special relationship between states and citizens.\(^{220}\)

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\(^{220}\) Such particularity worries typically concern whether theories of political obligation can ground a moral obligation to obey the law in one’s own state and only one’s state. In particular, this worry is
This is an important worry, one that I mentioned as a problem of ‘particularity’ in Chapter Four. As noted there, the problem of particularity is especially difficult for consequentialist theories insofar as the production of the good does not respect territorial boundaries. This worry amounts to a choice point for AFCTL. Before moving on, I will articulate three different ways of developing the view in the face of this choice point.

First, one could argue that insofar as citizens or permanent residents stand in a special relationship to coercive actions by state actors and the coercive institutions of the State, it is appropriate for the State to give extra weight to the Functional Autonomy of its own citizens and to arrange its institutions in ways that will produce the Functional Autonomy of its own at the expense of others. For this response to be principled, one would have to argue that coercive power is extended over one’s citizens but not over non-citizens, or that far more coercive power is exercised over one’s own citizens than non-citizens. Whether such a claim is, in fact, correct depends on the extent to which we think states exercise coercive power over individuals outside of their borders. And, presumably, we will find that this answer varies depending on which state we examine. For instance, the United States presumably possesses and exercises much more coercive power over non-citizens than Argentina. The US does so directly by restricting who may enter the country, but also indirectly in the economic policies it adopts.

A different rationale for a similarly local focus would be to claim that there are contingent reasons for restricting the production of Functional Autonomy to citizens—raised against those who would attempt to ground the obligation to obey the law by appealing to some sort of natural duty, such as the natural duty of justice. See, e.g. (Green 1988), (Simmons 1979), (Waldron 1993). I am merely concerned with particularity as it pertains to whose Functional Autonomy ought to be produced.
although it is, ultimately, the production of Functional Autonomy of all that justifies exercises coercive power. This rationale would draw on the arguments for the institutional and role-based divisions of labor. As already noted, there are the physical difficulties of implementing various conditions, and so there needs to be extensive cooperation and coordination between various actors who are performing joint actions. This difficulty becomes even greater when trying to realize various conditions internationally. There are motivational difficulties in maximizing an impartial good. This motivational difficulty becomes, presumably, even greater for people in faraway places, and therefore performing various governance tasks internationally will be much harder and less effective. Finally, there are epistemic obstacles in assessing the effects of various institutional arrangements and actions with an eye to their effects on the Functional Autonomy for a populace, let alone for all persons in the world.

According to this line of argument, local governance affords various advantages in overcoming at least some of these problems. For instance, some argue that democratic institutions provide information that other institutions cannot provide.\(^{221}\) Restricting the assessment of legitimacy to assessing how much Functional Autonomy is produced by a state would be justified on instrumental grounds. This line of argument, however, would not preclude the claim that wealthier nation-states ought to attempt to provide effective aid to persons who lack the basic requisite conditions for enjoying Functional Autonomy, as that minimal level of aid does not require extensive governance. That is, this response would

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\(^{221}\) (Dreze and Sen 1991).
imply that various governments are failing to produce the Functional Autonomy of people elsewhere and, accordingly, enjoy far less legitimacy than they could.

Finally, a third, radically different response would be like the second insofar as it claims that the Functional Autonomy of all persons ought to be maximized, rather than just those within territorial boundaries. But, unlike the previous answer this response would claim that as a contingent matter, institutional and role-based divisions of labor need to be radically reorganized to maximize overall Functional Autonomy to allow for international governance of a sort that we have never seen. To meet the informational difficulties mentioned above, perhaps democratic institutions would have to be modified such that persons outside of a territory enjoy the franchise or at least those especially affected by a nation’s policies would so enjoy it.\footnote{Goodin 1988; 2007} Or perhaps the theory would call for more international federations or a world state.

It is beyond the scope of this dissertation to adequately defend one of these responses. One reason for not addressing this point at much further length is that which way we answer will depend, quite considerably, on various empirical claims about what produces Functional Autonomy. As noted in Chapter Five, that is a book-length undertaking in itself, and it is one that needs to wait until the AFCTL is presented and defended in full. But before moving on, there are two points worth making.

The first point is a companions in guilt argument. Will-based theories might appear to straightforwardly yield the conclusion that the government is permitted to only wield coercive power over persons within their territory. By consenting or agreeing to be

\footnote{Goodin 1988; 2007}
governed, in some broad sense, one enters into a special moral relationship with one’s state, just as consenting or promising in the interpersonal context gives rise to special obligations.

But this appearance is misleading. If we opt for an actual will-based view, then it seems that persons outside of the territory could equally perform an act of will by which they authorize governance by some other state. If we opt for a counterfactual consent view, we might very well find that some persons outside of State A’s territory would nonetheless agree that they ought to be governed by State A, and would be reasonable to reject conditions in which they were not governed by A.

Perhaps the will-based theorist would point out that the State does not ‘claim authority’ or ‘claim legitimacy’ over those individuals. In reply, it is not clear that the State claims such authority or legitimacy over its own citizens. And even if it did, we need a reason to think that this matters from a moral point of view. As such, we should not assume that actual and counterfactual will-based views do not, in fact, straightforwardly better satisfy the particularity desideratum than AFCTIL.

The second point returns to Chapter Four and the discussion of authority—namely, we should question the importance of particularity. Let us assume that various will-based theories can avoid the previous objection, and are not, in fact, also subject to the particularity problem. As with the case of authority, the fact will-based theories show as much is an output of the theory, and as such, it should not be assumed to be a pre-theoretical desideratum for all theories. Moreover, as with the case of authority, this output is the output of a theory that has become especially prominent in discussions of political

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223 See, e.g. (Guerrero 2012)
legitimacy, which might explain why so many take particularity to be especially important. But the central question that occupies discussions of legitimacy concerns the moral justification of coercive power. If we find that our best justification of coercive power do not also yield traditional claims about who ought to be the beneficiaries of that coercive power, then particularity intuitions do not seem as central, especially since economic developments have made the traditional concern with linking governance to a particular territory less central of a question in political morality than it used to be.

§4 The Erroneously Demanding Objection and Legitimacy

So far, I have articulated the demandingness objection, and I have indicated how the _unreasonably_ demanding version of the demandingness objection would arise for AFCTL. I have indicated one specification of the objection that is not, in fact, a pressing objection, and one specification of that objection that constitutes a choice point for AFCTL—namely, whose Functional Autonomy ought to be considered when determining the legitimacy of institutions and actions. I will turn now to the erroneously demanding objection as it might appear to arise for AFCTL. Recall that the erroneously demanding version of the demandingness objection arises for Simple Consequentialism in part because it claims that each Individual Act is right if and only if it _Maximizes Impartial_ value. We could see this objection arising for AFCTL at the level of either micro legitimacy or macro legitimacy.

As for the erroneously demanding objection and the Act Consequentialist Standard of Micro Legitimacy, we might worry that this view will condemn most actions as micro illegitimate. Most actions state officials perform will, presumably, fail to maximize overall Functional Autonomy. To make this more concrete, imagine a legislator is deliberating about
which of two possible policies to vote for. One would produce more Functional Autonomy than the other, but both policies would produce significant amounts of Functional Autonomy. To describe the sub-optimal choice as illegitimate will strike many as implausible; some non-optimific actions appear to many to be legitimate. So, a Simple Consequentialist standard of micro legitimacy would seem to give rise to the demandingness objection.

This objection is not especially pressing for an Act Consequentialist Standard of Micro Legitimacy, however, and this is because it departs from Simple Consequentialism in two respects. First, the Act Consequentialist Standard of Micro Legitimacy view does not claim that an action is micro legitimate if and only if it **Maximizes** the good. Instead, it claims that an action is micro legitimate if and only if the role-based reasons to perform the act in question are not outweighed by role-independent moral reasons. As such, various actions, such as the legislator’s, are morally permissible despite falling short of being optimific.

Second, the Act Consequentialist Standard of Micro Legitimacy does not call on agents to **Directly** deliberate as to what will produce the good. Instead, because of the role-based divisions of labor and institutional division of labor, the view claims that various state actors ought to rely extensively on various conventional rules to overcome epistemic obstacles. And because the proposed theory of micro legitimacy determines these rules with an eye to what will best accomplish various institutional tasks, the theory will be responsive to epistemic and motivational challenges for the guidance of deliberation and for action. Extraordinarily motivationally and epistemically taxing rules for state actors will be self-defeating insofar as individuals will likely fail to comply with them. In the context of political
morality, where many different state actors need to coordinate their actions to fulfill their institutional tasks, having role-based rules that individuals will frequently fail to fulfill will undermine coordination. Thus, there is good reason to think that the view will not claim that political actions are legitimate only if they conform to implausibly demanding standards.

Turning from micro legitimacy to macro legitimacy, we might think that the relevant objection would be that a consequentialist theory of macro legitimacy will erroneously claim that all realistically possible sets of institutional arrangements will be macro illegitimate because none of them will Maximize Functional Autonomy. That is, every realistically possible set of institutions will be deemed illegitimate because there is an alternative that would produce somewhat more Functional Autonomy. This, we might think, would be an implausible claim. For instance, a state that produced the Functional Autonomy of 99% of residents when it could be arranged to produce the Functional Autonomy of 100% of residents would be deemed macro illegitimate.

In Chapter Six, however, I defended the Scalar Consequentialist Standard of Macro Legitimacy, which jettisons the Maximization component of Simple Consequentialism. I have argued that, instead of assessing institutions as legitimate or illegitimate, we should assess them as more or less legitimate. As such, there is not reason to think that the theory will erroneously claim that various states and state institutions are illegitimate; instead, the theory will merely predict that some states are more or less legitimate than others, or less legitimate than it could be.
§5 Conclusion

In this chapter, I have considered a powerful objection to consequentialist theories of interpersonal morality, namely, that consequentialism is too demanding. I have developed various specifications of the objection. Some of these specifications are not problems for AFCTL. Others highlight appealing features of the AFCTL. Finally, one specification constitutes choice points for the theory, as it raises the question as to whether the theory can satisfy a particularity criterion. This latter set of questions is important, but I have suggested it is a pressing question for all theories of legitimacy, and that we should not assume that any theory of legitimacy will satisfy some a particularity criterion.
Chapter 9: Conclusion

Given the number of moving parts in this dissertation, it is worth retracing what I have done before concluding.

I began this dissertation with a question that animates not only various works of political philosophy but also our political disputes, the Question of Legitimacy:

*The Question of Legitimacy:* Under what conditions, if any, is the possession or exercise of coercive power by the State or particular state actors morally permissible, and why do these conditions ground the morally permissible possession or exercise of coercive power?

Over the course of this dissertation, I have advanced four theses that concern this question. I began by provisionally accepting what I labeled the ‘Traditional Picture of Legitimacy.’ According to this picture, the Legitimacy of ‘the State,’ construed as some sort of ‘right to rule’ is what makes particular exercises of coercive power by state actors morally permissible. Second, the Traditional Picture claims that a necessary condition for the legitimacy of the State is that it must also enjoy authority, or the moral power to impose obligations to obey its directives or alter the normative landscape of citizens in various other ways. Given this picture, I considered what I take to be the most prominent strategy for answering the Question of Legitimacy, namely, to appeal to the will of citizens. Such theories appear to enjoy significant advantages over a rival approach, which appeals to various substantive values to answer the Question of Legitimacy.
I argued, however, that such an appearance is illusory insofar as such theories are subject to persistent, enduring problems, or they do not enjoy significant advantages over substantive theories of legitimacy. This constituted initial support for the first thesis of this dissertation:

*Will-Based Theories Are Overrated*: Will-based theories of legitimacy or authority are subject to enduring problems, and certain purported advantages they enjoy over other theories are not, in fact, genuine advantages.

I then argued that we ought to reject the Traditional Picture that I provisionally accepted. I argued for this claim by defending two distinct theses. The first thesis was as following

*Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro*: Macro legitimacy is obviously insufficient, and it is not obviously necessary, for micro legitimacy.

Defending this thesis involved breaking the Question of Legitimacy, the initial question that motivated this dissertation, into two further questions:

*The Question of Macro Legitimacy*: Under what conditions, if ever, is the State morally justified in possessing and exercising political power over persons within its jurisdiction, and why is it morally justified?

and

*The Question of Micro Legitimacy*: Under what conditions, if ever, are particular exercises of coercive power by state actors in their role as state actors morally permissible, and why are they permissible?
After defending Macro Is Obviously Insufficient and Is Not Obviously Necessary for Micro, I then defended a third thesis:

*Authority and Legitimacy Ought to Be Addressed Separately:* In answering questions of legitimacy, one ought not to address questions of authority. Theories of legitimacy that do not account for the authority of the State or law are not, for this reason, necessarily defective *qua* theories of legitimacy.

I argued that the second and third thesis provide additional reason to accept the first thesis, *Will-Based Theories Are Overrated.* I also argued that the two theses motivated adopting a different approach to theorizing about political legitimacy. In particular, I argued that theorists of legitimacy should not attempt to the necessary and sufficient conditions for the authority of the State; and, perhaps more strikingly, I argued that rather than attempting to articulate the necessary and sufficient conditions for the macro legitimacy of the State, theorists of legitimacy ought to ‘start at the bottom’ and focus on articulating the necessary and sufficient conditions for particular actions by state officials to be micro legitimate. This supported the claim that a theory of legitimacy ought to be act-focused.

While one could develop such an act-focused theory in a variety of ways—and I briefly sketched some of those ways—I suggested that consequentialist theories of legitimacy are more appealing than they might appear. This was in part because consequentialist theories of legitimacy are at odds with the Traditional Picture, and they have sometimes been rejected for that reason. I also argued, however, that a consequentialist theory of micro legitimacy is positively well-motivated; some of the common objections to consequentialism as a theory of right action for private persons are not compelling in the context of micro
legitimacy. Furthermore, consequentialism would yield a plausible and principled explanation of the connection between micro legitimacy and macro legitimacy, an explanation that treats micro legitimacy as more fundamental than macro legitimacy. In short, I argued that the first three theses give us some reason to accept a fourth thesis:

Consequentialist Theories of Legitimacy are Underrated: Consequentialist theories of legitimacy have been underdeveloped and overlooked, and an appropriately developed consequentialist theory of legitimacy would enjoy significant advantages over rival theories—especially rival will-based theories.

The rest of the dissertation involved developing and defending a particular consequentialist theory of legitimacy, the Act-Focused Consequentialist Theory of Legitimacy.

I argued that a particular value, Functional Autonomy, is the appropriate value to be produced on a consequentialist theory of political legitimacy, given both considerations about the justification of coercive power and distinctly political considerations. I argued that this value ought to be produced. This led to formulating a theory of legitimacy. In response to the Question of Micro Legitimacy, I defended two claims:

Micro Weight: The weight of a role actor’s role-based reason is a function of how much it contributes to the fulfillment of the appropriate institutional task.

Act Consequentialist Standard of Micro Legitimacy: An action is micro legitimate if and only if the state actor’s role-based reasons to perform the action are not outweighed by the role-independent moral reasons that count against the action.
On this view, institutional tasks are justified in reference to the production of Functional Autonomy. So, particular actions by state actors are ultimately justified by the contribution to the production of Functional Autonomy.

In answering the Question of Macro Legitimacy, I presented and briefly defended the following view:

*Scalar Consequentialist Standard of Macro Legitimacy:* The degree of macro legitimacy of a state is a function of how much Functional Autonomy it produces. The more Functional Autonomy a state produces, the more macro legitimacy that state enjoys.

I then argued that rather than grounding micro legitimacy, the significance of macro legitimacy for micro legitimacy is that it ought to play some role in the deliberations of state actors. Finally, I defended the Act-Focused Consequentialist Theory of Legitimacy against two especially pressing objections—that the view failed to respect the separateness of persons, and that the view was objectionably demanding.

By presenting and defending the Act-Focused Consequentialist Theory of Legitimacy, I provided additional reason to accept the fourth thesis of this dissertation—namely, Consequentialist Theories of Legitimacy Are Underrated. More interestingly, I have developed a consequentialist theory of legitimacy that is a viable and attractive rival to alternative theories. Apart from giving reasons to be skeptical that will-based theories are satisfactory, I have not attempted to argue that the Act-Focused Consequentialist Theory of Legitimacy is superior to these rivals. This is in part due to space constraints. But it is also because there are parts of the theory that need to be further developed before such an assessment would be fruitful.
More needs to be said about how to measure Functional Autonomy and the social conditions necessary for it. This is a difficult task, one that would require drawing on work in a variety of fields. But it is worth noting that the theory could still be action-guiding even if we have not pinned down exactly what is required for Functional Autonomy, and I indicated how the theory could inform the actions of various political actors in various contexts even without such a full specification. This points to another way in which the theory needs to be further developed: more needs to be said about what the tasks would be for different institutions, or what sorts of tasks would be appropriate for institutions to perform, and how, given such an institutional division of labor, this ought to inform the role-based division of labor within institutions. This further task would involve, among other things, examining existing professional codes that govern various state actors and indicating how they ought to be changed. This is a large task, but it points to the appeal of the theory; it is well-suited for addressing and reforming existing roles and their conduct. Actually making that case for various institutions would be better approached with an eye to specific contexts.

One other way in which the theory would need to be developed to fruitfully compare it with rival theories would be to think about how it pertains to boundaries. As noted in Chapter Eight, one way of specifying the demandingness objection for the view would raise questions about particularity, and the extent to which the theory justifies governance vis-à-vis citizens or if it somehow justifies governance beyond the borders. Such a question is pressing, and it is a choice point. A fully defended version of the theory would defend one option in response to that choice point.
For now, however, my hope is that readers come away convinced that I have defended a novel approach to attempting to answer the Question of Legitimacy, and that I have made a powerful case in defense of a theory that embodies this novel approach in answering the Question of Legitimacy.


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