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What's the Problem with Political Authority? A Pragmatist Account

by Luke Maring

The dialectic between statists and philosophical anarchists is familiar. Statists try to establish political authority by citing some sort of consent (express, tacit, hypothetical, or normative), fair play, associative obligations, or even gratitude; philosophical anarchists point out weaknesses in statists' arguments. This paper tries to get "underneath" the familiar dialectic: Why is establishing political authority a distinctive problem in the first place?

Different theorists conceive of political authority differently, but § 1 captures the dominant conceptions: political authority is fundamentally about using speech to give citizens moral reasons (or pro tanto duties). However, as § 2 argues, the use of speech to give moral reasons (or pro tanto duties) is routine among ordinary folk. The standard definition should thus leave us puzzled about why establishing a government's reason-giving powers is not the very same problem as establishing the reason-giving powers of ordinary people. Worse, while the literature contains several strategies for supplementing the standard definition of political authority, these strategies cannot solve our problem. Section 3 shows that none of the current strategies succesfully distinguish governmental from quotidian reason-giving.

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WHAT'S THE PROBLEM WITH POLITICAL AUTHORITY?

A PRAGMATIST ACCOUNT

Luke Maring

Abstract: Standard definitions represent political authority as the power to give reasons (or *pro tanto* duties) by using speech. But the giving of reasons (or *pro tanto* duties) is routine among ordinary folk. Why, then, is establishing the reason-giving powers of the state not the very same problem as establishing the reason-giving powers of ordinary people? This article (i) shows that the literature does not have the resources to answer, (ii) develops a pragmatist answer, and then (iii) closes by suggesting that, properly understood, the problem of political authority calls not for more permutations of, say, consent theory, but concrete, genuinely democratic political systems.

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political authority by citing some sort of consent (express, tacit, hypothetical, or normative), fair

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leave us puzzled about why establishing a government's reason-giving powers is not the very *same* problem as establishing the reason-giving powers of ordinary people. Worse, while the literature contains several strategies for supplementing the standard definition of political authority, these strategies cannot solve our problem. §3 shows that none of the current strategies succesfully distinguish governmental from quotidian reason-giving.

I think a methodological commitment lies behind this puzzle. Virtually everyone in the field proceeds by first assimilating political authority to a generalized practical authority, and then asking what could justify generalized practical authority.[1] This article's strategy goes in the opposite direction: §4 develops a pragmatic account of the problem by juxtaposing (a) the way in which moral equals give one another reasons, and (b) the way in which governments presume to give citizens reasons. I argue that the problem with political authority resides not in the *nature* of reasons that governments (try to) give, but in the structure of the *process* by which governments (try to) to give them.

1. THE STANDARD DEFINITION OF POLITICAL AUTHORITY

What is political authority? The following three-point definition strikes a balance between being substantial and ecumenical—it has determinate content, but is generic enough to include most dominant theories of authority. First, political authority is a species of practical, not epistemic, authority. It is possible for practical authorities to be epistemic authorities as well; such a figure would, so to speak, wear two hats. It is also possible that some degree of epistemic authority is a necessary condition for wielding political authority. But political authority is practical.

Second, an exercise of political authority is the normative ground of moral reasons. This might seem too weak: many accounts hold that political authorities give citizens *pro tanto* duties, which, one might think, carry greater weight than mere reasons. But it is not clear that the choice between reasons or *pro tanto* duties matters in the end. Both are normative entities that (dis)favor actions and that compete in complicated ways with other normative entities to generate an all-things-considered ought. It seems likely that reasons-talk can be translated without loss into *pro tanto* duty-talk, and vice versa. For the sake of uniformity, we will use reasons-talk throughout.

What *does* matter is that an authority's demand is the normative ground of a moral reason. Consider a negative example:

> If a petulant child of a brutal dictator whimsically tells the minister to leave the palace, and the dictator will unleash brutality on the masses out of anger if the minister [fails to leave], then the child's command has created a moral requirement [for the minister to leave the palace].[2]

After the child speaks, the minister has a weighty reason to leave the palace. There is even a sense in which the minister's reason depends upon the child—if the child had not spoken, the minister would not have a moral reason to leave. But the child's say-so is not the *normative* ground of the minister's reason. The role of the child, in this anecdote, could be played equally well by a merely mechanical device that will brutalize the masses unless the minister leaves.[3]

There is some controversy about whether the power to normatively ground reasons is the power to create reasons *ex nihilo*, or whether it is merely the power to give general reasons more specific content.[4] Examples do not favor either analysis. We can say that a legitimate, authoritative government gives citizens a brand new reason by levying a tax to improve schools; we can equally say that the government specified citizens' general reason to promote children's wellbeing, thereby making the paying of an educational tax the privileged way to serve a general reason. Fortunately, we needn't choose between these idioms. Whereas the child in Estlund's anecdote uses merely causal power to trigger a reason the minister had all along (namely, to save innocent lives when it is easy to do so), both creating a reason *ex nihilo* and specifying a general reason are ways of shaping normative space. To remain ecumenical, we will say that authorities *give* subjects reasons. Whether giving amounts to creating or specifying is a separate issue.

Third, and last, an exercise of political authority takes the form of a speech act—typically the laying down of a law or policy. We admittedly speak of the police officer's authority to make arrests and the ambulance driver's authority to break the speed limit. But the debate over political authority focuses on the normative powers of the legislator.

Tie these three threads together, and we arrive at the standard definition of political authority:

> *Standard Definition*: *A* has authority over *B* if *A*'s demand that *B* Φ
>
> is the normative ground of a moral reason for *B* to Φ.[5]

This definition is functional: it tells us what political authority *is* by telling us what political authorities *do*. They use speech to normatively ground moral reasons. Or, what comes to the

same thing, political authorities use speech to give (via creation or specification) citizens moral reasons.

2. THE PROBLEM: REASON-GIVING IS COMMONPLACE

Our aim is to discover why establishing political authority is a distinctive problem. The trouble is that according to the standard definition, political authority doesn't seem particularly remarkable. Ordinary people routinely use speech to give us moral reasons—even if we have not consented (expressly, tacitly, hypothetically, or normatively) to their rule, even if they do not institute a fair system for mutual benefit, and even if we have little reason to be grateful to them. In the right circumstances, for example, children give their parents moral reasons by asking for help with their math homework. Sometimes children should struggle on their own. But I have in mind cases where a parent's failure to help would count as failing *qua* parent—the child has already tried several times, the parent doesn't have anything better to do, and the child's self-esteem is in jeopardy, say. Students can give their teachers moral reasons by requesting recommendation letters—denying one's promising mentee a letter can be callous, particularly if the mentee is relying upon one. Admittedly, we have role-based obligations to our children and students, but, in the right circumstances, even total strangers can ground moral reasons for one another. Think of the elderly person who asks—or, if she is frustrated by her constant need for help, demands—that you retrieve her favorite cereal from an out-of-reach shelf at the grocery store. I, at least, think she gives me a fairly strong moral reason to help; it would be uncaring to ignore her.

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The point is not that reason-giving is entirely unmysterious. There is a important question about how it is possible for ordinary people to shape normative space merely by speaking.[6] Call this the *transcendental problem of reason-giving*. The point is that solving the transcendental problem is not sufficient to establish a *government's* powers of reason-giving. When Robert Paul Wolff and John Simmons identify as philosophical anarchists, they are not expressing skepticism about solutions to the transcendental problem; they are expressing skepticism about solutions to the problem of political authority in particular. But why, if political authorities are doing the same thing that ordinary people routinely do, will a solution to the transcendental problem not suffice?

One initially plausible answer is that the problem with political authorities lies not in *what* they do, but in *how much* they do it.[7] The senior citizen who asks for her favorite cereal gives you one reason; a government purports to give citizens many reasons, and in many different practical domains. So perhaps the problem with political authority—the reason why establishing political authority is a distinctive problem—is that governments shape normative space so much.

Unfortunately, this initially plausible answer conflates two issues.

> *Establishment Question*: What establishes a *A*'s power to give reasons in the first place?
>
> *Scope Question*: Once *A*'s power to give reasons is established, how many reasons may *A* give, and in which practical domains?

Establishing a government's power to give reasons is one task; justifying a capacious jurisdiction is another. And whereas we do not ask the establishment question about ordinary folk (unless we are interested in the transcendental problem), we regularly ask the establishment question about governments. Our question is *why*. We cannot answer by pointing out that governments (purport to) give out too many reasons—the question is not whether governments give too many reasons, but whether they are entitled to give any reasons in the first place. One could, of course, just deny that the establishment question for governments requires a different solution than the transcendental problem of reason-giving. But that denial would come at a significant cost. Casting the problem of political authority in this way would require adopting one of two seemingly unattractive options: (a) the power to give reasons is, in itself, highly suspicious in the hands of ordinary folk, or (b) the power to give reasons is, in itself, fairly unproblematic in the hands of the state.

A natural suspicion, at this point, is that governmental reason-giving resembles more quotidian reason-giving only because the standard definition is so ecumenical. To be ecumenical, the standard definition of political authority had to be fairly thin, and the literature already contains thicker accounts of what states do. These thicker accounts—the suspicion concludes—will distinguish governmental reason-giving from more quotidian examples, and thereby explain why establishing political authority is a distinctive problem. This too is an initially plausible thought. But it is false.

3. FOUR BAD WAYS TO EXPLAIN WHY POLITICAL AUTHORITY IS A PROBLEM

The literature contains four strategies for thickening the standard account of political authority. Rather than arguing that these strategies mischaracterize authority, this section shows that they cannot distinguish governmental from quotidian reason-giving. So whether or not these strategies are substantively mistaken, they cannot answer our question.

The first strategy suggests that governments give their subjects *content-independent* reasons. Hart coined the term, suggesting that content-independence lies in the fact that a political authority's command "is intended to function as a reason independently of the nature or character of the actions to be done."[8] In Hart's wake, different theorists posed content-independence in subtly different terms.[9] But the general idea, sometimes inadequately captured, is that the case for obedience doesn't reduce to the authority-independent merits of what one is being told to do. As Stefan Sciaraffa puts it, "an agent has a content-independent reason to Φ if and only if someone's intent that she Φ is a reason for her to Φ."[10] The normative pressure to obey comes not just from the authority-independent merits of Φing (if there are any), but from the reason-giver's intent that you Φ.

If the legislature's intent gave citizens reasons irrespective of what it legislates, that would explain why political authority is such a problem. But this conditional has a dubious antecedent. If an otherwise excellent, even perfect, legislature required that petty thieves be drawn and quartered, the new law wouldn't give us a moral reason to draw and quarter anyone. Political authority is not a license to punish trivial crimes with gruesome torture and execution, so that particular law lies beyond the legislature's purview.[11] It is more plausible that a legislature's intent gives citizens a reason provided that the contents of the law fall within certain

bounds. This, however, places political authorities alongside ordinary folk. A child's intent can function as a reason when he asks for help with his math homework; but there are limits on what children may request. A mentee's intent that one write a recommendation letter can function as a reason; but are boundaries on what students may ask for. It is common for a person's intent to function as a reason, so long as her command or request falls within certain bounds; so that cannot be the distinctive problem with political authority.

The second strategy comes from Joseph Raz. According to Raz, governments give out *exclusionary reasons*.[12] An exclusionary reason is second-order. Whereas a first-order reason is a reason to perform some action, a second-order reason is a reason to act (or not to act) for a reason. An example: we all have *some* first-order reason to pay our taxes, given that our dollars support public services. That first-order reason confronts countervailing first-order reasons to spend our dollars differently, but, according to Raz, a legitimate government's demand that we pay taxes excludes those countervailing reasons—gives us a reason not to act upon them without diminishing their weight. Is the distinctive feature of political authority its claim to give exclusionary reasons?

Exclusionary reasons are controversial—some argue that exclusion is incoherent, or that apparent cases of exclusion are really cases of outweighing or undercutting. We will side-step this debate. If we grant exclusionary reasons, do they distinguish governmental from quotodian reason-giving? The answer is "No." Raz himself appeals to quotidian examples while developing his account. In one such example, Colin makes a promise to his wife: he will put their son's interests above all else when choosing their son's school. Colin sees the cost of a particular boarding school as a reason to send his son elsewhere, and is concerned about setting an inappropriate example for parents who are less able to pay. But Colin's promise, so long as

we grant exclusionary reasons, excludes these countervailing reasons without diminishing their weight as reasons. Similarly, a beloved parent's dying wish might give one an exclusionary reason. So too might a friend's, child's, or even a stranger's request.

One might, given the examples in the paragraph above, suspect that the problem of political authority arises because governments are large bureaucratic institutions that try to give us exclusionary reasons—exclusionary reasons aren't a problem on their own, but exclusionary reasons plus bureacracy is. However, it is easy to design a bureaucratic case ismorphic to Colin's. The "Redskins" name used by the Washington Area National Football Team is an offensive racial epithet. Suppose that several tribal councils (bureaucratic institutions) circulate a pledge among local fans: those who sign agree not to attend games until the team changes its name. After signing the pledge, local fans have all the same first-order reasons to attend that they did before—the games are just as exciting, football has the same aesthetic attractions, the team fields more or less the same athletes, and the atmosphere in the stadium is just as raucously enthusiastic as before. These first-order reasons may be outweighed by a first-order reason to not support racially offensive organizations. But the point is that fans who sign the pledge have promised not to act upon any of those (possibly outweighed) reasons to attend. If Colin's promise functions as an exclusionary reason, so does theirs. In fact, the fans' promise is probably unnecessary. Tribal councils can (so long as we grant exclusionary reasons) give an exclusionary reason by simply requesting, or even demanding, a boycott. Calling for a boycott does not diminish a fan's reasons to attend—football is just as exciting or aesthetically appealling as it ever was. Rather, if we grant exclusionary reasons, the tribal council's request or demand makes it wrong for fans to act upon their reasons to attend. Centuries of terrible

oppression (continuing to this day) plausibly give tribal councils the right to demand that we not entertain ourselves by supporting such an eggregiously offensive organization.[13]

The third strategy for problematizing political authority suggests that states do not merely claim to give citizens reasons; they claim the right to rule. This is a view with a pedigree, articulated most recently by Stephen Darwall.[14] According to him, authority is a second-personal relationship such that subjects wrong their superiors by disobeying. Darwall's defense of this claim depends upon an ornate theory of second-personal reasons. Happily, the core of this strategy to problematize political authority does not depend on the details of Darwall's second-personal commitments. The core "lies in the thought that the duty to obey is *directional*."[15]

Our question, once again, is not whether political authority really is the right to rule.[16] It is whether directionality, in itself, can distinguish political from quotidian reason-giving. And the answer is that it cannot. Even if political authority is directional in precisely the way that Darwall suggests, so are many instances of quotidian reason-giving. The parent who neglects to help with her son's homework wrongs her son; the professor who callously denies her promising mentee a recommendation letter wrongs her pupil; and the uncaring Samaritan who, without good reason, refuses to get the elderly person's cereal wrongs the senior citizen.

The fourth, and last, thickening strategy notes that governments claim a monopoly on coercive force. They claim the right to coerce while simultaneously claiming the right not to be coerced by others. Now, a monopoly on coercion is both remarkable and troubling. But it is a remarkable and troubling claim that has to do with the state's *legitimacy* rather than its *authority*. Recent discussions make a helpful distinction between authority (the power to normatively ground a moral reason for citizens to Φ by telling them to Φ) and legitimacy (the permissibility

of exercising authority and of enforcement).[17] It is conceptually possible to have the power to give reasons while lacking both the right to use that power and the right to force compliance, so authority-legitimacy is not a distinction without a difference. And the point is that coercion is forcing someone to do a particular thing, not giving them a moral reason to do that thing. Thus, the thought that political authority is problematic because of it's presumed monopoly on coercion doesn't actually see a problem with *authority* at all.

Relatedly, we cannot explain why political authority is problematic by citing liberty. Some theorists (sometimes) write as though the whole problem of political authority reduces to justifying the state's infringement upon individual liberty.[18] But focusing on liberty pushes the problem into the sphere of legitimacy. We limit a person's liberty—coerce her—by forcing her to do something, not by giving her a moral reason that favors doing that thing. Admittedly, giving out a moral reason curtails what we might call a person's *normative liberty*—it changes what she can rightly be held accountable for doing. But curtailing normative liberty, once again, is perfectly quotidian. We do not object when children, students, or short senior citizens in grocery stores do it.

To sum up: according the standard definition, political authority is the power to give moral reasons by using speech. But there is nothing obviously problematic in that. Worse, the four main strategies for thickening the standard definition—content-independence, exclusionary reasons, the right to rule, and a monopoly on coercion or infringement upon individual liberty— cannot explain why the establishment question is so urgent either. So again: why is establishing the reason-giving powers of a government not the same problem as establishing the reason-giving powers of ordinary folk?

This section juxtaposes (a) the way in which moral equals give one another reasons, and (b) the way in which governments presume to give citizens reasons. A recent development in speech act theory will aid this juxtaposition: the distinction between alethic and constitutive speech acts.[19] Consider, for instance, commands. An *alethic command* calls our attention to the practical reasons we already have. The passerby who demands that you refrain from murder issues an alethic command—her demand, at best, is a reminder that your authority-independent reasons already disfavor murder. A *constitutive command* aims to give (via creation or specification) its target a reason she did not previously have.[20] If a general has legitimate authority over a private, and demands that the private do pushups, the general is not issuing a brusque reminder that the balance of the private's first-order reasons favor exercise. The general aims to ground a reason by issuing a constitutive command.

The alethic-constitutive distinction seems to apply to other speech acts as well. We can command others to do what they already have reason to do; we can also ask them to act upon their reasons. Suppose that I am holding office hours, but am so lost in thought that I don't notice the student standing nervously at my office door. She asks, "Do you have a moment to answer a few questions?" The student issues an *alethic request*. As her professor conducting office hours, I had excellent reasons to invite her in; her request calls my attention to them. By contrast, the elderly person who asks you to retrieve her favorite cereal issues a *constitutive request*—she aims to give you a reason.

So: some speech acts (commands, requests, or whatever) are in the business of calling one's attention to the balance of existing practical reasons. Call all such speech acts alethic.

Constitutive speech acts (commands, requests, or whatever) are in the business of normatively grounding (via creation or specification) reasons.[21] With this background in place, it is time to defend two conclusions. First, and in normal circumstances, constitutive speech acts between equals misfire if the would-be reason-giver ignores what we will call the challenge-response model. (Or, more weakly, constitutive speech acts between equals generate a reason that is promptly defeated—outweighed or undercut—if the would-be reason-giver ignores challenge-response.[22]) Second, governments routinely ignore challenge-response and thereby demean citizens, treating them as persons to whom justification is not owed.

4.1 MISFIRE AND CHALLENGE-RESPONSE

Suppose your colleague asks you to review her new manuscript. You answer, "I'm pretty busy; can you find someone else?" "I'm afraid not," she responds. "I really need feedback and no one else in the department does this sort of philosophy."[23]

This exchange illustrates the *challenge-response model*. Your colleague's opening request is constitutive. It aims to give you a reason. Faced with your colleague's request, you issue a *challenge*. Challenges should be understood in terms of their normative function: they register one's objection to 'receiving' the reason and present the other with a dilemma. Your colleague must *respond* by defending the propriety of her original request, or else fail to give you the (undefeated) reason she intends. Challenge-response is thus simple in outline: constitutive speech acts aim to give people reasons; such speech acts are challengeable; once a challenge is issued, the would-be reason-giver must respond to successfully give the intended (undefeated) reason. With the outline in view, the answers to three questions will provide depth and clarity.

Q1: Why are constitutive speech acts between moral equals challengeable?

Q2: Why does a would-be reason-giver fail to give a reason (or succeed only in giving a defeated reason) if she ignores challenge-response?

Q3: Does challenge-response apply to all constitutive speech acts between equals?

Q1 asks why constitutive speech acts between moral equals are challengeable in the first place. The answer is that the ability to give someone practical reasons is to have a kind of power over her—one determines, in part, what the other can be held accountable for doing. Given the examples throughout this paper, it is implausible that we lack this power altogether, that we cannot give practical reasons at all. But it is equally implausible that our powers of practical reason-giving are unchecked. If, for example, I had an unlimited power to give you practical reasons, I could make it the case that you ought to spend an alarmingly large fraction of your waking hours doing as I say. Even if I do not force compliance, there is something morally suspicious here. You and I are equals, so your normative commitments should not rest so completely in my hands.

It seems, then, that we need an account on which (a) it is possible to give one another practical reasons, and which (b) limits this power in a way that reflects our moral equality. This section's account mobilizes the idea of a challenge. If I try to give you a reason, you needn't simply acquiesce. Our equality means that you can issue a challenge—asking why I made the request I did, or demanding to know whether my command is apt. I acknowledge you as my

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equal—as someone I may not simply boss around—by taking your challenge seriously and explaining myself.

Equality is also the key to answering Q2: why does a would-be reason-giver fail to give a reason (or succeed only in giving a defeated reason) if she ignores challenge-response? Unfortunately, we need to make a brief excurses first. When a constitutive speech act *misfires*, it fails to give its target the intended reason. There are two kinds of misfire. First, there might be a problem with the *content* of the speech act. Suppose one's partner intends to ask one to set the table, but the request comes out garbled—"Please do, er, don't, set the table for dinner." The content of this request is absurd, so it misfires. Your normative commitments with respect to table setting remain unchanged. In an *entitlement* misfire, the problem is not the content of the request, but that the person issuing the speech act is not entitled to do so. There is nothing wrong with the content of "Set the table!" But the command misfires if a three-year old tries to boss around her parents. And commands are not, it seems, the only constitutive speech act susceptible to entitlement misfires. In the right circumstances, the phrase, "You have no right to ask me that," captures an important truth about giving reasons.

Now, to bring equality back into the picture: the answer to Q1 emphasized that we recognize one another as equals by answering their challenges; the flip side is that we demean others, treating them as subordinates, by refusing to do so. When we attempt to give someone a new practical reason by using a constitutive speech act, we are attempting to exercise a degree of control over her normative commitments. It is demeaning to exert such control over someone while assuming that she has no right to have her challenges answered. One would treat her as *one to whom justification is not owed*. Adults are (sometimes) entitled to treat young children that way, but it is no way to treat an equal.

For example, the colleague in this section's opening case answers your challenge by saying that she really needs feedback, and by pointing out that you are the only department member who does the relevant sort of philosophy. Intuitively, that is a good (or, at least, not a bad) response. But imagine that she ignored your challenge altogether, spun on her heel, and yet assumed that she had successfully given you a reason to read her manuscript. Just as a three-year old is not entitled to boss around her parents ("Set the table!"), your colleague is not, in normal circumstances, entitled to treat you as a subordinate, as one to whom justification is not owed. And typically, when three-year olds, pushy colleagues, or anyone presumes to have standing they lack in the game of giving and asking for practical reasons, their constitutive speech acts succumb to an entitlement misfire. Of course, there might be independent reasons for you to read the manuscript—perhaps its publication would reflect well on your department during a time of extreme budget cuts at your University, so you read for the sake of your department rather than as a favor to your colleague. The point, however, is that whether or not there are independent reasons to overlook the fact that a would-be reason-giver demeans you, constitutive speech acts succumb to an entitlement misfire when equals falsely presume the sort of superiority that would release them from the burdens of challenge-response.

Alternatively, and more weakly, one might suspect that ignoring a challenge results not in an entitlement misfire, but in the giving of a defeated reason. When your colleague ignores your challenge and spins on her heel, she gives you a reason to read her manuscript, but that reason is undercut or outweighed by the fact that she demeans you as one to whom justification is not owed. I find it more plausible that ignoring challenge-response results in misfire—just as the three-year old presumes a normative standing she lacks, your colleague presumes to be something other than your equal. The game of giving and asking for practical reasons requires

us to treat one another as equals, so, in normal circumstances, deviating from challenge-response is akin to taking a penalty kick from the wrong place in soccer: if one doesn't follow the rules, the attempt is doomed at the outset. But my account of the problem of political authority is compatible with the view that ignoring challenge-response results in defeated reasons (see §4.3 below).

The paragraphs above are littered with defeasibility operators—"in normal circumstances" and "typically." This takes us to Q3: does challenge-response apply to *every* constitutive speech act between equals? The answer is "No." Challenge-response is a default setting, but certain circumstances take it offline. Suppose that an emergency requires swift, coordinated action, and that someone seizes the initiative and acts as an effective leader. It would, it seems, be wrong to challenge the leader's commands. But the wrongness of issuing a challenge derives from the urgent need for coordinated action. The leader's immunity to challenge expires as soon as the emergency is over, and it extends only to commands that are relevant for solving it.

Imagine, for another example, someone whose extreme timidity leads to her interests being overlooked. She musters the courage to ask you for a favor, and your initial inclination is to issue a challenge. If challenging her request would reinforce her timidity, and the favor is not particularly hard to fulfill, it might be wrong to issue a challenge. But, as in the emergency case, the wrongness of issuing a challenge does not derive from the fact that the would-be reason-giver has a permanent place of privilege in the game of giving and asking for practical reasons. If she overcomes her timidity, challenges become perfectly appropriate.

There are other kinds of cases—probably infinitely many—that can take challenge-response off-line. Listing them all would (obviously) not be a productive exercise. The point is

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that while challenge-response is not absolute, departures from it should be temporary aberrations. In normal circumstances, constitutive speech acts succumb to an entitlement misfire (or generate a defeated reason) when the speaker presumes, and lacks, the kind of superiority that would release her from the burdens of challenge-response.

4.2 THREE OBJECTIONS TO CHALLENGE-RESPONSE

The first objection is that challenge-response cannot be a default setting because, particularly in hierarchical organizations, it is unproblematic for a moral equal to presume an abiding immunity from challenge. Morality does not prefer the coach on a sports team to the players, but according to the objection, the coach is not required to answer her player's challenges. Similarly, an employer is the moral equal of her employees, but is permitted to ignore their challenges.

There are times when coaches or employers needn't answer challenges. In the heat of a game, when there is no time to argue about which play to run, the coach may simply decide. But this is akin to the emergency case above: the need for swift, coordinated action takes challenge-response temporarily off-line. The objection must hold that it is unproblematic for coaches and bosses to ignore challenges when their status as coach or boss is the *only* justification for doing so. And *that* is a dubious claim. The best coaches routinely entertain constructive criticism from their players; the best bosses routinely field challenges from their employees. Athletes and employees regularly—and plausibly—complain that it is disrespectful for coaches or bosses to act like tyrants by ignoring legitimate challenges from their underlings. In order to facilitate work and play, we arrange ourselves into hierarchies, giving different jobs to different people. But the fact that we coordinate ourselves in this fashion does not make it permissible to demean

people by treating them as though they are not owed justification. Challenge-response should be the default mode of interaction, even in hierarchical organizations.

The second objection challenges the coherence of challenge-response. An alethic speech act calls attention to reasons that are already there; a constitutive speech act shapes normative space by giving a reason. But if one marshals good reasons to defend a constitutive speech act against a challenge, doesn't this mean that the original speech act is alethic? When your colleague says that she really needs feedback, and that you are the only person in the department who does the relevant sort of philosophy, isn't she pointing out that you had an excellent reason to read her manuscript all along?[24]

Admittedly, we do sometimes use conversations along the lines of challenge-response in an alethic fashion, to point out reasons people already have. Suppose, for a clear example, that your colleague responds to your challenge by (truthfully) saying, "You promised yesterday to read my manuscript; don't you remember?" The promise you made yesterday gave you a reason to read her manuscript; so, in this case, she answers your challenge precisely by reminding you of a reason you already have. The question raised by the second objection is: does the fact that one responds to a challenge by marshaling good reasons *necessarily* mean that the original speech act is alethic?

There is some pressure to answer in the negative. Return to the initial formulation of this section's opening example, and suppose that your colleague's request is alethic. It seems to follow that failing to read her manuscript (or failing to consider your reason to read her manuscript) would be a normative mistake on your part *whether or not* she actually asks you to do so. An alethic request, after all, merely points out a reason you already have. It would similarly be a mistake not to help your son with his homework, even if there is no outward

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indication that he wants your aid. It would be a mistake to not retrieve the senior citizens'

favorite cereal, even if there was no observable clue that she needed help. Moral life can be

demanding, and I will be among the first to concede that most of us have alarmingly high failure

rates. But if apparently constitutive speech acts are really alethic, our failures include the fact

that we do not act upon great hordes of 'secret' reasons. That seems (to me) to run afoul of any

plausible formulation of ought-implies-can.

More broadly, if A asks B to ϕ, and B issues a challenge, there are two ways for A to

respond. First, A's response can point out that B already has a good reason to ϕ. If it does, the

original request is indeed alethic. But there is a second way for A to respond. She can point out

that B has reasons, not to ϕ, but to think that A is entitled to ask that he ϕ. When A responds in

this latter fashion, it is a bit odd to say that the original request is alethic.

The third objection rejects challenge-response by rejecting the whole idea of giving

reasons (via creation or specification) altogether. Those whose intuitions run more realist than

pragmatist might hold that you have a standing (conditional) reason to read your colleague's

manuscript if asked. By asking you to read, your colleague does not give you a reason (in our

sense of that term); she merely "triggers" a conditional reason you had all along.[25] Thus, insofar

as challenge-response rests upon the idea of giving reasons, those with realist intuitions might

reject it.

Fortunately, responding to this objection does not require defending pragmatism over

realism. I presented challenge-response in a pragmatist framework because I find that

framework most plausible. But all the essential elements of challenge-response fit equally well

into a more realist paradigm. Even if your colleague triggers your standing conditional reason to

read if asked, we need to distinguish between two kinds of triggering: triggering by mere causal

events and triggering by an agent's expression of intention.[26] You have a (conditional) reason to carry an umbrella if it is going to rain, but a barometer doesn't intend to trigger it, nor do the ominous storm clouds on the horizon. But in the case of your colleague, her intention that you read the manuscript is vital. If her request for help were facetious, your reason to read if asked would continue to lay dormant.

Now, we framed challenge-response so that it applies to the giving of reasons through constitutive speech acts. But, if one prefers to speak of conditional reasons triggered by the conveying of intent, we can frame challenge-response that way instead. Like the power to give reasons, the power to activate conditional reasons by conveying intent entails a degree of control over others' normative commitments—you can determine, in part, what the other can be held accountable for doing. Given the fact of our moral equality, the other needn't simply acquiesce. She is (normally) entitled to issue a challenge in the hope of getting you to retract your intention. To avoid demeaning her as one to whom justification is not owed, you must respond (at least in normal circumstances). As before, these defeasibility operators are important: challenge-response is a default setting. Thus, whether speech acts give brand new reasons, specify the content of general reasons, or merely trigger reasons, your colleague demeans you if she ignores your challenge, spins on her heel, and yet presumes that her speech was a success.

4.3 THE PROBLEM OF POLITICAL AUTHORITY

The problem with political authority is that governments presume the power to give citizens (undefeated) reasons without responding to challenges. On a token occasion, a government may

produce a cogent response. But the point, here, is about political practice. Governments do not, with respect to average citizens, conform to challenge-response.

While a properly democratic system might respond adequately to challenges from average citizens, few (if any) governments are properly democratic. Average citizens have the chance to vote for a representative that, ideally, would voice their challenges during legislative proceedings. Realistically, however, (a) an individual vote for a representative has virtually no causal power to make one's challenge heard, (b) it is often hard to find a representative willing to voice one's challenges, and (c) the average citizen has no official avenue to air her challenge if her representative lets her down. She must wait until the next round of elections, when she gets another chance to cast another non-impactful ballot for another representative that may not share her concerns. As evidence that average citizens are effectively shut out of legislative processes, at least in the United States, a recent, statistically sophisticated study found that, "When the preferences of economic elites and the stands of organized interest groups are controlled for, the preferences of the average American appear to have only a miniscule, near-zero, statistically non-significant impact upon public policy."[27] In fact, even "when a majority of citizens disagrees with economic elites or organized interests, they usually lose."[28]

But despite governing through a process that effectively shuts out average citizens' challenges, governments presume that citizens have (undefeated) reasons to obey. Imagine: an average citizen has excellent, unanswered challenges to a recent law. She makes her point in all the major newspapers and hand-delivers her challenge to all the relevant political departments. She breaks the offending law, gets caught, and is prosecuted in court. If her defense is that the government did not answer her challenge, and that the law therefore gives her no (or a defeated) reason to obey, it is overwhelmingly likely that she will lose. She will not persuade many judges

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by pointing out that it is demeaning for her government to treat her as one to whom justification is not owed, or that the government is presupposing a sort of normative superiority that is inappropriate for moral equals (even in hierarchical organizations).[29]

We saw, in §2 and §3, that the literature cannot explain why the solution to the transcendental problem of reason-giving does not also solve the problem of political authority. The answer is not found in the character of the reasons that governments (allegedly) give—government-given reasons are not uniquely content-independent, nor are they uniquely exclusionary, nor do they uniquely imply directionality. The answer is that governments presume the power to give reasons in a problematic *way*: they presume to give citizens (undefeated) reasons without conforming to challenge-response; they demean citizens by treating them as persons to whom justification is not owed. The challenge for statists, then, is to justify this mode of reason-giving. In short, statists need to morally justify a governmental immunity to challenge-response.

Unfortunately, it is not clear that any of the traditional justifications of political authority can do that. Consent theory, for example, holds that citizens agree to their government's rule. And of all the mechanisms for consent (expressed, tacit, hypothetical, and normative), expressed consent is often thought to be the gold standard. Many echo John Simmons's doubt that citizens express consent to their government's rule;[30] relatively few doubt that citizens' expressed consent would, if given, justify political authority. But it's not clear that even expressed consent can redeem a practice of demeaning others as persons to whom justification is not owed. Compare: The practice of male headship releases men in traditional marriages from the burdens of challenge response—men in such relationships can overrule their wives by invoking their status as head. That is a deep moral problem, and the fact that women say "I do" during

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traditional marriage ceremonies does not solve it. A settled practice of treating people as inferior can be morally problematic whether or not they consent to it.

Theories of fair play, to consider a second class of traditional justifications, hold that we are obligated to support fair systems of rules that benefit us.[31] They typically measure fairness and benefit in terms of material inputs and outputs: a system is beneficial if it doesn't take more than it gives back; and it is fair if it takes the right amounts from the right people. Now, it is important for political systems to be fair and beneficial, but the arguments above show that material inputs and outputs do not exhaust the moral character of our political practice. It also matters that our political practice does not demean citizens by treating them as persons to whom justification is not owed. Excellent performance in one task (providing for fairness) does not necessarily excuse failure at another (recognizing citizens as equals deserving of justification).

Associative theories of political obligation, to consider a last canonical theory, begin with the plausible suggestion that we can acquire fairly demanding obligations simply by living with and among others.[32] They often cite families as a paradigm case: we do not consent to be sons, daughters, or siblings; yet, it seems, we owe our parents, brothers, and sisters a great deal. Associative theorists suggest that just as we acquire a certain set of familial obligations by inhabiting the role of, say, 'son,' we acquire political obligations by inhabiting the role of 'citizen.' But it is not clear that associative obligations can justify a settled pattern of demeaning people. Despite the intimacy of family ties, associative obligations cannot explain why it is morally permissible for husbands in a patriarchal practice of marriage to treat their wives and children as persons to whom justification is not owed. And if intimate family ties cannot justify a settled pattern of demeaning people, the impersonal bonds between citizens and their political leaders might not do the trick either.

If traditional solutions to the problem of political authority are doubtful, is another solution more promising? I want to close with a suggestion: the problem of political authority, properly understood, calls not for more permutations of, say, consent theory, but for concrete, genuinely democratic systems of government. Compare: the practice of headship treats women and children as persons to whom justification is not owed, and the only solution is to replace patriarchal marriage with something more egalitarian. Similarly, I suggest, we can solve the problem of political authority only by instituting a genuine democracy—a system of government that is properly responsive to citizens' challenges. If this is right, the problem of political authority, properly understood, requires a political rather than a philosophical solution.

5. CONCLUSION

Why is the problem of political authority not identical to the transcendental problem of reason-giving? The answer is not that government-given reasons are content-independent—it is common for an ordinary person's intent to give a reason, so long as her command or request falls within certain bounds. Nor is it that governments give citizens exclusionary reasons—we do not balk when ordinary people (or bureaucratic institutions such as tribal councils) give us exclusionary reasons. Nor is it that governments presume the right to rule—the duty to obey governments is arguably not directional, and even if it is, directional reason-giving is quotidian as well. Nor, finally, is the problem that governments claim a monopoly on coercion or infringe upon citizens' liberty—that suggestion pushes the problem into the sphere of legitimacy.

Virtually every discussion of the problem of political authority begins by assimilating political authority to a sort of generalized practical authority and then asking what could justify generalized practical authority. That is a methodological mistake. By juxtaposing the ways that

equals give one another reasons with the ways that governments presume to give citizens reasons, we can see the real problem. Equals conform to challenge-response; governments do not.

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[1] Joseph Raz, for example, uses non-political figures such as arbiters to develop his account of state authority (See Raz, <u>The Morality of Freedom</u>, 41). Stephen Darwall appeals to a host of non-political examples, from financial advisors to an ordinary person demanding that someone get out of bed in the morning (See Darwall, "Authority and Reasons," 259 & 271). David Enoch is particularly clear about commiting to this generalist strategy. He defines practical authority as a species of "robust reason-giving"— the sort of thing that happens when a colleague asks you to read her manuscript (See Enoch "Authority and Reason-Giving," 2). He then gives a theory of robust reason-giving precisely in the hope that an understanding of the general phenemenon will someday help solve the problem of political authority.

[2] Estlund, <u>Democratic Authority</u>, 118.

[3] How is it possible for one's demand to be the normative ground of another's moral reason? Different theorists answer differently. According to Schroeder, "Cudworth and Normative Explanation," one's demand can (perhaps partially) constitute the other's moral reason. Darwall holds that second-personal accountability relations make such normative grounding possible (See Darwall, <u>The Second Person Standpoint</u>; Darwall, "Authority and Reasons"). Enoch, "Giving Practical Reasons" answers in terms of the commander's intentions. And there are, of course, other accounts. To remain ecumenical, I insist only that a legitimate authority's demand normatively grounds moral reasons.

[4] See Richardson, <u>Practical Reasoning about Final Ends</u> for a leading account of specification.

5 The standard definition is compatible with a wide range of theorists. See Raz, "Authority and Justification;" Friedman, "On the Concept of Authority in Political Philosophy;" Wolff, "The Conflict Between Authority and Autonomy;" Green, "Legal Obligation and Authority;" Wellman, "Doing One's Fair Share;" and Estlund, <u>Democratic Authority</u>. There are others, but this sample shows that I am not discussing a fringe position.

[6] I owe this point to an anonymous referee.

[7] I owe this point to an anonymous referee as well.

[8] Hart, <u>Essays on Bentham</u>, 254-55.

[9] Leslie Green writes, "[t]he mark of their content-independence is that their force does not depend on the nature of the action they require" (See Green, "Legal Obligation and Authority"). Scott Shapiro holds that a "content-dependent reason is a reason for conforming to a directive because the directive has a certain content" (See Shapiro, "Authority," 389). For a careful treatment of these, and other, definitions of content-independence, see Markwick, "Law and Content Independence" and Sciaraffa, "On Content-Independent Reasons."

[10] Sciaraffa, "On Content-Independent Reasons," 234.

[11] This example is isomorphic to one of Sciaraffa's: "consider the [ship] captain's demand to debark, go home, and marry the first girl one sees. The natural thing to say about this command is that it exceeds the captain's authority" (*Ibid.*, 240).

[12] Raz, <u>The Authority of Law</u>, 17-21.

[13] I do not mean to suggest that Raz has made it to easy for governments to acquire authority. Raz's requirement for earning authority is, of course, satisfying the Normal Justification Thesis. My point is not that the Normal Justification Thesis sets the bar too low—makes it too easy to earn political authority—but that Raz's account of authority's nature should leave us confused about why we should be setting bars specifically for governments in the first place. Why is establishing a government's powers of reason-giving different than the transcendental problem of reason-giving? Exclusionary reasons do not answer this question.

[14] Darwall, <u>The Second Person Standpoint</u>; Darwall, "Authority and Reasons."

[15] Enoch, "Authority and Reason-Giving," 325 (emphasis his).

[16] Though it is worth noting that the "right to rule" is but one of several analyses of authority, and that it is not obviously correct. Stealing from one's neighbor surely constitutes a wrong against her; it might not wrong the legislature that made stealing illegal in the first place.

[17] See Estlund, <u>Democratic Authority</u>, 2.

[18] See Wellman, <u>Is There A Duty to Obey the Law?</u>, 3-5.

[19] See Kukla and Lance, '<u>Yo!' and 'Lo!'</u>, 111-13.

[20] In '<u>Yo!' and 'Lo!'</u>, Kukla and Lance use "constative" in place of constitutive. Linguists, however, use "constative" differently, so Kukla and Lance now prefer "constitutive."

[21] It is important to recognize that, so long as we are thinking about language pragmatically, surface grammar does not reliably indicate what sort of speech act one is dealing with. "It is a bit hot in here" looks initially like a declaration or an observation of fact. But someone who pointedly looks at the window and says, "It *is* a bit hot in here," is probably telling you to open the window.

[22] Many thanks to an anonymous referee for calling my attention to this possibility.

[23] Enoch, "Giving Practical Reasons" inspired this example.

[24] I'm grateful to an anonymous referee for raising this objection.

[25] Enoch, "Giving Practical Reasons," 4.

[26] *Ibid.,* 14-18.

[27] See Gilens and Page, "Testing Theories of American Politics," 575.

[28] *Ibid*., 576.

[29] One might object by pointing out that laws can be challenged and overturned, most obviously through judicial review. But this objection misunderstands the point. While judicial review can be an important check on the legislature's power, it is an example of one governmental branch checking another. The important thing here is not the way that the legislature relates to the courts; it is the way that these branches of government together relate to average citizens.

[30] Simmons, <u>Moral Principles and Political Obligations</u>, 57-95.

[31] Hart, "Are There Any Natural Rights?"; Rawls, "Legal Obligation and the Duty of Fair Play."

[32] See Horton, Political Obligation for an influential statement of this view.