Counsel and Command: An Address-Dependent Account of Authority

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Abstract

In this dissertation I develop an account of the concept of authority and the distinction between theoretical and practical authority in terms of their proper forms of interpersonal address. I then exploit the difference in moral status between these forms of address in order to develop an account of the moral significance of the state. In Chapter 1, I discuss Stephen Darwall’s recent critique of Joseph Raz’s “service conception” of authority. I argue that Darwall’s argument suffers from a conflation of two forms of preemption, which I call “encompassing” and “determining” preemption. In Chapter 2, I argue that Darwall’s own, “second-personal” conception of moral obligation is best interpreted as conceiving of moral obligation in terms of the “normative felicity conditions” of what I call normatively “creative” acts of address. Normatively creative acts of address derive their normative force from the very act of address. Normatively “transmissive” acts of address on the other hand depend for their normative force on something external to the act of address itself. In Chapter 3, I defend an account of the distinction between theoretical and practical authority in terms of the two distinctions introduced in Chapters 1 and 2. These two distinctions give rise to four distinct categories of interpersonal address—counsel, testimony, request, and command—of which the first is proper to theoretical and the last proper to practical authority. In Chapter 4, I discuss the moral asymmetry between request and command and argue that command depends on what Kant calls a “rightful condition”—i.e. the state—for its normative felicity. In Chapter 5, I offer an interpretation of Kant’s account of right by way of a particular reading of his claim that the state of nature is morally defective.
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To advise is not a proper act of law, but may be within the competency even of a private person, who cannot make a law.

—Aquinas, *Summa Theologiae*
For Jasmin
Introduction

My dissertation advisor Tim Scanlon once said to me that he suspected my true calling to be that of a linguist. In fact, the thesis of this dissertation originated in a certain linguistic discontent I frequently feel when I read in the literature on the concept of authority. My discontent arose, and still arises, with passages like these:

It is clear that not every power amounts to an authority. My neighbour can stop me from growing tall trees in my garden by threatening to burn rubbish by my border. He, therefore, has some power over me but no authority. (Raz 1986, 24)

Most philosophers hold that authority (of the practical sort) consists in a right to rule, such that subjects are obligated to obey. But they disagree over what it takes for a person to qualify as an authority in that sense. (Hershovitz 2011, 1, footnote omitted)

On the plausible hypothesis that authority consists in the power to robustly give duties, it follows that A is an authority over B. (Enoch 2014, 314)

Here is what bothers me about these passages. The term “authority” enters ordinary discourse by way of two distinct linguistic forms. On the one hand, we speak of someone’s being an authority, say in her area of expertise. Here the term “authority” figures in what might be called a “monadic” predicate, that is, a predicate that makes reference to a single person. On the other hand, we say that one person has authority over another, say within the institutional hierarchy to which they both belong. Here we might speak of a “relational” predicate, since it puts two persons into a particular relation with each other.

My suspicion is that the difference here is not merely a stylistic quirk but rather points to something of genuine philosophical significance. The distinction between these two linguistic forms captures a distinction between two concepts of authority, and it captures something essential about the distinction between them. That is, my hypothesis is that there are two formally distinct concepts of authority and that one of them is relational in a way in which the other one isn’t.
However, the bits of philosophical discourse just quoted slip back and forth between the two linguistic forms with nary a ripple. In all these instances, what seems to be at play is the relational concept of authority, and so the concept properly captured by talk of one person’s having authority over another, yet the philosophers in question seem comfortable speaking of this very kind of authority in the language appropriate to the other, i.e. that of someone’s being an authority in something. To my ears, there is therefore something off in all these instances, in the same way in which there would be something off if we kept speaking of this or that person as “a sister” when what we mean is that the person is someone’s sibling, not that she is a member of some Catholic order or the like.

Just as I suspect that the difference between the two linguistic forms in which the term “authority” figures matters philosophically, I also suspect that the inclination to ride roughshod over it as exemplified in these passages points to a (more or less implicit) philosophical preconception rather than merely to stylistic inattention. Philosophers working on authority—including the ones quoted above—generally agree that there is a distinction between two kinds of authority, which they tend to refer to as “theoretical” and “practical” authority. They also tend to agree that the two linguistic forms in question are proper to these two kinds of authority respectively: in the case of theoretical authority we tend to speak of someone’s being an authority in something, whereas in the case of practical authority we say that someone has authority over another.

However, many of these philosophers also accept an account of this distinction on which the formal difference suggested by the distinction in linguistic form disappears from view. According to this account, the difference between theoretical and practical authority amounts to a substantive difference in the sorts of reasons in terms of which we describe them. In particular, theoretical authority concerns theoretical reasons, i.e. reasons for belief, whereas practical authority has to do with practical reasons, i.e. reasons for action, or so it is assumed. According to this conception of
the distinction between theoretical and practical authority, their formal structure is therefore identical. It is just that this structure applies to a different substance in the two cases. However, this means that the difference in the way we deploy the term authority—i.e. the difference in speaking of someone’s “being an authority” vs. speaking of their “having authority over another”—has to amount to a mere linguistic quirk without any real philosophical significance. The linguistic practice in question is therefore at best harmless and at worst a red herring. Hence the comfort in, or even pressure towards, sliding between speaking of this or that person’s being an authority on the one hand and of her having authority over another on the other.

Two of the three objectives of this dissertation are now on the table. The first is to spell out what I take to be mistaken about the account just sketched. The second is to provide a better account of the distinction between theoretical and practical authority, one that does justice to the difference in our ordinary discourse and so dissolves the discontent from which I departed. However, the account of the distinction between theoretical and practical authority I defend here has significant implications for political philosophy. The third objective is to address these implications.¹

Having set out the motivation underlying the account of authority defended here, let me turn to the normative and methodological assumptions on which it turns. Let me start with the observation that the concept of authority is a normative concept. Any account of the concept of authority has to make reference to some normative idea or other. And indeed, authority is standardly understood as a normative power of a particular kind, namely the power to create preemptive reasons for another. Note that the account of the distinction between theoretical and practical authority in terms of the distinction

¹ I will stick to speaking of this distinction as the distinction between theoretical and practical authority, for three reasons. First, the terminology provides for a convenient and familiar shorthand. Second, I take it that I am after the same distinction as the philosophers just mentioned. Third, I believe that what is more fundamentally at stake here is in part what the distinction between theoretical and practical reason amounts to.
between reasons for belief and reasons for action sketched a moment ago combines nicely with this account of the concept of authority. When we put the two together, we end up with the idea that theoretical authority is the power to create preemptive reasons for belief whereas practical authority is the power to create preemptive reasons for action. I suspect that at least some of the theoretical appeal of accounting for the distinction between theoretical and practical authority in terms of the distinction between theoretical and practical reasons resides precisely in the philosophical neatness of this picture.

I have no quarrel with the terms in which the standard account proposes to understand the idea of authority—i.e. the idea that authority amounts to a normative power and that this power must be understood in terms of the notion of preemption—as such. The trouble arises once this account is combined with the distinction between theoretical and practical reasons in the manner just described. Once the distinction between theoretical and practical authority is understood along these lines, the formal difference to which our linguistic practices point is hidden from view. The only thing that remains visible is a single structure—the power to create preemptive reasons for others—which is then filled with theoretical or practical content, respectively.

Rather than starting with some substantive distinction between theoretical and practical reasons or the like, I take Hobbes's well-known distinction between counsel and command to offer a more promising starting point for a proper account of the distinction between theoretical and practical authority. Hobbes describes counsel as an “instruction” the reason for compliance with which derives “from the matter itself” and command as an instruction the reason for compliance with which derives “from the will of the instructor” (1998, 153 (chap. 14.1), emphases removed).2 I find

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2 The parenthesized appendages to references to On the Citizen and the Leviathan refer to the chapters in the original works.
Hobbes’s distinction promising because it seems to point to a normative asymmetry that corresponds precisely to the linguistic asymmetry mentioned above. Like the distinction between speaking of someone’s being an authority in something and speaking of someone’s having authority over another, Hobbes’s distinction between counsel and command turns on a difference in the number of parties to which the two concepts make reference. The addressee makes an appearance in the addressee’s reason for obedience only in the case of command (“the will of the instructor”), not in the case of counsel (“the matter itself”). This suggests that there is a sense in which counsel is monadic whereas command is relational on the Hobbesian picture.

I am taking a second cue from the Hobbes here. Hobbes’s distinction is a distinction between two forms of address. My own account of the distinction between theoretical and practical authority is “address-dependent” in a similar sense. That is, I consider the two kinds of authority under the aspect of their exercise or deployment in interpersonal address. Rather than asking under what conditions one person is in fact an authority in some area of expertise or in fact has (de jure) authority over another in some domain and only subsequently explaining authoritative interpersonal address in these terms, I start by asking what addressor and addressee of authoritative acts of address of either variety have to take to be true. In deference to Hobbes, I will call these two forms of address “counsel” and “command.”

More specifically, I start by asking what the parties to an act of counsel or command have to take to be the case normatively speaking if the exchange is supposed to “get off the ground.” What rights, duties, and reasons do the parties to an act of authoritative address have to take themselves to have if the act of address is to be what it is? In other words, my primary interest concerns what
following Stephen Darwall I will call the “normative felicity conditions” of exercises of counsel or command.

Why take this second cue from Hobbes? Why not start with the question as to when someone is in fact a (de jure) authority in something or in fact has authority over others and treat the question how the parties conceive of themselves as explanatorily downstream? I believe that, like any form of genuine interaction, counsel and command depend on what might be called “shared self-understanding.” I can be blocking your view without either of us being conscious that this is what is going on. In this sense, blocking someone’s view does not constitute genuine interaction. However, you and I cannot have a conversation without its being the case that we jointly understand ourselves to be engaged in one. What we take ourselves to be doing is therefore constitutive of what we are in fact doing. This is why I give explanatory pride of place to the parties’ normative self-understanding as opposed to what is in fact normatively the case.4

With these preparatory remarks in place, let me provide a brief overview of my account. I propose to understand the distinction between counsel and command—again understood as the forms of address proper to theoretical and practical authority, respectively—in terms of two dimensions along which their normative felicity conditions differ. The first of these dimensions might be explained by reference to Hobbes’s understanding of the distinction between counsel and

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3 The notion of a felicity condition originally derives from J. L. Austin’s How to Do Things with Words (1975, 14).
4 Note that my account of authority resembles H. L. A. Hart’s account of law in The Concept of Law (1994) on this count. According to Hart, where earlier legal positivists such as John Austin and the Scandinavian Legal Realists go wrong is in their purely “external” understanding of what a social rule is. A social rule as Austin and the Scandinavian Legal Realists have it amounts to a mere prediction of the behavior of some social group. On their view, the rule exists if the prediction it makes about the behavior of the group is sufficiently accurate. Hart on the other hand argues that we cannot make sense of the idea of a social rule without reference to what he calls its “internal aspect” (1994, 56), i.e. the fact that the rule is normative for those who take themselves to be subject to it. In other words, for someone to take herself to be subject to a rule is not merely for her to think that the rule constitutes an accurate description of what she in fact does but rather for her to take herself to be bound by it. A social rule exists only when the members of the social group whose rule it is relate to the rule in these self-conscious normative terms, at least for the most part. Like my account of authority, Hart’s account of a social rule—and by extension of law as a (particularly complex) system of social rules—thus ascribes explanatory priority to the relevant parties’ normative self-understanding.
command as discussed above. According to Hobbes, the distinction between counsel and command turns on a distinction between two kinds of normative source, namely “the matter itself” and “the will of the instructor.” Similarly, my suggestion is that the first of the two distinctions between counsel and command is that the former is a “transmissive” and the latter a “productive” form of address. In the case of counsel, both addressor and addressee take the act of address to merely transmit to the addressee normative force that exists independently of the act of address. In the case of command on the other hand, both parties to the act of address take the normative force to which the addressee is subject to only come into existence through the very act of address.

The second dimension concerns the kind of normative force—and so the kind of preemptive power—that is at play in either act of address. (As I said above, my reservations about the standard account of authority don’t concern its appeal to the idea of a preemptive normative power as such but rather the particular way in which we cash out these notions.) In the case of theoretical authority, both addressor and addressee presuppose that the former’s verdict reflects the facts about the subject matter at hand better and more fully than the latter’s. It might therefore be said that the addressor’s verdict is taken by both parties to encompass the addressee’s own verdict regarding matter at hand. If the addressee accepts the addressor’s verdict as encompassing her own in this sense, however, then the addressor’s verdict won’t merely count as one pro tanto consideration among all the others for her. Rather, it will replace her own verdict altogether, at least insofar as reason has decisive influence on her. This, then, is the sense in which counsel as the form of address proper to theoretical authority is preemptive and the sense in which the addressor might be said to have normative power vis-à-vis the addressee.

Felicitous command on the other hand is preemptive for its addressee in the sense that both addressor and addressee take the former to have the power—in the normative sense of an
entitlement—to determine the latter’s will. The idea of a normative power so understood is therefore irreducible in explaining the normative structure of command on my view. In particular, its normative significance cannot be reduced to the comparative merits of the content of the addressee’s command vis-à-vis the addressee’s own powers of reasoning or the like, as was the case with counsel. Note that this is another way of making a point already made above, i.e. that command is relational in a way in which counsel is not.

If counsel and command differ along two dimensions, it follows that there is conceptual space for two additional forms of interpersonal address, each of which resembles counsel in one respect and command in the other. I argue that what I call “testimony” and “request” fill these slots. Testimony shares the “transmissive” nature of counsel. In giving counsel and testimony alike, the addressee refers to something whose existence does not depend on the act of address itself. At the same time, the giving and accepting of testimony operates in the normative register of command rather than counsel. In a felicitous case of testimony, the addressee takes herself to be entitled to being believed and the addressee in believing the addressee acts on her recognition of the addressee’s entitlement. Request on the other hand is “creative” like command in the sense that in the successful case the request is issued and taken up as its own source of normative force: the requestee does what the requester asks of her because of the request itself. At the same time, it is internal to the idea of request that the requester doesn’t take herself to have the right that the requestee do the thing requested, so in this sense request is unlike command and like counsel. As I put it, the requester but not the commander grants her addressee “discretion” as to what to do. Furthermore, it is an internal standard of request that the requester adjust her request so as to create a “harmony of ends” between the two parties. A harmony of ends is not the same as the “encompassing” relation internal to counsel; this is why requesting something does not qualify as an exercise of authority,
unlike counsel. However, a harmony of ends resembles the encompassing relation in that neither request nor counsel are meant to figure as merely one *pro tanto* consideration among others in the addressee’s reasoning.

My account of practical authority in terms of the normative felicity conditions of command provides for what I think is an intriguing interpretation of a time-honored notion in political philosophy, i.e. the thought that we are each other’s “natural equals.” On the reading to which my account of command gives rise, we are naturally equal to one another in the sense that none of us naturally has normative power over others of the kind presupposed in the felicitous exercise of command. Any such exercise of power needs to make reference to an “artificial”—that is, institutional—order. In other words, the normative significance of political society can be developed out of the normative felicity conditions of a particular form of interpersonal address, namely command.

I believe that this interpretation squares well with Kant’s political philosophy as set out in the *Doctrine of Right*. Kant’s point of departure is the idea that “the only original right belonging to man by virtue of his humanity” is the right to “freedom (independence from being constrained by another’s choice)” (1999b, 393 (6:237), emphasis in original). Freedom understood as mutual independence is therefore the normative principle that structures our natural relations, according to Kant. However, what is presupposed by command as a normative felicity condition is that the commandee is precisely *not* independent of the commander, given that the commandee’s will is taken by both parties to fall within the commander’s power. Kant’s claim that the right to freedom is an—indeed, the one—“original right” might therefore be interpreted as the claim that there is no such

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5 The parenthesized appendages to references to Kant refer to the pagination in the *Akademie* edition.
thing as normatively felicitous command in the state of nature, that is, outside of some institutional order.

However, Kant also argues that there is a duty to exit the state of nature and enter a “rightful condition,” that is, a system of public positive laws. The duty to exit the state of nature is internally related to Kant’s claim that relations of right hold only “provisionally” in the state of nature. However, Kant’s understanding of the duty to exit the state of nature and the provisionality of our natural relations of right on which it turns is open to misunderstanding. The duty to leave the state of nature is not a duty with respect to which conformity and violation are equally coherent options. By the same token, the state of nature does not represent a fully coherent (albeit morally defective) state of affairs. Rather, the idea of provisionality suggests that the state of nature contains what might be called a “practical contradiction”: as persons who conceive of themselves as merely one person among others occupying the same space, we have to think of ourselves as standing in conclusive relations of right with others; yet in the absence of a rightful condition we cannot.

The moral defectiveness of the state of nature so interpreted may once again be interpreted in address-dependent terms. From the address-dependent interpretation of our natural moral equality just sketched it follows that a state of nature in which everyone respects everyone else as their moral equal would have to be one in which no one takes herself to be entitled to command anyone else. The only morally possible form of interaction would take the form of request. The state of nature would therefore have to amount to what I call a “state of pure request” on this view. However, in granting her addressee discretion the requester ascribes to her something to which she (the requestee) is entitled. As such, the requester ascribes to the requestee a domain or sphere within which she (the requestee) has power over others. In a slogan, then, the possibility of request presupposes the possibility of command. A state of pure request is therefore an impossibility. The
only morally possible state of nature would therefore be one in which there is no interaction at all. Incidentally, this is precisely the condition under which Kant takes the duty to exit the state of nature to apply: “when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition” (1999b, 451–2 (6:307), emphasis added). The parallel between Kant’s case and my own here therefore speaks in favor of my case for understanding both as attempts at a relational interpretation of the idea that we are each other’s natural equals.

Let me now provide a brief outline of the individual chapters that make up this dissertation. The topic of Chapter 1 is the debate between Darwall and Joseph Raz about the concept of practical authority. In two recent papers, Darwall criticizes Raz’s “service conception” of authority for failing to capture the relational or (as Darwall puts it) “second-personal” quality of practical authority. I argue that Darwall’s larger case against Raz is sound. However, in the second paper Darwall frames his objection to Raz in terms of the claim that the notion of a preemptive reason is already second-personal and so something to which Raz is not entitled. This, I argue, is painting with too broad a brush, since it conflates what I called the distinction between “encompassing” and “determining” preemption above, of which only the latter is relational and as such proper to practical authority. The purpose of Chapter 1 is therefore to establish preemption as the concept through which to understand the idea of authority and to motivate the distinction between these

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6 More generally, there is much kinship between Darwall’s second-personal theory of moral obligation as articulated in his The Second-Person Standpoint (2006) and subsequent writings (see in particular his two essay volumes Morality, Authority, and Law: Essays in Second-Personal Ethics I (2013d) and History, Honor, and Relationships: Essays in Second-Personal Ethics II (2013e)) and my own conception of authority. Apart from our shared preoccupation with the normative felicity conditions of particular forms of interpersonal address, there is the fact that the idea of authority is front and center in Darwall’s account. For Darwall, the concept of practical authority is one member of a “circle of interdefinable, irreducibly second-personal concepts” (2009, 153). Moreover, Darwall shares not only my view that there is a formal distinction between theoretical and practical authority, but also my take on this distinction in terms of the distinction between monadic and relational normativity, in that the concept of theoretical authority is not supposed to count as second-personal in his sense. It is therefore no coincidence that he also frequently invokes Hobbes’s distinction between counsel and command as suggestive of his own concerns.
two kinds of preemption with a view to explaining the difference between theoretical and practical authority.

In Chapter 2, I turn to Darwall’s second-personal account of moral obligation. A number of philosophers have puzzled over Darwall’s claim that moral obligation depends on the authority we have over one another. Most philosophers working on authority seem comfortable with the idea that one person might be creating reasons for another ex nvo in what they view as extra-moral contexts. For example, the sergeant who commands her platoon to fall in thereby seems to many to in fact create a reason for them to do so through her very act of command. However, specifically moral obligation does not seem to depend on anyone’s actual command for its existence. For instance, my moral obligation not to step on your foot does not seem to depend on your, or anyone else’s, actually telling me not to do so. Darwall agrees that what we are morally obligated to do is not a matter of what others in fact command us to do. Instead, we are morally obligated to do what the “moral community” commands us to do on Darwall’s view, where the moral community has to be conceived as an “idea of reason” along the lines of Kant’s kingdom of ends. However, it is unclear how appeal to the moral community so understood is supposed to give distinctive content to the idea that moral obligation is a matter of the authority you and I have over each other, rather than amounting to a mere metaphor for whatever we are morally obligated to do on independent grounds. The solution to this puzzle is implicit in Darwall’s own idea that morality constitutes the normative felicity conditions of command, or so I argue. Moral obligation has to be understood not in terms of a particular normative content, which then may or may not enter into this or that actual act of command, but rather as the normative form under which it is possible for one person to command another in the first place. By the same token, the distinction between moral and extra-moral instances of command cannot be understood in the way ordinarily suggested, since all
instances of command are moral in the sense that they share the normative felicity conditions that make up Darwall's second-person standpoint.

In Chapter 3, I spell out my account of the distinction theoretical and practical authority. I start by discussing three rival accounts, the “belief–action” account, the “reason–duty” account, and the “transmission–creation” account. The belief–action account, which corresponds to what I called the “standard account” of the distinction between theoretical and practical authority above, fails to capture the normative asymmetry to which our linguistic practices—“being an authority” vs. “having authority over another”—give expression. The reason–duty account, according to which the distinction between theoretical and practical authority must be understood in terms of the distinction between reasons and duties, either collapses into the belief–action account or else fails to explain what the distinction on which it turns amounts to. I then turn to a third account, the “transmission–creation account,” which has it that exercises of theoretical authority merely transmit whereas exercises of practical authority create the reasons that apply to their addressees. I argue that the transmission–creation account is on the right track as far as the role of the addressee in exercises of theoretical and practical authority is concerned but that it fails to capture the difference in the addressee’s normative position. I then propose my own, two-dimensional account of the distinction between theoretical and practical authority, as sketched above. In doing so I also introduce testimony and request as the two forms of interpersonal address for which my account of the distinction between theoretical and practical authority creates conceptual space.

In Chapter 4, I expand on the normative significance of the distinction between two of the forms of address discussed in Chapter 3, i.e. request and command. Request differs from command in that the requester grants the requestee discretion as to whether to do the thing requested, whereas the addressor of a command grants her addressee no discretion of this sort. My starting point is to
interpret the idea of discretion on which the distinction turns in terms of Aristotle’s distinction between wish and choice. Like choice in Aristotle’s sense, command presupposes that the commandee’s agency with respect to the thing commanded lies within the commander’s power, here understood in the normative sense of an entitlement that the commander takes herself to have against the commandee. However, to take something to be within one’s power is to treat it as a mere means in the sense at play in the Formula of Humanity of Kant’s Categorical Imperative. The reference to the Formula of Humanity provides a clue to the normative significance of the distinction between request and command. As already mentioned, my suggestion is to understand the idea that we are each other’s natural equals in address-dependent terms: we are each other’s natural equals in the sense that none of us gets to command anyone else “naturally,” that is, outside the “stage-setting” of some institutional system. However, if to command another is to treat them as a means, the Formula of Humanity explains why command gives rise to moral scrutiny, as it were. By the same token, the Formula of Humanity also provides for a framework through which to understand how institutional structures might render command morally permissible: such structures have to make it the case that command does not treat its addressee merely as a means.

In Chapter 5, I develop an interpretation of Kant’s conception of the state of nature. I do so by way of defending Kant against two recent criticisms, A. John Simmons’s case in “Democratic Authority and the Boundary Problem” (2013) and Michael Thompson’s puzzlement in “What is it to Wrong Someone? A Puzzle about Justice” (2004). I argue that they both fail to give Kant’s claim that relations of right are merely provisional in the state of nature its due, if in interestingly different ways. Neither of them acknowledges the sense in which a refusal to exit the state of nature is practically self-defeating, in much the same way in which Kant conceives of actions that fail the Categorical Imperative as practically self-defeating. By the same token, both lines of objections rest
on the presupposition that morality is merely one domain of practical normativity among others, whereas Kant’s account of right rests precisely on a rejection of this thought. In this respect, my reading of Kant’s account of right is analogous to my interpretation of Darwall’s second-personal account of moral obligation, since the latter also turns on a rejection of the idea that moral and extra-moral forms of second-personal address are straightforwardly on a par with one another.

To sum up. The standard account of authority revolves around the idea that authority consists in the power to create preemptive reasons for another. The distinction between theoretical and practical authority is then commonly understood in terms of a substantive distinction between theoretical and practical reasons. My own account instead turns on the distinction between two forms of preemption, which I develop out of a review of the debate between Darwall and Raz over the concept of practical authority (Chapter 1), and the distinction between merely transmitting and creating normative force for another, which I develop by way of discussing a frequently raised objection against Darwall’s second-personal account of moral obligation (Chapter 2). These distinctions give rise to a total of four forms of interpersonal address: counsel, testimony, request, and command, of which the first and the last are the forms of address internal to theoretical and practical authority, respectively (Chapter 3). I elaborate on the distinction between the latter two of these forms of address, request and command, arguing that command bears special justificatory burdens vis-à-vis request, which I argue provides for an address-dependent interpretation of the notion that we are each other’s equals (Chapter 4). I then bring Kant’s political philosophy to bear on my account by arguing that there are significant parallels between his account of right and my account of command (Chapter 5).
Chapter 1: Two Concepts of Preemption: Notes on the Raz–Darwall Debate

1.1 Introduction

The distinction between counsel and command figures in two of Thomas Hobbes’s major works, *On the Citizen* and the *Leviathan*. In both, Hobbes suggests that the distinction depends on a difference in the *source* of their respective normative force. As he puts it in *On the Citizen*, “**Counsel** is an *instruction* or *precept* [praecptum] in which the reason for following it is drawn from the matter itself. But a **command** is an *instruction* in which the reason for following it is drawn from the will of the *instructor*” (1998, 153 (chap. 14.1, emphases in original)). In the *Leviathan*, Hobbes infers that the normative force of command therefore derives from the good of the commander: “From this it followeth manifestly, that he that Commandeth, pretendeth thereby his own Benefit: For the reason of his Command is his own Will onely, and the proper object of every mans Will, is some Good to himselfe.” Counsel qua counsel on the other hand has the good of the counselee as its object: “He that giveth Counsell, pretendeth onely (whatsoever he intendeth) the good of him, to whom he giveth it” (1996, 176 (chap. XXV)).

There is a striking contrast on this particular count between the Hobbesian picture of command and Joseph Raz’s “service conception” of authority. According to Raz, what gives (person) *A* authority over (person) *B*—and so the entitlement to command *B*—is the service that *A* thereby...
provides B. On Raz’s view, A’s authority over B gives the latter what might be called “normative priority” over the former. As Raz puts it, “the function of authorities…is to serve the governed” (1986, 56). All of this appears to run directly contrary to Hobbes’s description of the normative structure of command in the *Leviathan*. Hence, if the Hobbesian picture of command as having the good of the commander as its object lends itself to the (real or perceived) authoritarian thrust of his political philosophy at large, Raz’s account of authority by contrast holds out the promise of a more “democratic” theory of the state.

It is likely that its anti-authoritarian promise explains at least in part how the service conception has come to acquire a status close to the one Robert Nozick in *Anarchy, State and Utopia* ascribes to John Rawls’s theory of justice, justice as fairness: those writing on the idea of authority must either work within Raz’s theory or explain why not (see (1974, 183)). Nozick himself of course does offer an explanation for why he rejects justice as fairness, and perhaps still the most influential one at that, at least judging from the median “Political Philosophy 101” syllabus (see (1974, 183–231)). It is therefore perhaps not completely out of place to describe Stephen Darwall as the Robert Nozick to Joseph Raz’s John Rawls. In two recent articles, “Authority and Second-Personal Reasons for Acting” (2009) and “Authority and Reasons, Exclusionary and Second-Personal” (2010a), Darwall mounts what is arguably the most sustained criticism of the service conception to date.

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8 The appearance might be just that, an appearance. It is actually not obvious that the difference between Raz and Hobbes runs all that deep here. After all, on Hobbes’s account the sovereign also provides a rational benefit to the governed, namely exit from the state of nature.
9 See Rawls’s *A Theory of Justice* (1999a).
10 Here is the original quote: “Political philosophers now must either work within Rawls’ theory or explain why not.”
11 There is a third paper in which Darwall criticizes the service conception, “Authority, Accountability, and Preemption” (2011). However, since that paper covers essentially the same ground as “Authority and Reasons, Exclusionary and Second-Personal,” I will not discuss it separately.
12 I should clarify that the analogy I draw between Darwall and Nozick here goes no further than this. While my sympathies in the Raz–Darwall debate rest largely with Darwall, I believe that Nozick’s critique of Rawls is in essence mistaken.
In this chapter I examine Darwall’s two arguments against Raz and Raz’s reply to Darwall. I argue that Darwall’s first criticism succeeds and Raz’s reply fails but that Darwall’s second criticism suffers from a failure to distinguish two senses in which the concept of preemption might be understood. While both Raz and Darwall hold that the concept of practical authority has to be understood in terms of the idea of a preemptive reason, they differ fundamentally in how they conceive of the notion of preemption. Raz’s argument presupposes a version of what I call “encompassing” preemption. Darwall on the other hand understands preemption in terms of what I refer to as a “determining” conception of preemption. Since Darwall’s second criticism of Raz presupposes his own, determining conception of preemption, it fails to get a grip on Raz.

I will proceed as follows. In §1.2, I introduce the service conception of authority more thoroughly. In §1.3, I summarize Darwall’s first criticism of Raz. In §1.4, I attempt to mount a defense on Raz’s behalf against the argument from §1.3, an attempt I take to fail on grounds internal to Raz’s own view. In §1.5, I produce a summary of Darwall’s second argument against the service conception. In §1.6, I articulate a response against Darwall’s second argument on Raz’s behalf, one better consistent with Raz’s overall position. In §1.7, I spell out the distinction between Raz’s encompassing (§1.7.1) and Darwall’s determining (§1.7.2) conception of preemption underlying the failure of Darwall’s second argument to get any purchase on Raz. §1.8 concludes.

1.2 The Service Conception of Authority

Raz has developed, defended, and refined his service conception of authority in a number of writings over the last thirty years. I will attempt to synthesize these various writings into what I take to be his present considered view.
Raz tends to state his account by appeal to three theses, the “preemption thesis,” the “normal justification thesis,” and the “dependence thesis.”\(^{13}\) I find it instructive to conceive of the division of labor between these three theses in terms of Rawls’s distinction between concept and conception. Rawls distinguishes the concept of justice from a conception of justice as follows: “The concept of justice I take to be defined…by the role of its principles in assigning rights and duties and in defining the appropriate division of social advantages. A conception of justice is an interpretation of this role” (1999a, 9). Justice as fairness—i.e. the two principles of justice chosen by the parties in the original position—thus constitutes Rawls’s favored conception of justice. Similarly, Raz’s account of authority might be understood as answering two distinct questions, the first of which concerns the concept of practical authority, the second its proper conception. First, what is it for someone to have authority over someone else? Second, under what conditions does one person have authority over someone else, in the sense specified in response to the first question? The preemption thesis contains Raz’s answer to the first question, whereas the normal justification thesis and the dependence thesis spell out his answer to the second. I will leave the dependence thesis aside for now and return to it in §1.7.1.

As Raz understands the concept of authority, for one person to have authority over another is for the former to have a certain kind of normative power over the latter, i.e. the power to “impose or revoke duties or to change their conditions of application” (1986, 24). Duties in turn are reasons of a special kind according to Raz, namely categorical preemptive\(^{14}\) reasons.\(^{15}\) A categorical reason is a

\(^{13}\) For what I take to be Raz’s most succinct statement of the service conception, see (1995, 214).

\(^{14}\) Raz has changed his terminology here a few times over the years. Most recently he has been speaking of “protected” rather than preemptive reasons. Like Darwall, I prefer to stick to the latter term, so as to display more clearly the internal relation between authority and preemption on which Raz’s account turns.

\(^{15}\) It is difficult to locate a distinct place where Raz comes out and says this, but he does explicitly agree with Leslie Green’s interpretation of his (Raz’s) view, according to which “duty-imposing norms are…categorical reasons protected by second-order ‘exclusionary’ reasons” (2010, 225), where “categorical” means “insensitive to variations in human interests and attachments” (2010, 218). According to Raz, “Green correctly states my explanation of the concept [of a duty, M.G.]” (2010, 282).
reason whose “application is not conditional on the agent’s inclinations or preferences” (2010, 291).

A preemptive reason in turn is the “systematic combination” of a (first-order) reason to do as the directive directs and a (second-order) “exclusionary reason not to act for certain reasons (for or against that act)” (1999b, 191). For one person to have authority over another is thus for the former to have the power to create categorical preemptive reasons for the latter in this sense on Raz’s view. This in turn is precisely what the preemption thesis says. According to the preemption thesis, “The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should replace some of them” (1995, 214). However, for one reason to exclude other reasons just is for the former not merely to be added to the latter but instead to replace them.

Note that, according to Raz, one person’s having the power to create preemptive reasons for another is tantamount to the former’s having the right to rule over the latter, which in turn is correlated with a duty on the part of the latter to obey the former. As Raz puts it, “The obligation to obey is an obligation to obey if and when the authority commands, and this is the same as a power or capacity in the authority to issue valid or binding directives” (1986, 24). Authority for Raz is thus something conceptually distinct from, and normatively more exalted than, the entitlement to causally affect others or to justifiably use coercion against them. A person’s entitlement to merely affect others causally, or even her entitlement to coerce them, does not entail any obligations on the latter’s part, and a fortiori no obligation to obey her (see (1986, 23–8)). For example, “My neighbour can stop me from growing tall trees in my garden by threatening to burn rubbish by my border. He, therefore, has some power over me but no authority” (1986, 24). Similarly, “I do not exercise authority over people afflicted with dangerous diseases if I knock them out and lock them up to protect the public, even though I am, in the assumed circumstances, justified in doing so” (1986, 25).
The normal justification thesis in turn might be said to constitute the heart of the service conception, since it articulates the nature of the service that those in authority over others need to provide them in order to count as in fact having authority over them. The normal justification thesis says that

the normal and primary way to establish that a person should be acknowledged to have authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding, and tries to follow them, than if he tries to follow the reasons which apply to him directly. (1995, 214)

A’s command thus need not benefit B in the narrow sense of advancing B’s self-regarding interests or the like in order to count as serving B according to Raz. Instead, if A is to have authority over B, then B must be doing better at complying with her (B’s) reasons more generally conceived by way of her compliance with A’s command than she otherwise would; that is, whether those reasons be prudential, moral, or of any other kind. A’s authority over B thus might be said to be grounded in the rational benefit with which A’s exercise of authority provides B according to the service conception, if “rational” is understood here as “responding properly to one’s reasons.”

Here is an illustration of how the service conception is meant to work. Suppose that we have independent reason to provide the most effective possible assistance to the poor. Suppose further that a system of tax-based public poverty relief is more effective at assisting the poor than uncoordinated private acts of charity. Hence, we do better at complying with the independent reasons that apply to us if a system of this sort is in place. However, for a tax-based public poverty relief system to be in place just is for citizens to treat the tax code as the source of categorical

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16 This is where there might be a difference to Hobbes then, since in Hobbes’s case the “service” provided by the sovereign is measured by the subjects’ self-regarding interests, in particular their interest in their own survival. See also footnote 8.
preemptive reasons. It follows that the tax code constitutes a source of categorical preemptive reasons for us.

More precisely, what follows is that the tax code is a source of categorical preemptive reasons for us as far as its role in providing the most effective possible assistance to the poor is concerned. Nothing has thereby been said about the other purposes served by the tax code, which we may have no independent reason to pursue. The service conception therefore lends itself to a “checkered” conception of political obligation. As Raz puts it, “The non-excluded reasons and the grounds for challenging an authority’s directives vary from case to case. They determine the conditions of legitimacy of the authority and the limits of its rightful power” (1986, 46). Note that the “democratic” appeal of the service conception is once again on display here: which exercises of political authority are legitimate is a matter of the reasons that apply to its citizens, rather than the reasons that apply to those who exercise authority over them.

1.3 Darwall’s First Argument

For the last ten or so years, Darwall has been exploring the structure of what he calls the “second-person standpoint.” According to Darwall, the second-person standpoint is “the perspective you and I take up when we make and acknowledge claims on one another’s conduct and will” (2006, 3). I will discuss Darwall’s second-personal conception of moral obligation in greater detail in §1.7.2 as well as Chapter 2. What matters for present purposes is that in discussing the second-person

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17 This point relates to the parallel I drew in the Introduction between Hart’s account and mine. Like Hart, Raz holds that a legal system depends for its existence on the normative attitudes of its subjects. In other words, Raz agrees with Hart in rejecting a naïve legal positivism of the sort that conceives of the idea of a legal system in terms of a merely external description of certain behavioral regularities.

standpoint Darwall frequently makes reference to the idea of practical authority. For instance, he says that “We have an implicit commitment to norms of respect and ‘second-personal authority’ (the authority to address claims, demands, and expectations) that it can take reflection on cases where these are transgressed to appreciate” (2006, x, emphasis added). Or, “What makes a reason second-personal is that it is grounded in (de jure) authority relations that an addressee takes to hold between him and his addressee” (2006, 4, emphasis added).

Raz’s service conception on the other hand makes no reference to anything like the second-person standpoint. Darwall therefore considers the service conception to pose a “challenge” (2009, 134) to his own, second-personal conception of authority. After all, if the service conception succeeds, then the idea of practical authority can be made sense of without reference to the second person, pace Darwall. The task Darwall sets himself in the two papers mentioned in §1.1 is therefore to demonstrate that the service conception in fact fails to capture the idea of practical authority. Darwall’s ulterior purpose is to thereby shore up the case for his own, second-personal conception of practical authority. However, his case against the service conception is of interest independently of his second-personal take on practical authority, which in any case is more charitably understood as the conclusion rather than the premise of his argument. I will therefore refrain from referring to the idea of the second person in recapitulating Darwall’s critique.

In the first of these papers, “Authority and Second-Personal Reasons for Acting,” Darwall ascribes to Raz the following three theses.\(^{19}\)

(I) If \(B\) would do better in complying with independently existing reasons were \(B\) to treat \(A\)’s directives as preemptive reasons, then \(B\) has sufficient reason so to treat \(A\)’s directives.

(II) If \(B\) would do better in complying with independently existing reasons were \(B\) to treat \(A\)’s directives as preemptive reasons, then \(A\)’s directives actually are such preemptive reasons for \(B\).

\(^{19}\)The second paper, “Authority and Reasons: Exclusionary and Second-Personal,” contains a similar list (see (2010a, 269)).

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(III) If \( B \) would do better in complying with independently existing reasons were to treat \( A \)'s directives as preemptive reasons, then \( A \) has authority with respect to \( B \). (Normal justification thesis.) (2009, 150)

While Darwall rejects all three theses, he accepts thesis (I) *arguendo* and instead limits himself to discussing the latter two, thesis (II) in “Authority and Reasons: Exclusionary and Second-Personal” and thesis (III) in “Authority and Second-Personal Reasons for Acting.”

In both cases, Darwall’s case turns on an argument from what is known as the “wrong kind of reason” problem. The term derives from Peter Strawson’s argument against “consequentialist” justifications of our “reactive” practices (i.e. the practice of responding with resentment, anger, indignation, gratitude, and so on, to certain behaviors) in his “Freedom and Resentment” (2008). According to a consequentialist theory of this sort, these practices are justified by appeal to their morally desirable consequences. For example, a consequentialist would justify the practice of responding with resentment to perceived slights because it (arguably) brings about the morally desirable consequence of reducing the occurrence of slights. According to Strawson, however, “this is not a sufficient basis, it is not even the right *sort* of basis, for these practices as we understand them” (2008, 4, emphasis in original). The right sort of basis would be one that accounts for the *internal* appropriateness (or lack thereof) of our reactive attitudes, not merely their external utility. Such an account would therefore have to make irreducible reference to notions such as culpability, incapacity, negligence, etc.; in other words: the very notions in terms of which the participants in these practices make sense of what they are “up to.”

In “Authority and Second-Personal Reasons for Acting,” Darwall argues that a parallel objection applies to thesis (III) above. According to Darwall, the fact that \( B \)'s acting as though \( A \) has authority over her assists \( B \) in doing better at doing what she has reason to do is the wrong sort of basis for
ascribing A actual (de jure) authority over B. By Raz’s own lights, A’s having authority over B entails a
right on A’s part against B’s obedience and a duty on B’s part to A to obey her. However, the
fact that B does better at doing what she has reason to do when she obeys A is the wrong sort of
basis for, and so could not possibly explain, a relation of authority so conceived, in the same way in
which the utility of our reactive practices could not possibly explain their internal normative logic.
As Kenneth Einar Himma puts the point pithily in the title of a paper of his on the service
conception, “just ’cause you’re smarter than me doesn’t give you a right to tell me what to do”
(2007).

Darwall appropriates an example of Raz’s to illustrate the point (2009, 151). Suppose that John
is an expert in Chinese cooking, and suppose that I have reason to cook a tasty Chinese meal.
Presumably I would do better at conforming to her reason to cook a tasty Chinese meal if I treated
John’s cooking instructions as preemptive reasons, at least supposing that John is trustworthy and
well-intentioned. By thesis (III), it follows that John has authority over me. However, it seems plain
that John doesn’t have a right against me to “rule over” me, nor do I have a duty to John to “obey”
him, yet these are the terms in which the parties to a relation of authority make sense of themselves
qua parties to an a relation of authority according to Darwall.

Raz in fact originally introduced the example by way of illustrating a similar point. What he said
there is that John “does not have authority over me because the right way to treat his advice depends
on my goals” (1986, 64). In other words, the relevant preemptive reason lacks categoricity. However,
only categorical preemptive reasons amount to duties. Since—as we saw in §1.2—one person’s exercise
of authority over another consists in the former’s creation of duties for the latter, and since John
does not create duties but merely (non-categorical) preemptive reasons for me, he doesn’t have
authority over me here even by the lights of the service conception.

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As Darwall points out, however, other putative counterexamples to the service conception are not deposed of so easily. Suppose that I have a full-blown duty (in Raz’s sense of a categorical preemptive reason) to invest my money prudently, say because I have a duty to see to my family’s financial security. Suppose that Ruth is an expert in financial matters. I would therefore do better at conforming with my duty to invest prudently if I followed Ruth’s advice. However, Ruth still does not have authority over me in the sense that she has a right against me to “rule” over me, nor do I have a duty to her to “obey” her, or so it seems. As Darwall says,

In such a case, an alleged authority would more plausibly appeal to an obligation to do as he directs. If the only way we can adequately comply with our moral obligations is to treat an alleged authority’s directives as preemptive reasons, then there seems to be a sense in which it is plausible to suppose that we would be under an obligation so to treat them. Even so, it wouldn’t follow from this that the alleged authority himself thereby acquires any authority (beyond any he might have had already) to hold others to moral demands. (2009, 151–2)

One way to understand Darwall’s case against Raz here is therefore as turning on a perceived tension between Raz’s concept and his (Raz’s) conception of practical authority. On Darwall’s own view, there is an internal relation between the concept of practical authority on the one hand and the notion of a right/duty correlate on the other. As we saw above, Raz also holds that we have to understand the concept of authority in terms of the notion of a right to rule and the correlative notion of a duty to obey. Hence, as far as the concept of authority is concerned, there seems to be significant agreement between Darwall and Raz. And indeed, Darwall himself observes that “much of what Raz says about practical authority in The Morality of Freedom aside from the normal justification thesis seems well attuned to practical authority’s second-personal character” (2009, 146). However, the antecedents of the three theses above all channel the normal justification thesis, which is the core of Raz’s conception of authority. Raz’s conception therefore does not bear out his concept of practical authority, or so Darwall might be interpreted as arguing.
1.4 Raz’s First Response

Raz expressly replies to Darwall’s critique in “On Respect, Neutrality, and Authority: A Response” (2010). The gist of his reply is directed at Darwall’s argument in “Authority and Reasons, Exclusionary and Second-Personal,” which I will discuss in the next section, and even then Raz does not defend himself in what I would consider the most perspicacious manner. Both here and below I will therefore focus on how Raz might reply, rather than on how he in fact replies, to Darwall’s critique as recapitulated in the preceding section.

As restated in the preceding section, Darwall’s argument in “Authority and Second-Personal Reasons for Acting” is that a facilitative relation between A’s directives and B’s compliance with her (B’s) reasons is not sufficient to account for A’s having authority over B (in the sense of A’s having the right to rule over B and B’s having a duty to obey A). However, so far we have only considered Raz’s understanding of the idea of a duty, which—as we saw above—he conceives of as a categorical preemptive reason. What we have not looked at yet is his account of the idea of a right. Hence, perhaps this is the place to look for resources in defense of the service conception against the argument from §1.3.

Raz defends a version of the “interest theory” of rights, according to which rights are grounded in some interest or other on the part of the right-holder. Here is Raz: “Definition: ‘X has a right’ if and only if X can have rights, and, other things being equal, an aspect of X’s well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty” (1986, 166, emphasis in original). Given that duties are categorical protected reasons on his view, Raz takes rights to be grounded in those interests on the part of the right-holder which ground categorical preemptive reasons for others. Those to whom the latter reasons apply are those about whom we ordinarily say
that the right-holder has a right \textit{against} them. The categorical preemptive reasons that apply to them in turn constitute the duties we ordinarily say are \textit{owed to} the right-holder.

When we add the interest theory of rights to the service conception, what we obtain is the idea that $A$'s authority over $B$ is grounded in some interest of $A$'s—namely an interest in $B$'s obedience—that is a sufficient reason for holding $B$ to be under a duty to obey $A$. However, it is unclear how this account squares with the normal justification thesis, according to which $A$'s authority over $B$ is grounded in its facilitative relation with $B$'s compliance with her ($B$'s) reasons. It is hard to see how these two grounds—i.e. $A$'s interest in $B$'s obedience on the one hand and the facilitation of $B$'s compliance with her ($B$'s) reasons on the other—could possibly amount to the same thing. Note that this point makes for a sharper and more determinate articulation of the charge that there is a tension between Raz's concept and his conception of practical authority. If Raz's concept of authority makes reference to the idea of a right to rule, and if the idea of a right to rule needs to be understood in terms of the interest theory of rights, then it follows that Raz's \textit{concept of} authority in conjunction with his conception of rights is at odds with his \textit{conception of} authority, given that the grounds the normative force of authority in its facilitative relation to the reasons that apply to those who are subject to its authority.

There is a larger significance to the internal tension within Raz's thinking about authority. As I suggested at the beginning of the chapter, much of the appeal of Raz's \textit{conception of} authority resides in its “democratic” potential. Applied to the authority of the state vis-à-vis its citizens, the normal justification thesis promises to make good on the core liberal tenet that the latter enjoy a kind of “normative priority” over the former, as I put it there. As Raz himself says in his response to Darwall, “I am more used to the idea that those in authority are accountable to their subjects than to the thought that their subjects are accountable to them” (2010, 299). However, the whole apparatus
of terms marking the concept of authority—and in particular the notion of the right to rule and the obligation to obey—all tend to ascribe “normative priority” to the bearer of authority vis-a-vis her or his subjects. Hobbes’s claim that “he that Commandeth, pretendeth thereby his own Benefit” is but one expression of this latter idea. Rather than offering an unambiguously “democratic”
alternative to the supposed Hobbesian “anti-democratic” picture of authority, then, the service
conception in fact reproduces the contrast between a democratic and an anti-democratic
understanding of authority in the form of the tension between Raz’s concept and his conception of
authority.

Raz comes closest to addressing the worry raised here in an unpublished paper, “The Possibility
of Partiality” (2008). In reply to an objection from Frances Kamm to the effect that the service
conception cannot explain how it is that the obligation to obey those in authority is owed to the
bearer of authority, Raz says that

the rights of authorities over their subjects do not derive from the interests of the people in
authority. Rather, they derive from the interests of the authority, which is to be a good authority, and
whatever helps it in that is in its interest. The whole point of the service conception is to explain the
separation between the interests of the people in authority and the authority they hold, and to
explain the latter by reference to the reasons which apply to the people under their authority. …Duty
is owed to the authority in that it arises out of the right of the authority to direct its subjects, which
right is itself in the interest of those subjects, each and every one of them. It is in a manner of
speaking a duty you owe to yourself, because—according to the service conception—the authority is
your servant, and in defying it you fail yourself. (2008, 18)

However, it is not clear how the distinction on which Raz’s reply turns here is supposed to help or
even work. The term “authority” in the contrast between “the interests of the authority” on the one
hand and “the interests of the people in authority” on the other is ambiguous. One alternative is that
the term refers to the property of someone’s having authority over someone else. Here the contrast in
question would be that between the property of having authority over others on the one hand and

\[21\] I obtained the author’s written permission to quote from this manuscript.
the bearers of the property on the other. This interpretation is suggested by the third passage, where “authority” clearly refers to the property of having authority over others. However, the property of having authority is not the sort of thing that could have any rights, yet this is what Raz claims for “the authority.”

The other alternative is that the term “authority” refers to some institution or other that is in a position of authority. Here Raz would be contrasting the institution in question with the persons who occupy this or that role within it. The references to “authority” in the third sentence would then have to be understood as references to the property of authority, which on this reading attaches to the relevant institution directly and to the persons occupying institutional roles only indirectly (namely in virtue of their occupying this or that institutional role). On the present reading, Raz is arguing that, while the persons occupying the various roles in a given institution may have private, extraconstitutional interests, the institution as such is (solely? overridingly? strongly?) interested in “being a good authority.” If we then understand the notion of “being a good authority” in terms of the sort of facilitative relation between the institution’s directives and its subjects’ reasons on which the normal justification thesis turns, Raz will have established the requisite link between his service conception and his interest theory of rights. However, the trouble with Raz’s account so interpreted is that it is unclear what justifies ascribing to the relevant institutions the interest in “being a good authority.” As it stands, Raz’s appeal here seems to amount to no more than an ad hoc device for bringing the interest theory of rights into the fold of the service conception of authority.

Raz’s appeal to the notion of an institutional interest in “being a good authority” points to another objection to the service conception (or rather, as I will argue momentarily, it points to

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22 In fact, I myself will argue for an understanding of the normative significance of institutions along these lines, in Chapter 4. I will return to this point briefly in the conclusion to the present chapter (§1.8).
another way of framing Darwall’s objection above). The normal justification thesis seems to turn on a conflation of two distinct questions. The first question is: under what conditions does one person have (de jure) authority over another? This is the question I described as the question of the correct conception of authority above. The second question is: how should a person who in fact has (de jure) authority over another act qua person who has authority over another? It has often been observed that there is a distinction between what persons are morally entitled to do and what they morally should do. In other words, the argument is that there is conceptual space for such a thing as a right to do wrong. The same distinction seems to apply here as well: there is such a thing as an objectionable or criticizable manner in which someone might exercise their authority over someone else, without its being the case that they are not entitled to doing what they are doing. Note that we might interpret Darwall’s objection from the “wrong kind of reason” problem from §1.3 in terms of the present objection. The reason why the service conception falls before the “wrong kind of reason” problem is precisely because the considerations to which the normal justification thesis appeals properly fall under the second rather than the first question and as such provide the wrong sort of basis for ascribing someone authority over someone else.

It might perhaps be argued that the two questions are in fact not separate in the way the objection has it but that there is instead an internal relation between them. An argument of this sort would presumably amount to a sort of constitutivism. On a constitutivist reading of the service conception, the normal justification thesis would serve as both the standard for ascribing someone authority over others.

23 Note that there is a third question here, namely: who should have (de jure) authority over others? It is possible that the answer to the first or second question also provides an answer to the third. For instance, it might be suggested that those should have authority over others who, when granted such authority, would in fact act as they should qua bearers of the relevant form of authority. Even if an account of this sort is correct, however, the questions at hand are still conceptually distinct.

24 Kant’s division between right and ethics contains such a distinction. See for instance his discussion in the Metaphysics of Morals (1999b, 512 (6:379)). For a more contemporary discussion, see Jeremy Waldron’s “A Right to Do Wrong” (1981).
authority over another and the standard governing the actions of the former qua bearer of authority over another, in the way that, say, according to Christine Korsgaard’s constitutivist account of action, the Categorical Imperative constitutes both the standard for ascribing agency to someone as well as the internal standard governing them qua agent. If a constitutivist reading of the normal justification thesis of this sort could be made out, then the charge that the normal justification thesis specifies the standards for what those with authority over others should do with their authority, rather than the conditions under which someone in fact has (de jure) authority over another, could be rejected as resting on a false dichotomy. Whatever its theoretical merits, however, there is not a shred of evidence in Raz’s writings warranting a constitutivist reading of the service conception of this sort, not to speak of an explicit concern with the various objections raised against constitutivism. As an interpretation of Raz’s account of authority qua Raz’s account of authority, a constitutivism of this sort is therefore a definite bridge too far.

1.5 Darwall’s Second Argument

Note that, so far, the argument has turned on an understanding of the concept of practical authority in terms of a right to rule and a correlative duty to obey. As I mentioned in §1.2, however, Raz defines the concept of authority not only in terms of a right to rule and a correlative duty to obey but also, and primarily, in terms of the power to create duties—i.e. categorical preemptive reasons—for others. Darwall’s objection in “Authority and Second-Personal Reasons for Acting”—i.e. the objection discussed in §1.3—therefore leaves it open to Raz to concede that practical authority as he (Raz) understands it in fact does not entail a right to rule and a duty to obey yet hold fast to the idea

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25 For a statement of Korsgaard’s position see her The Sources of Normativity (1996) and Self-Constitution (2009).
that practical authority is the power to create duties for others. In other words, one strategy open to Raz here is to sever the conceptual link between the power to create duties on the one hand and the right-to-rule/duty-to-obey correlate on the other and to instead hold that practical authority in fact entails only the former, not the latter, the various claims to the contrary in his own writings notwithstanding.27

In “Authority and Second-Personal Reasons for Acting” Darwall explicitly allows for this reply:

Suppose, however, that Raz were to eschew talk of obligation in this sense “all the way down,” and simply take the position that all he really means by a duty of obedience is that there are preemptive reasons for following an alleged authority’s directives. Similarly, he might hold that the latter is all that it is for someone to have practical authority in the sense in which he has in mind. If we interpret the normal justification thesis as applying to practical authority defined in this way, it seems much more plausible. But it should be clear that practical authority so defined is not a thesis that entails anything about any right to obedience or about any obligation to obey, at least as we ordinarily understand rights and obligations. So understood, the normal justification thesis is simply a thesis about preemptive reasons. (2009, 153)

Darwall’s objective in the second paper critical of the service conception mentioned above, “Authority and Reasons, Second-Personal and Exclusionary,” is precisely to close off this line of reply for Raz. In other words, Darwall here argues that thesis (II) of the three theses listed in §1.3 above is false as well.

Darwall’s case once again proceeds from the “wrong kind of reason” problem. Just as the fact that holding others responsible for their actions has socially desirable consequences is a reason of the wrong sort for our practices of assigning responsibility, the fact that B would do better at doing what she has independent reason to do if she were to treat A’s directives as creating preemptive reasons for her is a reason of the wrong sort for ascribing to A the capacity to actually create such reasons through her directives. As Darwall puts it, “Why should the fact that one has reason to

27 Note that this strategy would effectively concede that thesis (III) from §1.3 above is false, at least when the reference to the concept of authority there is understood in terms of the right to rule/the duty to obey.
regard or treat someone’s directives as creating exclusionary reasons make it the case that their directives actually do create such exclusionary reasons?” (2010a, 270)

Darwall illustrates the point with the following example. Suppose that $B$ has reason to get out of bed at a certain time but finds that ordinary alarm clocks don’t work for him. Instead, he gets himself an “authority alarm clock” whose alarm consists of an authoritative-sounding voice telling him to get up. The authority alarm clock induces in $B$ an “authority experience,” that is, the experience of being ordered out of bed by someone with authority over him, which, given his deferential personality, is effective at getting him out of bed. Given that, by hypothesis, $B$ has reason to get out of bed, he has reason to treat the alarm clock’s “verdicts” as creating a preemptive reason to get out of bed. However, Darwall argues,

it is also obvious that whatever weight the reasons $B$ might have to get out of bed at 7 a.m. and so to treat his experience as veridical, they cannot actually make his experience veridical or even bear on its accuracy. They would be completely impotent to make it the case that the alarm’s “directives” actually are legitimate or genuinely create preemptive reasons. When the alarm clock goes off and the voice speaks, $B$ has the very same reasons to get up at 7 a.m. and, by hypothesis, the same less weighty reasons to continue to lie in bed. Granted, $B$ has pragmatic reasons to respond to the alarm, on the one hand, and, on the other, not even to think about his reasons for staying in bed (since if he does consider them he is likely to act contrary to the weightier reasons and stay in bed). But this doesn’t mean that $B$ can not legitimately think about these reasons, that it is outside his discretion, or that the latter reasons have somehow been displaced, preempted, or defeated, only that he would be foolish to consider them. Clearly, the person who recorded the “authoritative voice” acquires no authority by virtue of the fact that $B$ will comply better with reasons if he treats his voiced directives as creating preemptive reasons. (2010a, 271–2)

Suppose further that the authority alarm clock eventually fails to create the requisite authority experiences in $B$. $B$ instead hires $A$ to order him out of bed every morning. $A$’s orders once again provide $B$ with the sought-after “authority experience.” $B$ therefore has reason to treat $A$’s verdicts as creating a preemptive reason to get out of bed. However, $A$ is no more able to actually create preemptive reasons for $B$ than was the authority alarm clock, or so Darwall argues. He concludes:

Although I agree with Raz that the capacity to create preemptive reasons (that is, to create exclusionary reasons not to act on reasons that would otherwise be unimpeached along with a new
reason that “displaces” or preempts the excluded reasons) is a mark of practical authority, I believe that this capacity itself requires the second-personal relation of accountability. In a slogan: “No preemptive reasons without the standing to hold accountable.” If, as I maintain, the latter can be established only within a second-personal framework, it will follow that the former requires a second-personal framework also. (2010a, 261)

1.6 Raz’s Second Response

In his official response to Darwall, “On Respect, Neutrality, and Authority: A Response,” Raz notes that Darwall’s objection is “not specifically to the claim that the normal justification thesis may give rise to preemptive reasons. Rather it is that, in itself, meeting the conditions of the normal justification thesis does not give rise to reasons of any kind” (2010, 298–299). This may seem curious, since in his official response to Darwall, Raz only concerns himself with the objection reproduced in §1.5, not the one from §1.3, and Darwall’s case in §1.5 seems to specifically turn on the service conception’s supposed failure to account for the preemptive nature of practical authority. As I understand him, however, what Raz has in mind here is that the “wrong kind of reason” objection, insofar as it makes false the conditional in thesis (II), also makes false the conditional in thesis (I). Here are the two theses again:

(I) If \( B \) would do better in complying with independently existing reasons were \( B \) to treat \( A \)'s directives as pre-emptive reasons, then \( B \) has sufficient reason so to treat \( A \)'s directives.

(II) If \( B \) would do better in complying with independently existing reasons were \( B \) to treat \( A \)'s directives as pre-emptive reasons, then \( A \)'s directives actually are such preemptive reasons for \( B \).

Darwall’s argument against (II) was that the fact that \( B \) would do better at doing what she has reason to do by treating \( A \)'s directives as creating preemptive reasons does not make it the case that \( A \)'s directives in fact create preemptive reasons for \( B \), since the former is the wrong sort of basis for the latter. However, the same line of argument would seem to make false the conditional in thesis (I) as well. If Darwall is correct in arguing that the fact that \( B \) has reason to treat \( A \)'s directives as
preemptive reasons does not make it the case that A’s directives are preemptive reasons for B, then it is not clear how it could be that the fact that B has reason to treat A’s directives as preemptive reasons makes it the case that B in fact has sufficient reason to do so. The principle on which Darwall’s argument from §1.5 seems to turn on what (paraphrasing Bernard Williams28) might be called the “‘treatment-as’ out, ‘treatment-as’ in” principle. However—Raz seems to be saying here—insofar as the “‘treatment-as’ out, ‘treatment-as’ in” principle applies to thesis (I), then it also applies to thesis (II).

In a paper entitled “The Myth of Instrumental Rationality,” Raz defends what he calls the “facilitative principle” (2005a, 6). The facilitative principle says that the normative force of a reason gets transmitted to whatever facilitates compliance with that reason. According to Raz, the facilitative principle captures what is correct about the notion of instrumental rationality. The normal justification thesis in turn amounts to nothing more than a special case of the facilitative principle, namely the one where the facilitative relation in question proceeds via compliance with authoritative directives. As Raz puts it in his response to Darwall, the authority-created reasons whose existence Darwall disputes are there by reasoning analogous (some would say identical) to that which establishes the existence of instrumental reasons: you have reason to do A, doing B (walking to the station, obeying the authority) will facilitate doing A, therefore you have reason to do B. It is more complicated to establish that the authoritative reasons are preemptive, and that was all I argued for in presenting my account of authority. But that point is not challenged by Darwall. (2010, 299)

Hence, it is the facilitative principle which warrants the transition from antecedent to consequent in theses (I) and (II) according to Raz.

Note that, if this is indeed what Raz’s response to Darwall amounts to, then Darwall has a counter-response, one which appeals to a difference in the scope of the “‘treatment-as’ operator” in

28 Williams’s own line is “obligation-out, obligation-in” (1985, 181, emphasis removed).
the two theses. The antecedent of both (I) and (II) says that what facilitates B's doing what she has reason to do is treating A's directives as preemptive reasons. By the facilitative principle, B therefore has reason to treat A's directives as preemptive reasons. However, this is only what thesis (I) says. Thesis (II) on the other hand omits reference to the idea of B's treating A's directives as preemptive reasons and instead says that those directives are in fact preemptive reasons for B. Hence, only thesis (II) runs afoul of the “treatment-as’ out, ‘treatment-as’ in” principle, not thesis (I). 

However, Raz has a comeback here too. Recall that, for Raz, to treat A's directives as creating preemptive reasons just is to “do as the directive directs and...not to act for certain reasons (for or against that act)” (1999b, 191). We can therefore reformulate the antecedent of (I) without reference to the notion of “treatment as,” as follows:

(I*) If B would do better in complying with independently existing reasons were B to (i) do as A's directives direct and (ii) not act for certain reasons (for or against that act), then B has reason to treat A's directives.

However, if we can reformulate the antecedent of (I) without reference to the notion of “treatment as,” we can do the same thing with the consequent. Hence, we can reformulate (I*) once more, as follows:

(I**) If B would do better in complying with independently existing reasons were B to (i) do as A's directives direct and (ii) not act for certain reasons (for or against that act), then B has reason to do (i) and (ii).

Since the antecedents of (I) and (II) are identical, we can do to the latter what we did to the former:

(II*) If B would do better in complying with independently existing reasons were B to (i) do as A's directives direct and (ii) not act for certain reasons (for or against that act), then A's directives actually are such preemptive reasons for B.

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29 This is supposing that Darwall grants the truth of Raz's facilitative principle, which—as suggested by the fact that he rejects all three Razian theses—he does not.

30 For the sake of simplicity, I am omitting the reference to sufficiency in the consequent here.
However, for $B$ to have preemptive reason to perform $A$’s directives just is for $B$ to have reason to (i) do as $A$’s directives direct and (ii) not act for certain reasons (for or against that act). It follows that we can reformulate the consequent of (II) as follows:

(II**) If $B$ would do better in complying with independently existing reasons were $B$ to (i) do as $A$’s directives direct and (ii) not act for certain reasons (for or against that act), then $B$ has reason to do (i) and (ii).

Note that (I**) and (II**) are identical. However, since (I**) is merely a reformulation of (I) (via (I*)) and (II**) merely a reformulation of (II) (via (II*)), it follows that, if (I) is true, then (II) is true as well, pace Darwall. In other words, once thesis (II) is properly formulated, it follows that it collapses into thesis (I). Yet—as we saw in §1.3—Darwall accepts thesis (I), at least arguendo. The argument he marshals in “Authority and Reasons, Exclusionary and Second-Personal”—i.e. the arguments discussed in §1.5—were meant to impugn thesis (II) as opposed to thesis (I). However—Raz’s reply seems to go here—since the distinction between thesis (I) and (II) collapses, Darwall’s case against (II) collapses as well.

1.7 Two Concepts of Preemption

It is not clear whether the argument I just ascribed to Raz would satisfy Darwall. Very likely he would consider the elimination of the reference to “treatment as” in the reformulation of the antecedents of the two theses to amount to a sleight of hand. However, I won’t pursue the back-and-forth between Raz and Darwall—which in any case is entirely hypothetical at this point—any further here. Instead, I want to turn my attention to what I take to be the underlying issue here, namely a profound difference in how Raz and Darwall conceive of the idea of preemption. I will

31 More precisely, pace the Darwall of the line of argument I imputed to him in the present section.
discuss Raz’s concept of preemption in §1.7.1 and turn to Darwall’s understanding of preemption in §1.7.2.

1.7.1 Raz on Preemption

Consider again the elimination of the references to the notion of a preemptive reason in transforming (I) into (I**) via (I*) respectively (II) into (II**) via (II*) in Raz’s second response as I construed it in §1.6. What permits these eliminations is Raz’s particular account of what the idea of a preemptive reason amounts to. For Raz, the difference between a preemptive and a (possibly sufficient but) non-preemptive reason is purely substantive. A preemptive reason is simply a reason with a particular content for Raz, namely a content that makes reference not merely to (first-order) facts about what the agent has reason to do but also to (second-order) facts about which reasons for which she has reason to or not act. For Raz, the particular content for Raz, namely a content that makes reference not merely to (first-order) facts about what the agent has reason to do but also to (second-order) facts about which reasons for which she has reason to or not act. For $R$ to constitute a preemptive reason for $B$ to do $Z$ just is for $R$ to constitute a reason (simpliciter) for $B$ to do $Z$-and-not-acting-for-certain-other-reasons. The latter formulation captures everything there is to capture about a preemptive reason on Raz’s view. This is why it was possible to eliminate all references to the notion of a preemptive reason in the transformations above.

From the formal continuity between preemptive and non-preemptive reasons it follows that, as a formal matter, the facilitative principle might transfer the normative force of a given underlying reason to either a non-preemptive or a preemptive reason. Suppose that some reason $R$ for doing $X$ applies to $B$. If what facilitates $B$’s doing $X$—and so her compliance with $R$—is doing $Y$, then by the facilitative principle $B$ has (non-preemptive) reason $R_1$ to do $Y$. Similarly, if what facilitates $B$’s compliance with $R$ is doing $Z$-and-not-acting-for-certain-other-reasons, then $B$ has preemptive reason $R_2$ to do $Z$. Once again, the preemptive character of $R_2$ is merely a matter of its particular content.
Since $B$ has reason $R$ to do $X$ and doing $Z$-and-not-acting-for-certain-other-reasons as a matter of substantive fact facilitates doing $X$, $B$ has reason $R_2$ to do $Z$-and-not-act-for-certain-other-reasons.

As we saw in the previous section, authoritative reasons—that is, the reasons that someone's directives create for those over whom she has authority—derive their normative force from the facilitative relation in which they stand to the reasons that independently apply to the subjects of these directives on Raz's view; this is why the normal justification thesis is merely a special case of the facilitative principle. What is “more complicated to establish” according to Raz is that authoritative reasons are preemptive, that is, reasons of the $R_2$ rather than reasons of the $R_1$ variety.

Why, in other words, does the facilitative principle take the shape of the normal justification thesis when it comes to authoritative reasons?

The answer turns on the service conception's third and as yet undiscussed thesis, the dependence thesis. According to the dependence thesis, “all authoritative directives should be based, among other factors, on reasons which apply to the subjects of those directives and which bear on the circumstances covered by the directives” (1995, 214). According to Raz, what explains the preemptiveness of authoritative directives, and so of the authoritative reasons to which these directives give rise, is their dependence on their subjects’ underlying reasons. How are we to understand the relevant sense of dependence here? When Raz says that authoritative directives are, or should be,32 “based on” their subjects’ underlying reasons, presumably what he has in mind is that the content of the former is supposed to contain or encompass the content of the latter. As Raz puts it

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32 It is not entirely clear what the force of the “should be” in Raz's formulation of the dependence thesis is supposed to be. What sort of error are those in authority committing when they fail to do so? Perhaps they cease to have authority over those whom they direct. However, this answer postpones the question. After all, how are we to understand the normative force of the threat of a loss of authority? I am unable to pursue these concerns here, except to note that they return us straight to the discussion from §1.4 surrounding Raz’s claim about the supposed interest those in authority have in “being a good authority,” and in particular the question whether the service conception needs to be understood in constitutivist terms.
elsewhere, an authoritative reason is supposed to “reflect the balance of reasons on which it depends” (1986, 41).

Crucially, note that the dependence thesis is not only supposed to explain the preemptive status of authoritative reasons, it is also supposed to determine which reasons they preempt, namely the very reasons on which they depend, i.e. their subjects’ underlying reasons. It follows that “the two features, dependence and preemptiveness, are intimately connected” (1986, 42) for Raz. The intuitive idea here seems to be that, once the normative force of the underlying reasons has been transferred onto the authoritative reasons in virtue of the fact that the latter encompass the former in the sense just specified, the relevant underlying reasons need to be discounted, on pain of skewing the balance of reasons applying to the person in question. As Raz puts it, “At the level of general justification the preempted reasons have an important role to play. But once that level has been passed and we are concerned with particular action, dependent reasons are replaced by authoritative directives. To count both as independent reasons is to be guilty of double counting” (1995, 215).

These remarks indicate that Raz subscribes to what I will call an encompassing conception of preemption. According to an encompassing conception of preemption, preemptive reasons preempt the reasons they preempt in virtue of the fact that the content of the former reflects, contains, or encompasses the content of the latter. Note that the dependence relation in question here is a substantive relation. Whether one reason encompasses another in the sense at play here is a matter of their respective content.

The trouble for Raz is that it is not clear how to square the encompassing conception of preemption as Raz deploys it with his facilitative concerns. One way to approach the worry is by asking what exactly is supposed to make authoritative directives authoritative, i.e. give their subjects reason to do-as-the-directive-says-and-not-act-for-other-reasons. Raz’s appeal to the facilitative
principle on the one hand and to the encompassing conception of preemption on the other seem to make for two answers to these questions, and it is not clear that these two answers in fact come to the same thing. The first answer—the one appealing to the facilitative principle—is that the subjects of authoritative directives do better at complying with their reasons when they (i) do as the authoritative directives directed at them say and (ii) refrain from acting for other reasons. The second answer—the one deriving from the encompassing conception—is that authoritative directives reflect, or should reflect, the reasons independently applying to their subjects and that those subjects are therefore “guilty of double counting” if they do not treat these reasons as preemptive.

Reflecting on the second answer: what does the normative force of the charge of double counting consist in on Raz’s view? How does it “get a grip on the agent”? Raz might give one of two answers to this further question, one which I will call “internal,” the other “external.” The internal answer turns on the claim that the prohibition on double counting amounts to a formal principle of practical reasoning, on a par with, say, the instrumental principle or the principle of “enkrasia” or the like. An agent who double-counts in this sense would therefore be guilty of “structural irrationality,” to use a term of Thomas Scanlon’s (see (2007a)). The term “internal answer” reflects the fact that the justification of the relevant principle is somehow intrinsic to the principle itself, or at any rate does not refer to the reasons that apply to the agent independently of the principle in question.

33 Here we encounter the concern from footnote 32, except this time from the perspective of the addressee rather than the addresser of authoritative directives. If authoritative directives should reflect their subjects’ underlying reasons, then how are we to think about a case in which they don’t? Do these directives ipso facto cease to have authority for their addressees? Again, I lack the space to pursue this concern in greater detail.

34 Roughly, the principle of enkrasia requires the avoidance of akrasia, that is, weakness of will. (For a discussion of enkrasia see (Broome 2013).)
However, an internal answer of this sort opens up a conceptual gap between the dependence thesis and the facilitative principle. After all, it might be the case that a person in fact does better at satisfying the reasons that apply to her when she does double count. For instance, it might turn out that I drive more cautiously (which, let’s assume, I have independent reason to do) if I don’t treat the traffic law (whose normative force, let’s also assume, depends on, and so encompasses, the very reasons I have for being cautious in traffic) as preemptive, but rather retain those independent reasons next to my traffic law-derived reasons in my practical reasoning. As a matter of my particular psychological make-up, I am simply more likely to drive at a safe speed when I think “The speed limit around here is 25 miles per hour and (say) the moral importance of other people’s bodily safety gives me reason to drive no faster than that” than when I merely think “The speed limit around here is 25 miles per hour.” Here I do better at complying with my independent reasons precisely by not treating authoritative directives as preemptive, and this despite the fact that these directives by hypothesis satisfy the dependence thesis. More generally, the question “Which of my underlying reasons does, or should, a given authoritative directive addressed encompass?” on the one hand and the question “Which reasons should I exclude from my deliberations to ensure my maximal success in complying with the balance of my independent reasons?” seem to be conceptually distinct for all Raz says. Pace Raz, then, dependence and preemptiveness thus don’t seem to be “intimately connected,” at least on this reading of the normative significance of the dependence thesis.

Perhaps it might be replied that by double-counting my traffic-related reasons in this fashion I fail to do justice to the balance of my underlying reasons somewhere down the line and that the force of the example is really spurious because it turns on sweeping these (possibly remote) facts under the rug. Perhaps I end up driving too slowly and so don’t accomplish all the things I have reason to accomplish in a day? Perhaps my overly cautious style of driving is keeping everyone else from
accomplishing the things they have reason to accomplish, which is something I in turn have reason to care about? Perhaps, when I am rushing someone to the hospital, I am not rushing them quickly enough on account of my overly cautious style of driving, and they die on the way, which is something I have overwhelming reason to prevent from happening? The empirical doubtfulness of these speculations aside, the problem is precisely that they are just that, empirical speculations. Once the objector grants that these are the sorts of considerations that matter for establishing the harmony between the dependence thesis and the facilitative principle, she thereby grants that any such harmony would be a mere happy coincidence and that the dependence thesis and the facilitative principle thus really are conceptually distinct, which was precisely the point of the objection.

The external answer in turn has it that the normative significance of double counting is entirely derivative of the relevant agent’s independently applicable reasons in conjunction with the facilitative principle. According to the external answer, we are supposed to refrain from taking into account our independent reasons alongside the reasons we have in virtue of the authoritative directives to which we are subject only insofar as, and because, doing so interferes with our complying with those independent reasons as best we can. With the dependence thesis thus subordinated to the facilitative principle, no conceptual gap of the above sort threatens, and Raz’s two answers to the question what the authoritativeness of authoritative directives consists in do come to the same thing. However, in that case the dependence thesis turns out to be nothing more than a piece of just-so empirical speculation about which rules of thumb governing an agent’s practical deliberations are in fact most conducive to her complying with the balance of her reasons. Yet clearly this is not how Raz himself conceives of the status of the dependence thesis. In other words, the dilemma facing Raz is that of
either giving up on a unified account of practical authority or giving up on the dependence thesis as a thesis carrying any independent normative significance.  

Note that the dilemma just raised for Raz is analogous to a well-known dilemma facing at least certain versions of rule utilitarianism. The dilemma for these versions of rule utilitarianism concerns the normative status of the rules that are supposed to be conducive to utility maximization. Either the rules possess normative significance in their own right, in which case the account in question seems to up with “two conflicting forms of moral reasoning,”36 or they do not, in which case it is unclear how rule utilitarianism is supposed to be anything more than straightforward act utilitarianism with a psychologically more sophisticated description as to how agents maximize utility. In other words, rule utilitarianism needs to explain how the relevant rules might be justified by the principle of utility yet retain sui generis normative significance, such that they don’t merely hold inssofar as and because the particular acts falling under them taken individually maximize utility.37

Indeed, Raz himself invites the comparison between rule utilitarianism and the service conception. According to Raz, rules just are preemptive reasons. Since authoritative reasons are a species of preemptive reasons, it follows that authoritative reasons are a species of rules. As Raz puts it, “Authoritative directives are often rules, and even when they are not, because they lack the required generality, the same reasoning applies to them.” Rules, Raz has it,

35 Note that the only reason the same dilemma doesn’t also apply to the facilitative principle itself is that Raz foreclosed this possibility by sheer definitional fiat. As Raz formulates the facilitative principle, we have reason to do whatever it is that facilitates compliance with our reasons. Any even slightly more determinate formulation of the facilitative principle opens up the very conceptual gap on which my argument just now turned. For instance, consider a formulation of the facilitative principle according to which we have reason to act on those reasons compliance with which facilitates compliance with our underlying reasons. Here the conceptual gap in question opens up again because, for all Raz says, it might be the case that I comply with the relevant facilitative reasons better by not acting on them but instead on some other reasons.

36 The phrase is from Scanlon’s “Contractualism and Utilitarianism” (1982, 120).

37 I believe that the distinction between the two answers matches Rawls’s distinction between practice and summary conception of rules in “Two Concepts of Rules” (1999c) and that the project I am delineating here therefore is precisely the one with which Rawls is concerned there.
mediate between deeper-level considerations and concrete decisions. They provide an intermediate level of reasons to which one appeals in normal cases where a need for a decision arises. Reasons of that level can themselves be justified by reference to the deeper concerns on which they are based. The advantage of normally proceeding through the mediation of rules is enormous. It enables a person to consider and form an opinion on the general aspects of recurrent situations in advance of their occurrence. It enables a person to achieve results which can be achieved only through an advance commitment to a whole series of actions, rather than by case to case examination. (1986, 58)

What is noteworthy here is Raz’s description of the considerations that speak in favor of deploying rules in practical reasoning. The significance of rules seems to be purely facilitative on Raz’s picture. This in turn suggests that Raz’s considered view is to endorse the external horn of the dilemma and so to hold that the fact that authoritative directives encompass, or are supposed to, encompass, the reasons they replace matters only because and insofar as the subjects of these directives thereby do better at complying with their reasons. Again, however, this leaves him without a clear grip on the supposed sui generis normative significance of the dependence thesis.

An external reading of the service conception of this sort is why the “wrong kind of reason” problem has struck Darwall (and others) as so pressing for the service conception. If what ultimately matters normatively is entirely external to the notion of an authoritative directive, the service conception lacks the resources to distinguish between some directive’s actually being authoritative for us and our having reason to act as though the directive was authoritative for us, and so to draw the distinction on which the “wrong kind of reason” problem turns. After all, the distinction in question is a normative distinction, yet nothing of genuine normative significance hinges on it as far as the service conception is concerned.38

38 I believe that there is a structural parallel between my discussion here and Michael Thompson’s complaint in Part III of Life and Action (2008) about Rawls’s and Scanlon’s accounts of promising in A Theory of Justice (1999a, 303–5) and What We Owe to Each Other (1998, 295–327), respectively. (Thompson is much more sympathetic to Rawls’s account in “Two Concepts of Rules.” As he sees it, the account in Theory represents a fundamental shift in Rawls’s understanding of the relation between a practice on the one hand and the actions falling under it on the other, one which amounts to “decline” (2008, 173).) According to Thompson, on a sound two-stage theory the transition from the intermediate principles to which these theories appeal—that is, the principle of fidelity in Rawls’s case and “Principle F” as the non-practice-based analog to the principle of fidelity in Scanlon’s case (1998, 304)—to the particular actions that fall under these principles is governed by a purely formal “transfer principle,” in the same way in which the impermissibility of double counting is a formal principle of practical reasoning according to the first of the two answers to the question as
1.7.2 Darwall on Preemption

However, the service conception represents just one possible version of the encompassing conception of preemption, and one which, as we just saw, faces a number of problems particular to it. Note that something analogous can be said about rule utilitarianism: it represents just one version of utilitarianism, and one which brings with it a number of problems from which other versions of utilitarianism—in particular straightforward act utilitarianism—don’t suffer. By the same token, my reason for bringing up utilitarianism is not merely that I find the analogy between rule utilitarianism and the service conception instructive. It is also that the structure of utilitarianism more generally helps to make sense of the encompassing conception of preemption at large and so in contrasting it with the conception of preemption I am about to attribute to Darwall.

What I have in mind here is that the principle of utility is itself preemptive in a way analogous to the way in which the encompassing conception is preemptive. The judgment that some act maximizes utility is supposed to preempt all other utility-related considerations in virtue of the fact that these considerations have already been taken into account in the judgment which act maximizes utility. If I were to somehow “weigh” my judgment as to which act maximizes utility with the fact that, say, some particular act or other would produce some specific amount of utility, I would be to the normative force of the charge of double counting discussed in the present section. However—Thompson’s complaint goes—both Rawls and Thompson treat the question whether we should in fact follow the principle of fidelity respectively Principle F in particular situations as one that stands in need of a substantive answer deriving from the very ground-level considerations which substantively grounded the principle of fidelity respectively Principle F in the first place, i.e. the parties’ choice in the original position in Rawls’s case respectively the reasons that account for which principles people cannot reasonably reject in Scanlon’s. Note that the same goes for the second of the two answers to the question how to conceive of the normative force of the charge of double counting considered above. Here the answer has to do with what facilitates compliance with our underlying reasons, yet these are the very considerations that were supposed to explain the authoritative of of authoritative directives in the first place. Thompson’s case against Rawls and Scanlon culminates in the charge that neither of them is able to account for the idea of a person’s acting on the principle of fidelity respectively Principle F, and so actually participating in the practice of promising. Faithful agents act on the ground-level considerations and merely by reference to the mid-level normative structures. As I understand it, Thompson’s charge here is Darwall’s appeal to the “wrong kind of reason” problem by another name. I will return to Thompson’s complaint against Rawls’s and Scanlon’s accounts of promising briefly in the Postscript to Chapter 5 (§5.10).
guilty of double counting, in the very same way in which I am guilty of double counting when I retain the reasons on which the authoritative directives addressed at me are based in my practical deliberations next to these directives themselves.39

Note that the encompassing account of preemption also explains the sense in which authoritative directives and the principle of utility are both supposed to be obligatory. As we saw in §1.2, on Raz’s view duties just are categorical preemptive reasons. Similarly, what accounts for the obligatory character of the judgment that some act maximizes utility according to act utilitarianism is precisely the fact that it encompasses all particular utility-related judgments. Moreover, just as the preemptive character of preemptive reasons is a substantive matter for Raz—see the beginning of §1.7.1 for this point—the obligatory character of judgments concerning which act maximizes utility is a substantive matter according to act utilitarianism: it is simply a matter of aggregating all the relevant substantive utility facts.

Like Raz, Darwall understands the idea of obligation as internally related to the notion of preemption. Unlike Raz, however, Darwall doesn’t understand preemption in terms of the encompassing conception. As Darwall has it, there is a formal distinction between obligation on the one hand and mere reasons on the other. As he puts it in “Moral Obligation: Form and Substance,”

It seems conceptually possible that there might be cases where an agent does nothing wrong though she acts against the balance of moral reasons, even when these outweigh reasons of other kinds. … If all this is correct, then the concept of moral obligation must differ from that of what moral reasons recommend, however categorical or overriding these reasons might be. (2013c, 43).

Moral obligation is therefore not merely whatever results when the totality of our moral reasons is being aggregated or the like—and, more generally, obligation of any kind is not merely a matter of

39 However, we can imagine a version of rule utilitarianism according to which it is a utility-maximizing rule for an agent to keep particular utility-related considerations in view next to her judgment as to which act maximizes utility in her practical deliberations, since doing so makes it more likely for her to do what maximizes utility. The case here would be parallel to the traffic-related one from the previous section.
encompassing the applicable reasons—on Darwall’s view. Rather, the former operates in a formally distinct category from the latter.

We can see the formal distinction to which Darwall is appealing at work in the passage on the “authority alarm clock” quoted towards the end of §1.5, where Darwall says that, while \( B \) has “pragmatic reasons to respond to the alarm, on the one hand, and, on the other, not even to think about his reasons for staying in bed (since if he does consider them he is likely to act contrary to the weightier reasons and stay in bed),” it does not follow that \( B \) “may not legitimately think about these reasons, that it is outside his discretion, or that the latter reasons have somehow been displaced, preempted, or defeated, only that he would be foolish to consider them.” For Darwall, what \( B \) may legitimately think about or what it is within her discretion to consider falls in a formally different normative category from what it would be foolish for her to consider. The former belong to the normative category of the second-person standpoint and the interdefinable circle of concepts proper to it, along with rights, obligations, claims, demands, expectations, and the reactive attitudes, which just is the normative category of obligation according to Darwall.

What it would be foolish for \( B \) to do on the other hand is a question concerning the reasons that apply to her. Foolishness thus belongs to the normative category of mere reasons. As we just saw, however, what \( B \) has all-things-considered reason to do—in other words, the notion of a balance of reasons—also belongs to the latter category according to Darwall. (In fact, we could think of the judgment that it would be foolish for \( B \) to even consider her reasons for staying in bed itself as the

40 The (supposed) difference between moral and non-moral obligation respectively moral and non-moral reasons will figure prominently in my more extensive discussion of Darwall in Chapter 2.
41 See here also Darwall’s argument in “But It Would Be Wrong” (2010b) against Jonathan Dancy’s view that an action is morally wrong in virtue of the balance of moral reasons speaking against it. Dancy states his position in “Should We Pass the Buck?” (2000) and, more generally, Ethics without Principles (2004). Scanlon takes a position similar to Darwall’s in “Wrongness and Reasons: A Re-examination” (2007b) and—albeit more obliquely there—in his earlier “Contractualism and Utilitarianism” (1982, 116).
judgment that B has all-things-considered reason not to do so.) However, since the fact that a reason has been “displaced, preempted, or defeated” falls in the former normative category—i.e. the category of the second-person standpoint—on Darwall’s view, it follows that he must be conceiving of the notion of preemption in terms different from those of the encompassing conception. As we saw above, however, no such thing is true for Raz. Given Raz’s discussion of the “enormous advantage” of letting oneself be guided by rules in pursuing one’s reasons, the “foolishness” of continuing to consider one’s reasons in the face of hearing the alarm clock is precisely the sort of thing in virtue of which an agent has reason to ascribe preemptiveness to the alarm clock, at least on the external interpretation of the service conception.42

What exactly is Darwall’s own account of preemption then? The place to look for the answer is, I believe, Darwall’s second-personal interpretation of Kant’s “fact of reason.”43 The fact of reason, which Kant discussed in the Critique of Practical Reason, concerns our capacity for moral motivation. On Kant’s view, we have immediate consciousness44 of our capacity to act morally. This consciousness constitutes the “ratio cognoscendi”—that is, the “ground of our knowledge”—of our practical freedom, where the latter in turn constitutes the “ratio essendi” (1999b, 140n (5:5n))—that is, what grounds the existence—of the moral law as we encounter it in our consciousness. Analogously,

42 Hence, while Raz would presumably agree with Darwall that the “authority alarm clock” has no authority over its owner, his grounds for denying the alarm clock’s authority would have to turn on something other than the absence of preemption. Perhaps Raz would argue, channeling Hart, that the authority alarm clock’s “directives” aren’t really directives at all, since the issuing of directives requires a complex of first- and second-order intentions on the part of the speaker, and an alarm clock neither has intentions nor qualifies as a speaker in the relevant sense. (See Hart’s account of the concept of command in terms of a complex of first- and second-order intentions in his “Commands and Authoritative Legal Reasons” (1982, 251–2).) Thus, Raz might say that, whatever B has preemptive reason to do, she does not have preemptive reason to do what the alarm clock tells her to do, since strictly speaking the authority alarm clock cannot tell anyone to do anything. Whatever Raz’s argument here, it would have to amount to something along these lines. (It is therefore not clear to me how Raz might reply to the final twist in Darwall’s “authority alarm clock” example, where the alarm clock gets replaced by a person.)

43 See (1999b, 164 (5:31)).

44 As Anscombe might put it, we have “practical knowledge” of our moral motivation. (See (2000)). This relates to the fact that Kant speaks of a “Factum der Vernunft” here, where “Factum” derives from the Latin for “what is done” (as, by the way, does “fact”) and might as well be translated as “deed,” as in “deed of reason.”
on Darwall’s view, what we are immediately aware of is our capacity for being motivated by our recognition of our mutual accountability, and our practical freedom is the normative felicity condition of this capacity. Darwall doesn’t do this, but we could speak of the “fact of mutual accountability” as the second-personal analog to the fact of reason here.45

However, what we are immediately aware of when we are aware of our capacity for moral motivation on Kant’s view is that we are not only capable of acting in conformity with but from duty,46 as he puts it in the Groundwork (see (1999b, 53 (4:398))). In other words, what we are aware of is that the moral law is capable of determining our will all by itself. Analogously, what we are aware of according to Darwall is not merely that we are capable of acting in accordance with how we are accountable to others to act but rather from the idea of our being accountable to others to so act. In other words, what we are aware of is that the idea of our mutual accountability is capable of determining our will all by itself. Darwall speaks of a person who is capable of acting from her recognition of her accountability to others in this sense as “second-personally competent.”

As I read Darwall, we have to understand the idea of preemption as he deploys it in terms of the sense in which a second-personally competent person’s awareness of her accountability to others is capable of determining her will. The thought of her being accountable to others for doing something “displaces, preempts, and defeats” the other reasons that apply to her, and it does so

45 More generally, Darwall might not agree with my reading of his argument here, since he makes much of the difference between Kant’s deduction of the moral law in the Groundwork and his rejection of the possibility of such a deduction the Critique of Practical Reason and sees his own project as in line with the former rather than the latter. I myself am inclined to go the other way here, since what we are immediately aware of according to Darwall is not our freedom but our mutual accountability, which, like the object of the fact of reason, already refers to a moral concept. However, I cannot pursue these questions in more detail here.

46 Note that we might understand Thompson’s preoccupation with the distinction between acting on rather than merely acting by reference to the rules of a practice (see footnote 38 above) as getting at a similar distinction, with the difference that the relevant “ratio essendi” in Kant’s case is freedom—and so something transcendental—whereas it is the practice itself—and so something which can be accounted for in “natural-historical” terms—in Thompson’s case. The issue here relates to Thompson’s “puzzle about justice” in “What is it to Wrong Someone?”, one element of which is to charge Kant with a reliance on a “strange and wonderful metaphysics” incompatible with even a “mild naturalism” (see (2004)). I will return to Thompson’s argument in Chapter 5.
necessarily and immediately and not via the merely contingent fact these latter reasons happen to be outweighed in some all-things-considered calculus of reasons. Preemption as Darwall understands it therefore stands in an internal relation to the notion of a person’s determining her own will through the exercise of her second-personal competence in this sense. Let me therefore speak of the kind of preemption Darwall has in mind as a determining conception of preemption.

This is merely a first-pass description of determining preemption. Chapter 4 will provide me with the opportunity for further discussion. However, what matters for the specific purposes of the debate between Darwall and Raz is that, in arguing that there are “no preemptive reasons without the standing to hold accountable,” Darwall extends to Raz a conception of preemption manifestly not shared by the latter, without argument or even proper articulation. To be sure, the dilemma I set up for Raz in §1.7.1 relates to Darwall’s own appeal to the “wrong kind of reason” problem, as I pointed out at the end of the section. However, there is no analog in Darwall’s case against Raz to the point I am making here. More fundamentally, the service conception constitutes only one possible framework within which to deploy the encompassing conception of preemption, and the difficulty I raised for Raz had nothing to do with the encompassing conception in its own right but rather concerned the particular fashion in which the encompassing relation is supposed to figure in

Indeed, a theory according to which what we are morally obligated to do is simply a function of the balance of our (moral) reasons is tantamount to a theory of heteronomy (in Kant’s sense of the term) on Darwall’s picture, not in the substantive sense that the materials entering the calculus are the wrong ones, but in the formal sense that they enter “in the wrong place and in the wrong manner,” to use a phrase of Nozick’s, precisely because they enter a calculus. As I read her, Christine Korsgaard gets at a distinction analogous to my distinction between two senses of preemption when she distinguishes between a “testing” and a “weighing” model of reasons, in §3.2 of Self-Constitution (2009, 49–52).

Note that not just the second argument Darwall raises against Raz—i.e. his case against thesis (II), as discussed in §1.5—but also the first—i.e. his case against thesis (III), as discussed in §1.3—might be interpreted as turning on the categorical difference between obligation and mere reasons at play here. The sorts of considerations to which the normal justification thesis—and so Raz’s conception of practical authority—makes appeal operate in the space of what an agent has all-things-considered reason to do, whereas Raz’s concept of authority with its reference to the right to rule and the duty to obey makes appeal to considerations in the space of rights and obligations. (This is what the tension between Raz’s concept and his conception of authority discussed in §1.4 consisted in.) Since, as we just saw, Darwall also places the idea of preemption in the register of rights and obligations, the same tension reenters with respect to thesis (II). I take it that this also explains why Darwall himself seems to think of his case against thesis (II) as a mere extension of his case against thesis (III).
the service conception. Discarding the encompassing conception of preemption as such under the influence of my criticism of Raz would be analogous to discarding the principle of utility as the “supreme principle of morality” as such on account of the fact that rule utilitarianism amounts to an “unstable compromise” between “two potentially conflicting forms of moral reasoning” (Scanlon 1982, 103, 120). Darwall’s second argument against Raz therefore oversimplifies matters, even if—as I believe—Darwall’s case against the service conception is fundamentally sound.

1.8 Conclusion

There are two motives behind this chapter. The first is to tie the materials to be developed below back to an already existent debate in the literature. The second is to suggest a reading of the debate in question that prepares the ground for the account to follow. In particular, I will argue in the next chapter that we have to understand the distinction between theoretical and practical authority in terms of the distinction between the two forms of preemption introduced here: encompassing preemption is the form of preemption definitive of theoretical authority whereas determining preemption the form of preemption proper to practical authority. It follows that, while I criticize Darwall for his failure to draw the same distinction, I take sides with him in a more fundamental sense, on two counts. First, I also argue that there is a formal distinction between theoretical and practical authority. Second, just as Darwall holds that practical authority is second-personal whereas theoretical authority is not, I propose to interpret the former but not the latter in terms of the sort of preemption that—as I read him—defines the second-person standpoint.

However, the present chapter also anticipates the more specifically political concerns raised in Chapters 4 and 5, although the relation is less direct there than in the case of the distinction between
theoretical and practical authority developed in Chapter 3. Raz’s (unpublished) attempt to square his service conception of authority with his interest theory of rights, which I took on in §1.4, turns on the idea that “the authority” understood as an institution that has authority over the individuals falling under it has an interest in “being a good authority.” Above I argued that it was not clear what resources Raz’s account offers him to make good on this line of thought. However, in Chapter 4 I will develop an argument of this very kind. Specifically, what I will be suggesting there is that an institution understood as a system of public rules provide for the form within which one person’s having authority over another—where the relevant sense of authority needs to be understood in terms of the determining conception of preemption—can be morally squared with the two parties’ natural equality. If we understand the thought that we are each other’s natural equals as the original motivation behind the search for a more “democratic” understanding of the idea of authority—i.e. of the sense in which the governed enjoy “normative priority” over those who govern them—then my own account can be understood as sharing the very ambition on which so much of the appeal of the service conception rests.
Chapter 2:
Darwall’s Dilemma

2.1 Introduction

Darwall likes to illustrate the idea of the second-person standpoint with an example taken from a passage of David Hume’s *Enquiry Concerning the Principles of Morals*, in which Hume says: “Would any man, who is walking along, tread as willingly on another’s gouty toes, whom he has no quarrel with, as on the hard flint and pavement?” (1975, 226) In the parlance of contemporary moral philosophy, it seems evident that everyone has a reason not to step on another’s gouty toes. What Darwall in turn argues is that everyone in fact has not just one but two formally distinct kinds of reasons not to do so. First, there is the “agent-neutral,” “state-of-the-world-regarding” reason deriving from the impersonal badness of a state of affairs in which someone is in pain. Second, there is the “agent-relative” and indeed second-personal reason deriving from the valid claim that the gout-afflicted person has not to have her toes stepped upon.

Both of these reasons are moral reasons on Darwall’s view. The impersonal badness of a state of affairs in which the gouty-toed person is in pain is a moral consideration, just as her claim not to have her toe stepped upon has moral validity. However, while the first reason is formally continuous with the other reasons that apply to us—prudential reasons, reasons of etiquette, and so on—the second reason belongs to a sui generis normative category, namely that of a distinct form of morality defined by an “interdefinable circle” of irreducibly second-personal concepts (2006, 11–12), whose members are: second-personal reason, valid claim, practical authority, and accountability.

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50According to Darwall, second-personal reasons are a species of the genus agent-relative reasons (see 2006, 8–9).
of responsibility, among others. Hence, the second-personal reason not to step on the gouty person’s toe is understandable in terms of her valid claim against others that they not do so; which in turn is understandable in terms of the practical authority she has to demand that others not step on her toe; which in turn is understandable in terms of the latter’s being responsible for not doing so and accountable for doing so; and vice versa. However, none of these concepts are needed to make sense of the agent-neutral, state-of-the-world-regarding reason to refrain from stepping on the gouty person’s toes. This is the sense in which the second-person standpoint represents a sui generis form of practical reason captured by a sui generis system of concepts according to Darwall.

According to Darwall, the second-person standpoint captures the distinction between what we have mere moral reason to do on the one hand and what we are morally obligated to do on the other. As he puts it in “Moral Obligation: Form and Substance,”

so far as the concepts go, moral reasons might recommend an act and also outweigh reasons for acting otherwise without its necessarily being the case that the action is morally required or that not doing it is morally wrong. It seems conceptually possible that there might be cases where an agent does nothing wrong though she acts against the balance of moral reasons, even when these outweigh reasons of other kinds. Such an agent would of course be subject to rational criticism, but not necessarily, it seems, to moral blame. (2013c, 43)

It follows that “the concept of moral obligation must differ from that of what moral reasons recommend, however categorical or overriding these reasons might be” (2013c, 43). Note that it also follows from the passage just quoted that Darwall’s distinction between criticism and blame tracks the same distinction. Criticism is what is due when a person fails to act on the balance of the reasons that apply to her, while a person is blameworthy if she defaults on her moral obligations. Applied to the case of the gouty-toed person again, Darwall’s claim thus seems to be that there is both a moral reason and a moral obligation not to step on the person’s gouty toes and that we merit both rational
criticism and moral blame if we do so anyway, where each of the two elements in question here is
distinct from the other, respectively.

A number of philosophers, among them R. Jay Wallace, and Gary Watson,\textsuperscript{51} have expressed
puzzlement as to how to make sense of the second-person standpoint qua genuinely distinct form
of normativity. How exactly is the second kind of reason not to step on the gouty toes of the
person in Hume's illustration supposed to amount to something normatively distinct? Or, to frame
the same point more abstractly, what exactly does Darwall's claim that the members of his
interdefinable circle of second-personal concepts are \textit{irreducibly} second-personal amount to? While
the two authors just mentioned frame their argument against Darwall in different terms, I believe
that what both of them are getting at is the same problem viewed under a slightly different aspect.
The problem might be put in terms of a dilemma. Either the second-person standpoint is a distinct
form of normativity, in which case it fails to capture the categorical character of moral obligation; or
the second-person standpoint does provide for an adequate account of morality, in which case it fails
to make good on its own claim to formal distinctness. Call this “Darwall's dilemma.”

In this chapter I propose a solution to Darwall's dilemma. Briefly, I argue that what is
normatively distinctive about the second-person standpoint resides in Darwall's own appeal to the
“normative felicity conditions” of second-personal address. My proposal is to understand morality,
not as one variety of second-personal address among others, but rather as the very form of second-
personal address itself. What makes second-personal address distinctive is that it is normatively
“creative.” Acts of second-personal address purport to be “\textit{self}-originating” (1999b, 331, emphasis
added) and “\textit{self}-authenticating sources of valid claims” (2005, 32, emphasis added), to use an

\textsuperscript{51} Two other philosophers who have raised similar concerns about the second-person standpoint are Kelly Heuer (2014)
expression of Rawls’s. *Morality* in turn concerns the conditions under which it is possible for an act of address to be normatively creative in this sense. However, the validity of these conditions is not itself contingent on this or that particular act of second-personal address. Reconceiving of the relation between morality and the second-person standpoint along these lines thus salvages both the latter’s formal distinctness and the former’s categorical character.

I will proceed as follows. In §2.2, I suggest two related puzzles, namely what I call the “dilemma of authority” (§2.2.1) and the “problem of modern moral philosophy” (§2.2.2). In §§2.3–2.4, I discuss the two attempts at solving Darwall’s dilemma prominent in the literature, which (following Wallace) I call the “(quasi-)voluntarist model” (§2.3) and the “relational model” (§2.4). I argue that both fail. In §2.5, I consider Darwall’s understanding of the notion of morality, which I argue suffers from a critical ambiguity. In §2.6, I introduce and defend my own solution to Darwall’s dilemma, which I call the “Austinian model.” §2.7 concludes.

### 2.2 Two Related Puzzles

In the following two subsections, I will discuss two further puzzles, namely what I will call the “dilemma of authority” and “problem of modern moral philosophy.” The dilemma of authority concerns the question how one person might be able to *create* reasons for another. The moral problem concerns the opposite question how there could be “law without a (divine) lawgiver.” Both puzzles are closely related to Darwall’s dilemma and as such help to illuminate it.
2.2.1 The Dilemma of Authority

If practical authority is one of the members of Darwall’s interdefinable circle of second-personal concepts, then it makes for as good a starting point as any other for an analysis of the formal distinctness of the second-person standpoint. As we saw in §1.5, Darwall agrees with Raz that “the capacity to create preemptive reasons…is a mark of practical authority.” (His disagreement with Raz in turn pertained to the fact that practical authority “itself requires the second-personal relation of accountability,” which is what Raz’s service conception of authority fails to capture according to Darwall. What I argued in turn is that the deeper disagreement between the two of them concerns the formal structure of the notion of preemption itself.) What I want to focus on here is the thought that what is a mark of practical authority is the power to create reasons for another according to Darwall. Darwall indirectly confirms the normatively “creative” character of practical authority when he says that “the only claim an advisor makes as such is on an advisee’s beliefs about independently existing reasons and about what actions these reasons support, not on her will” (2009, 149, emphasis added), the implication being that the relevant reasons aren’t existing independently in the case of practical authority.52

However, note that the very notion of one person’s creating a reason for another through her mere say-so in this sense poses a philosophical puzzle. The puzzle it poses recalls one of the oldest puzzles of Western philosophy, i.e. the “Euthyphro dilemma.” In the Euthyphro, Socrates asks his interlocutor, the dialog’s namesake: “Is the pious being loved by the gods because it is pious, or is it pious because it is being loved by the gods?” (1997, 9 (10a)). The Euthyphro dilemma might be read

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52 One way to understand the deeper point underlying Darwall’s critique of Raz is that the service conception conceives of practical authority on the formal model of theoretical authority and as such fails to do justice to its distinctly practical character. As I already indicated in §1.8, and as Chapter 3 will make even clearer, I am highly sympathetic to Darwall’s argument against Raz so conceived.
as turning on the question how the gods’ love could make it the case that something is pious, that is, how it is that the gods’ love could “create” the piety of whatever it is that is pious. The Euthyphro dilemma thus runs parallel to the puzzle I am concerned with here, which is: how is it possible for one person to have the normative power to create a reason for another?

Following Andrei Marmor, I will call this puzzle the “dilemma of authority.” In “The Dilemma of Authority,” Andrei Marmor puts the puzzle as follows:

Either an authoritative directive identifies reasons for action its subjects have anyway, regardless of the authority’s directive, or else the directive purports to constitute such reasons. The former option makes it difficult to explain what practical difference authorities make, and why their say-so matters. The latter option makes it difficult to explain how an authoritative directive can constitute a reason for action without assuming in advance, as it were, that one ought to comply with the authority’s directives. (2011, 122)

Marmor calls the first the “epistemic” and the second the “constitutive” horn of the dilemma.

According to Marmor, Raz’s service conception of authority “basically endorses the first, epistemic, horn of the dilemma of authority.” Marmor recognizes that “Raz would resist the characterization of his service conception of authority as an epistemic model” but argues that it is “difficult to resist this characterization” (2011, 123).

Raz would indeed resist this characterization of the service conception. In the first place, however, there is a problem with Marmor’s very statement of his dilemma of authority. The “prior assumption” Marmor imputes to the would-be defender of the second, constitutive horn of the dilemma is ambiguous. As Marmor has it, what the “constitutivist”—i.e. the defender of the second, constitutive horn of the dilemma—would have to assume in advance is that “one ought to comply with the authority’s directives.” On a de dicto reading, however, this assumption amounts to no more than a claim about what it is for someone to have authority over another, along the lines of: for A to have authority over B is for A to have the right to rule over B and for B to have a correlative duty to
obey A. It is unclear what might be philosophically objectionable here, especially given how widely held an understanding of the concept of authority it turns on. Raz and Darwall at any rate both seem to hold it, as we saw in the previous chapter. Marmor is therefore more helpfully read as imputing to the constitutivist, not the (de dicto) assumption that whoever has authority ought to be obeyed, but rather the (de re) assumption that some independently identifiable person (or institution or the like) ought to be obeyed, which is then supposed to explain how it is that that person’s directives create reasons for those who are obligated to obey her. Marmor’s complaint against the constitutivist horn of the dilemma would then amount to the charge that all the actual philosophical work would have to be performed by the antecedent assumption that the person in question ought to be obeyed.

However, if this is Marmor’s statement of his “dilemma of authority,” then it construes the constitutivist position in needlessly narrow terms. The defender of the constitutive horn need not assume in advance that such-and-such person ought to be obeyed. The fact that such-and-such a person ought to be obeyed might be the conclusion of her account rather than its antecedently assumed premise. In fact, this is how Raz would characterize his service conception of authority, i.e. as an inference from B’s greater likelihood to comply with the reasons that independently apply to her if she obeys A than she would be were she to try to comply with those reasons “on her own” to a duty on B’s part to obey A. A’s power to create preemptive reasons for B is then derivative of B’s duty to obey A, which itself is derivative—via the normal justification thesis, which in turn is simply a special case of the facilitative principle—of the reasons that independently apply to her (B).

In fact, something like a prior duty to obey some (independently identifiable) person will strike many philosophers as all but inevitable. If A is supposed to have the normative power to create reasons for B, then some prior reason, or principle, or obligation, seems to need to be in place in virtue of which A has such power over B, where that reason, or principle, or obligation, does not
itself hold in virtue of some exercise of A’s normative power, on pain of regress. What is distinctive about Raz’s articulation of this idea is its wholly substantivist character. Like the preemptive quality of the reasons A creates for B, A’s power to create such reasons in the first place is a matter of the substantive reasons that apply to B together with the reasons that are substantively derivable from those reasons via the facilitative principle. However, even Darwall holds that A’s power to create preemptive reasons for B—which on his view figures as part of the second-person standpoint conceived as a distinct form of normativity—depends on B’s having a prior obligation to obey A. As Darwall puts it in his discussion of divine voluntarism in The Second-Person Standpoint, “Without its already being true that we should obey God’s commands, these cannot obligate us to perform specific actions. Pufendorf acknowledges this point. We could not be obligated by God’s command, he says, unless ‘we owed beforehand obedience to its author’” (2006, 109).

Darwall believes that the argument is “an instance of the general point” applying to his own, second-personal account of morality that, 

Since second-personal demands do not reduce to, and cannot be derived in any simple way from, propositions of value or non-second-personal norms of conduct, any obligation to God that results from his commands requires a normative second-personal accountability relation already existing in the background. As stated in Chapter 3 [of The Second-Person Standpoint, M.G]: “Second-personal authority out, second-personal authority in.” (2006, 109)

However, the idea that one person’s power to create reasons for another depends on some prior normative principle or the like invites a more-difficult-to-refute version of Marmor’s objection. Even if B’s obligation to obey A is not a mere unargued-for assumption but rather the conclusion of philosophical argument, it still seems true that the fundamental normative work is done by it (i.e. the underlying obligation) rather than by A’s supposed power to create reasons for B. However, in that case it is unclear in which sense A has normative power over B in any sui generis sense at all. To be sure, when A tells B to do such-and-such, then B has an obligation to do such-and-such on this
sort of account. However, A’s saying such-and-such merely provides an occasion for application to the underlying obligation, or principle, or the like. Nothing normative gets genuinely created by A’s telling B to do such-and-such. Everything normative is “already there,” as it were, namely in B’s preexisting obligation to do as A says. The second, constitutive horn of the dilemma thus seems to fall before the same puzzle as the first. The puzzle is this: what is it, and how is it possible, for one person to create reasons for another? As I will put it, how can there by such a thing as a normatively “creative” form of interpersonal address?

2.2.2 The Problem of Modern Moral Philosophy

As Rawls notes, “Kant is the historical source of the idea that reason, both theoretical and practical, is self-originating and self-authenticating” (2005, 100). What Darwall argues in *The Second-Person Standpoint* in turn is that we can make sense of the system of concepts defining Kant’s practical philosophy—in particular the ideas of obligation, freedom, and dignity—only in second-personal terms, that is, only in terms that make internal reference to relations of mutual accountability. The objects of our obligations are the things for which others have the authority to hold us to account. We can only make sense of our practical freedom by reference to the idea of what we can be held to account to by others. Finally, dignity is the capacity to both hold others accountable for compliance with their obligations and to be held accountable by others for compliance with one’s own.

As Darwall reads him, Kant himself interprets these concepts as internal to the exercise of reason merely first-personally understood, that is, an exercise of reason which presupposes only a single self-conscious reasoner, not any accountability relations between distinct agents or the like. As such, he (Kant) lacks the resources to capture the specifically practical nature of the concepts informing his practical philosophy according to Darwall. Practical reason turns out to be a mere
species of theoretical reason—one with a particular content—on Kant’s own theory, not a distinct form of reason, where to provide for the latter is the stated objective of Kant’s practical philosophy.\(^{53}\)

One way to put Darwall’s complaint is that Kant fails to recognize that, in order for practical reason to constitute a self-originating and -authenticating source of valid claims, persons need to be viewed as self-originating and -authenticating sources of valid claims.\(^{54}\)

I take it that this last point is what Gary Watson is also getting at when he construes Darwall’s account in *The Second-Person Standpoint* as a response to “Elizabeth Anscombe’s famous complaint against ‘modern moral philosophy’” in her article of the same name (1958). According to Anscombe, the idea of obligation, and specifically of moral obligation, on which much of moral philosophy after Antiquity has turned makes sense only against the background assumption of a divine lawgiver. The situation of modern moral philosophy, which rejects the idea of a divine lawgiver yet continues to appeal to the idea of moral obligation, is therefore “the interesting one of the survival of a concept outside the framework of thought that made it a really intelligible one” (1958, 6). According to Watson, “One of the main achievements of Darwall’s book is that it provides an answer to this challenge. The authorities to whom modern moral consciousness appeals are simply you and I. The ‘moral law’ is what we have the authority to demand of one another” (2007, 37–8, footnote omitted).

Note that, at this point, we have essentially taken a 180-degree turn from the dilemma of authority as discussed in the previous section. The dilemma of authority concerned how one person

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\(^{53}\) This is the point of Darwall’s discussion of the “naïve practical reasoner,” whose form of reasoning is structurally analogous to that of a purely theoretical reasoner, except that the naïve practical reasoner’s reasons are reasons for action rather than belief. Note that the distinction between a theoretical and a naïve practical reasoner corresponds to the distinction between theoretical and practical authority as conceived by the belief-action account (see §3.2 below).

\(^{54}\) Note that, as Rawls points out, not only practical but also theoretical reason is supposed to be self-originating and -authenticating on Kant’s view. Darwall on the other hand seems to think that only practical reason is autonomous, speaking at one point in the *Second-Person Standpoint* of “the sort of heteronomy that characterizes theoretical reasoning” (2006, 234n34). Darwall thus seems to think of theoretical and practical reason as distinct in a sense in which Kant does not. On this point see also Sebastian Rödl’s “Darwall gegen Kant: Kant verteidigt” (2009).
might be able to create a reason for another. Anscombe’s objection points to something like the opposite puzzle. Her objection to modern moral philosophy is that it presumes that there could be “law without a lawgiver.” To overstate things, Anscombe’s objection is that there could be no reasons that aren’t created by one person or another. Her dismissive remarks on his moral philosophy notwithstanding—Anscombe calls the idea of self-legislation “absurd” and the categorical imperative “useless” (1958, 2)—there is therefore a point of agreement between Anscombe and Kant on this point, since there is a sense in which Kant too believes that there could be no law without a lawgiver, where the lawgiver for Kant is the will—i.e. practical reason—itself. Call this the “problem of modern moral philosophy.”

This is to overstate things because Anscombe’s concern is not the possible existence of reasons in general, but rather the possible existence of obligations, and more specifically moral obligations. Here is Anscombe: “The ordinary (and quite indispensable) terms ‘should,’ ‘needs,’ ‘ought,’ ‘must’—acquired this special [i.e. moral, M.G.] sense by being equated in the relevant contexts with ‘is obliged,’ or ‘is bound,’ or ‘is required to,’ in the sense in which one can be obliged or bound by law, or something can be required by law” (1958, 5). As this passage makes clear, Anscombe’s objection is not to the idea of practical normativity without a lawgiver as such but rather to the idea of moral obligation without a law-giver. On this point Anscombe seems to differ fundamentally from Kant, to whom all practical normativity is the product of the self-legislative activity of the will. Darwall’s distinction between the two kinds of reasons applicable in the case of the gouty-toed person on the other hand seems to correspond to the distinction to which Anscombe appeals, except that

55 By way of caveat, I should point out that Anscombe herself doesn’t speak of reasons at all. As I mentioned in §2.1, talk of normative reasons is a feature of modern moral philosophy post Anscombe. To use Anscombe’s own metaphor, describing her position in terms of the idea of a normative reason therefore has the feel of jaws having gotten out of alignment.

56 By the same token, there is a deep parallel between the relation between Kant and Rawls on the one hand and the relation between Kant and Darwall on the other. Neither Rawls nor Darwall are willing to take the idea that normativity
Darwall holds that both reasons merit the qualifier “moral,” which Anscombe reserves for the idea of obligation at the (supposedly empty) heart of modern moral philosophy.

As Watson suggests, Darwall agrees with Anscombe not only on the distinctness of moral obligation as a form of practical normativity but also on the need for some lawgiver or other as the background needed for moral obligation qua distinct form of practical normativity to amount to something intelligible. It is just that no divine lawgiver is needed on Darwall’s view. Rather, we ourselves qua members of “the moral community” hold the requisite authority. It is in this sense that “the authorities to whom modern moral consciousness appeals are simply you and I.”

2.3 The (Quasi-)Voluntarist Model

I will pick up the two complementary puzzles discussed in §§2.2.1–2.2.2 in §2.5 below. For now, however, I will return to the suggestion from which the discussion of these two puzzles originally departed, i.e. the suggestion that the formal distinctness of Darwall’s second-person standpoint needs to be understood in terms of the idea of practical authority conceived as a person’s power to create reasons for others by issuing commands for them. R. Jay Wallace in his “Reasons, Relations, and Commands: Reflections on Darwall” (2007) calls this the “voluntarist model” of the second-person standpoint.

The voluntarist model squares well with Darwall’s discussion of his other preferred illustration of second-personal address, next to the case of the gouty-toed person. The illustration in question concerns a sergeant who commands her platoon to fall in. Here is Darwall:

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is a construction of reason as far as Kant. As Rawls puts it in Political Liberalism, “not everything, then, is constructed; we must have some material, as it were, from which to begin” (2005, 104). On this point see also Onora O’Neill’s “Constructivism in Rawls and Kant” (2003).
When a sergeant orders her platoon to fall in, her charges normally take it that the reason she thereby gives them derives entirely from her authority to address demands to them and their responsibility to comply. This is not a standing, like that of an advisor, that she can acquire simply because of her ability to discern non-second-personal reasons for her troops’ conduct. That is the point of Hobbes’s famous distinction between ‘command’ and ‘counsel.’ The sergeant’s order addresses a reason that would not exist but for her authority to address it through her command. (2006, 12–13, footnote omitted)

The sergeant’s act of address to her platoon imposes an obligation on her charges to fall in, one that wouldn’t exist were it not for the act of address in question, Darwall seems to be saying here. The sergeant’s command thus constitutes what above I called a normatively “creative” act of address. However, this is precisely how the voluntarist model conceives of what the distinctive character of second-personal normativity consists in.

The passage continues as follows: “Similarly, when you demand that someone move his foot from on top of yours, you presuppose an irreducibly second-personal standing to address this second-personal reason” (2006, 13). What Darwall seems to suggest here is that the case of the gouty toe exhibits the same normative structure as that of the sergeant and her platoon. However, this claim has struck both Wallace and Watson as straightforwardly false. As Wallace puts it

[The voluntarist model, M.G.] suggests that you did not have a second-personal reason to refrain from stepping on the victim’s toe until the protest was issued. This cannot be right, however. Surely we want to say that you have an agent-relative reason not to step on someone’s gouty toe that is (to some degree) prior to and independent of any complaint that might be issued after the toe has actually been stepped on. (2007, 26)

Similarly, Watson argues that

It is in an important respect misleading to say, …as Darwall sometimes does, that second-personal reasons rest on others’ authority to make valid demands. Darwall needs a distinction between ‘demands’ that remain in force whether or not one issues them and demands that do not. My reason to return your book is that you’ve asked for it back, not that you have the authority to do so. A different account must be given for my reason not to trample on your garden or your foot, though, since you’ve probably never addressed any such demand to me. The wrongness of what I do in this case cannot consist in my violating a demand that you’ve made. Nor can it consist in your possession of the authority to prohibit me from behaving in this way. For if you actually permit me to trample your foot or your garden, then presumably I am not violating any obligation to you, even though you retain the authority to forbid me to do so. … Without an account of how requirements can exist
without an exercise of someone's authority, Darwall's answer to Anscombe's objection (that we can't have laws without a lawgiver) remains obscure. (2007, 39–40)

In his reply to Wallace and Watson, Darwall concedes the point: “Wallace and I are agreed that someone who steps on your foot has violated your rights and his moral obligations even before you complain about it. As he notes, to deal with this sort of problem I introduce the idea of a claim or demand being ‘in force’ even when no actual individual has explicitly made it” (2007, 64). In The Second-Person Standpoint, Darwall says the following about the independent “in-force-ness” of moral obligations: “Moral obligations involve implicit demands that are ‘in force’…even when actual individuals have not explicitly made them” (2006, 290n22). Instead, we have to see moral obligations as “involving demands that are ‘in force’ from the moral point of view, that is, from the (first-person plural) perspective of the moral community” (2006, 9).

Note that there is an ambiguity between the two passages just quoted, one that stretches through the book more generally. In the first passage, Darwall seems to be making appeal to the distinction between express and tacit moral demands. As this reading has it, second-personal demands need not be issued expressly, but they do need to be present tacitly in order to be “in force.” Call this the “quasi-voluntarist” model of the second-person standpoint. There is textual evidence for the quasi-voluntarist model over and above the above passage. For instance, in the opening paragraph of The Second-Person Standpoint Darwall says that instances of second-personal address “might be explicit, in speech, as with the performatives J. L. Austin botanized—demanding, reproaching, apologizing, and so on—or only implicit, in thought, as with Strawsonian reactive feelings like resentment and guilt” (2006, 3). Moreover, Darwall repeatedly and approvingly quotes Strawson's claim that “the making of the demand is the proneness to such [i.e. reactive, M.G.] attitudes” (2006, 74, 194, 244n3, 290n22).

57 The reply is in fact to commentary from Wallace, Watson, and Korsgaard. However, Korsgaard’s critique of Darwall concerns not what is at stake here but instead Darwall's criticism of Kant as mentioned in §2.2.2 above.
emphasis added). Finally, in several places Darwall likens second-personal address to the notion of a “quasi-command.” For instance, he says that the “in-force-ness” of moral obligations independently of their being expressly issued by anyone “would be like Hart’s interpretation of Bentham’s doctrine in *A Fragment of Government* as involving ‘quasi-comands’ rather than the explicit commands of statute law. In such cases, Hart says, the command is taken to be implicit in acts of punishing. I will be saying the analogous thing about moral accountability” (2006, 9n17, compare 244n3 and 290n22).

However, the quasi-voluntarist model also “cannot be right,” for the same reasons as the ones just mentioned. The validity of our moral obligations seems to be independent not only of their being *expressly* but also of their being *tacitly* demanded. Even if we were to imagine slaves happy, that is not in fact tacitly harboring feelings of resentment against their masters, a system of slavery would still be morally wrong. As Wallace puts the point, the quasi-voluntarist model “still seems inadequate. It continues to make moral obligation hostage to the actual responses of the individuals implicated in interactions with each other, in ways that are problematic.” The obligation not to step on the gouty person’s toes is “independent of the explicit demands that your victim might make on you to desist, but it is also independent of the claims that might be implicit in the tendency of people in your ‘community’—including both the victim of your action as well as others not directly affected by it—to hold you to account when the obligation is violated” (2007, 27).

Once again, Darwall in fact agrees. As he puts it in his reply to Wallace and Watson, “it takes neither an explicit actual demand nor a demand that is implicit in actual human beings being prone to make it, either individually or collectively, in order for a claim or demand to be in force. The demand is made by the ‘moral community’ and by all of us insofar as we are members.” (2007, 65)

However, “the moral community…is not any actual community composed of actual human beings.
It is like Kant's idea of a 'realm of ends,' a regulative ideal that we employ to make sense of our ethical thought and practice” (2007, 64).

Yet Darwall’s appeal to the moral community as a “regulative ideal” brings with it theoretical burdens of its own. If second-personal reasons aren’t dependent on actual (express or tacit) acts of address after all, then we are at a loss again as to the supposed distinctness of second-personal as opposed to non-second-personal reasons. If it is possible for second-personal reasons to be “in force” irrespective of whether anyone in fact issues them (expressly or tacitly), then it is unclear in which sense they depend for their existence on the exercise of anyone's practical authority, and so unclear in which sense the appeal to practical authority is supposed to account for their formal distinctness.

2.4 The Relational Model

Wallace prefers a second model for making sense of the formal distinctness of the second-person standpoint, which he calls the “relational model.” On the relational model, “what makes a reason second personal is not that it derives from the command of another person but that it is implicated in a structure of relational or ‘bipolar’ normativity” (2007, 28). The term “bipolar normativity” was coined by Michael Thompson in his article “What is it to Wrong Someone? A Puzzle about Justice” (2004). Thompson there argues that there is a formal difference between a person's doing wrong on the one hand and her wronging another on the other. The former instantiates a “merely monadic,” the latter a “bipolar” form of normativity. Similarly, duties or obligations may take on either a merely monadic or a bipolar form, depending on whether discharging the duty or obligation is something I owe to anyone in particular.
According to the relational model, then, the formal distinctness of the second-person standpoint consists in its bipolar structure, and second-personal reasons are formally distinct from non-second-personal ones in that the former are bipolar and the latter monadic in the sense just sketched. Applied to the case of the gouty-toed person, I do wrong by stepping on someone’s toe in virtue of the “agent-neutral,” “state-of-the-world-regarding” moral badness of the pain I thereby bring about, whereas I wrong the person whose toe I step on in virtue of the valid claim the person has against me that I not step on her toe. The relational model seems to succeed where the voluntarist model failed, namely in explaining the distinction between the two reasons that according to Darwall apply there.

However, the relational model runs into two problems of its own, one of them interpretive, the other theoretical. The interpretive problem is that, according to Darwall, the domain of the second-person standpoint isn’t the domain of directed as opposed to merely monadic moral obligations. Rather, it is the domain of moral obligations, period, and so covers both monadic and directed moral obligations. In other words, the distinction with which Darwall is concerned is that between mere moral reasons and moral obligations, which means that the distinction between monadic and directed moral obligations is a distinction within the domain of the second-person standpoint as he understands it. As Darwall puts it in “Bipolar Obligation,” “The ideas of second-personal authority and reason are…more general than is that of bipolar normativity. So the former cannot be understood in terms of the latter. To the contrary, the latter is a species of the former” (2013a, 24).

But perhaps Darwall is simply mistaken about this. That is, perhaps it turns out on closer inspection that Darwall’s interdefinable circle of irreducibly second-personal concepts in fact only enters the picture with bipolar obligation, not yet with merely monadic obligation. Indeed, perhaps the very idea of monadic obligation is unintelligible or an “Unding.” Even assuming that this is so,
however, the relational model runs into a problem parallel to the one that confronted Darwall’s appeal to the moral community as a regulative ideal. If on the relational model second-personal reasons are “in force” outside of their actually being addressed, it remains unclear in which sense the second-person standpoint is supposed to stand in an internal relation to the concept of practical authority. As Wallace himself puts the point, “Insofar as relational normativity really is independent of the actual addressing of claims or demands, however, it is tempting to conclude that those who articulate such demands stand in a merely epistemic relation to the relational norms that they give voice to. Darwall’s contention that second-personal reasons are tied to our practical authority to make demands on other parties thus seems to go by the board” (2007, 29).

Wallace offers two lines of reply to this objection. The first is that it is characteristic of bipolar obligation that the person to whom the relevant obligation is owed has the authority to waive her claim against the obligor:

Choice or consent can have direct practical significance in contexts of relational normativity, altering or negating directional obligations that would otherwise obtain. This point too might be expressed in the language of authority. Thus, the bearers of moral rights are in a unique position to alter the normative relations at issue through their choices; their consent matters directly for the question of whether otherwise proscribed behavior may be engaged in, in a way the choices and preferences of uninvolved parties do not. To the extent this is the case, the bearer of the right has the unique authority to determine whether actions within the designated class may be carried out. Claim rights do not themselves derive from volitional acts of their bearers (such as explicit or implicit demands that others desist from the behavior the rights forbid). But once these essentially relational norms are in place, their bearers often have special authority to waive the protections that they provide, by consenting freely to being treated in the way that the right would otherwise prohibit. (2007, 29–30)

Here authority seems to work in roughly the same way as with the voluntarist model, if in an indirect or negative fashion. Whereas the voluntarist model had it that what is distinctive about second-personal reasons is that they are the creation of some actual authoritative act of address, the thought here seems to be that what sets bipolar obligations apart is that they might be waived through an actual act of address by the party to whom the obligation is owed. The validity of the
relevant bipolar obligation then indirectly depends on the obligee’s exercise of authority, in that it only holds because she has refrained from waiving her claim through the appropriate authoritative act of address.

However, the voluntarist element Wallace seems to be appealing to here also reenters the theoretical burdens from which the voluntarist model suffered. As Wallace himself points out, not all moral claims seem to be waivable (2007, 29n3). We arguably lack the power to waive our moral right to life or to sell ourselves into slavery, for instance. Once again, the normative distinctness of the second-person standpoint seems to be purchased at the price of ascribing to morality an unduly contingent character. It simply doesn’t seem to be the case that what we owe to each other morally speaking depends on what others in fact claim or refrain from claiming in the way seemingly suggested here.

Wallace’s second line of reply to the objection that the relational model cannot make sense of Darwall’s claim that the notion of a second-personal reason stands in an internal relation with the concept of practical authority is that it is characteristic of relational normativity…that the person who is wronged by you has a privileged basis for complaint against you, an objection to your conduct that is not shared by mere observers to what was done. The notion that someone in particular has been wronged by your action is conceptually connected to the idea that the wronged party has special ground for complaint, which typically takes the form of resentment and the kind of personal protest that gives expression to this reactive sentiment. We might put this point in the language of authority by speaking of the aggrieved party’s privileged authority to complain or object when relational obligations to them have been violated. (2007, 29, emphasis added)

Darwall in fact seems to distinguish between monadic and bipolar obligation along lines similar to those suggested by Wallace. Here is how he puts the point in “Bipolar Obligation:”

Bipolar obligations do implicate a distinctive species of second-personal authority and reason, and so entail a distinctive kind of accountability, which distinguishes them from moral obligations period. But moral obligations period are also tied to accountability conceptually, albeit a different species, and are therefore no less second-personal than are bipolar obligations. To put the point in a rough and preliminary way, obligees have an individual authority to hold their obligors accountable as the
Both Wallace and Darwall thus seem to suggest that the distinctiveness of bipolar obligation resides in the fact that those to whom the relevant obligations are owed have a particular kind of authority to hold their obligors accountable and to issue a particular kind of complaint in the case of breach. However, this line of argument begs the question in which sense the claim-holder’s position is understandable as a form of authority. Darwall’s suggestion is that what distinguishes individual from representative authority is that in the case of the former “it is up to us as individuals whether to make them, say, whether to claim reparations or to insist on someone’s keeping a promise” (2007, 65, emphasis added), say. In other words, a claim-holder exercises her individual authority “on [her, M.G.] own behalf and at [her, M.G.] own discretion” (2013a, 26). The exercise of representative authority on the other hand is “one that, unlike individual authority, is non-discretionary” (2013a, 27, emphasis in original).

Now, there is a trivial sense in which the exercise of both individual and representative authority might be described as discretionary. Just as it is “up to us” as individuals whether to claim reparations or instead let it go when someone has injured us, it is “up to us” as representatives of the moral community whether to actually complain about those who violate some supposed “moral obligation period,” such as pollute the environment or fail to contribute their part in some just institutional scheme or the like. This is not to say that the two complaints are the same. One way of putting the point is that only the obligee has a complaint against the obligor. The members of the moral community at large on the other hand merely has a complaint about her. They might even address their complaint to the obligor, but a complaint about a person addressed to that person does
not yet amount to a complaint against her. Yet even if these verbal maneuvers track a genuine distinction in normative form, it is not clear how the distinction helps to identify the sense in which individual authority is discretionary whereas representative authority is not.

One thought might be that the trivial sense in which those with representative authority exercise discretion when they complain about those who commit some moral wrong is trivial precisely because it is normatively inert. Complaints of this sort merely track moral wrongs whose status as moral wrongs does not depend on the issuing of the complaints themselves. It is in this sense that complaints of this sort do not count as exercises of practical authority. The discretion exercised by the obligee in particular on the other hand is not normatively inert. The obligee’s exercise of individual authority once again has to be an exercise of (practical) authority in the sense of the voluntarist model: the relevant reasons are created through the very act of complaint, or at least the obligor’s breach of her obligation to the obligee has to in some sense be expunged by the fact that the latter refrained from issuing a complaint of the sort in question.

The question is how to make sense of this line of thought. Perhaps the distinction between private and criminal law is instructive here. When \( A \) wrongs \( B \) in private law, then only \( B \) is legally entitled to “complain” against \( A \), i.e. to seek relief in a court of law. (Exceptions to this case, such as representation by an appointed representative, tend to confirm the rule.) Moreover, whether \( B \) actually exercises her entitlement makes a difference to \( A \)’s legal status. If \( B \)’s complaint is found valid in the relevant legal court, \( B \) has title against \( A \) that \( A \) make her \( (B) \) whole. Nothing corresponding holds for third parties. While third parties may complain about \( A \) for her wronging \( B \) (which, again, trivially falls within their discretion to actually issue or not), any such complaint is invisible to the law. Criminal law by contrast doesn’t single out any particular party as the sufferer of
a wrong in the case of a crime\textsuperscript{58} and as such exhibits the normative structure of “obligation period.”\textsuperscript{59} Moreover, just as the representative authority we wield as members of the moral community is non-discretionary on Darwall’s view, so is the state’s pursuit of criminal justice. The state may of course elect to forgo prosecuting certain kinds of crime. However, the considerations on which public-policy measures of this sort hinge are just that, public-policy measures. As such, they are external to the normative structure of criminal law itself. Our discretion in seeking relief from each other under private law or refraining from doing so on the other hand seems to belong to the very idea of private law.

It is not entirely clear what the moral equivalent to the structure of private law might be, such that it makes good on the sense in which the persons to whom the relevant obligations are owed enjoy a distinct form of practical authority vis-à-vis their obligors. Perhaps a structure of this sort could be developed in terms of the notion that it is up to the sufferer of a moral wrong to grant or refuse to grant the perpetrator forgiveness. However, there is a deeper problem here. In the private-law case, whether or not $B$ chooses to legally complain against $A$ or not seems to have no bearing on the question whether or not $A$ in fact legally wronged $B$. The same seems to hold for the moral case. Whether $B$ elects to complain against $A$ for violating some moral claim of hers against $A$ seems to have no bearing on whether $A$ in fact violated the claim in question. Moreover, this is so whether the claim was unwaivable or waivable-but-not-in-fact-waived. To claim otherwise is to treat morality as

\textsuperscript{58} United States law grants the victims of crimes the right to sue the perpetrators under certain circumstances. The O. J. Simpson trials provide a well-known example here. Simpson was found not guilty of the crime of murder in the criminal trial but was found guilty of wrongful death in the civil trial. However, what matters here is that it is only under private law that the estates of the deceased only appeared as even potential sufferers of a wrong.

\textsuperscript{59} Thompson himself suggests that the distinction between private law on the one hand and criminal law on the other is understandable in terms of his distinction between bipolar and monadic wrongs. Wrongs in private law are wrongs against particular individuals. Wrongs in criminal law are wrongs against the people as a whole, and so against no one in particular. On this point see his “What is it to Wrong Someone?” (2004, 343–5).
objectionably contingent on people’s actual choices. However, this is precisely the objection before which the original voluntarist model seemed to fall in the previous section.

The relational model thus appears to reintroduce the burdens of the voluntarist model from §2.3 at one remove. Either we interpret the relational model in terms of some version of voluntarism or other, in which case the account renders the validity of moral obligations objectionably dependent on people’s actual choices; or we interpret the relational model without appeal to some voluntarist element or other, in which case the theory is subject to the same problem that seemed to afflict Darwall’s appeal to the moral community as a regulative ideal, namely that it seems to lack the resources to account for the formal distinctness of the second person in general and the supposed significance of the concept of practical authority for making sense of the second-person standpoint in particular. Again, all this holds even if we waive the interpretive problem mentioned above—that Darwall himself understands the second-person standpoint as encompassing not only bipolar moral obligation but also monadic moral obligation—and restrict the domain of second-personal morality in the way proposed by Wallace. The relational model thus appears to fail by its own standards.

What does seem to emerge from the discussion is that there seems to be no getting away from voluntarism when it comes to understanding the distinctness of practical address. I suspect that this is what underlies Elizabeth Anscombe’s rejection of the “law conception of ethics” conceived of in abstraction from a concrete legislator as incoherent. By the same token, the philosophical appeal of invoking God as the relevant lawmaker emerges quite clearly here. God promises to combine the actuality of an actual lawgiver with the “eternity and immutability” (Darwall 2013b, 3, quoting Cudworth) of the Rousseauvian “general will” or the Darwallian “moral community.”
2.5 What Is Morality?

I believe that the key to solving the dilemma to which the second-person standpoint seems to be liable resides in spelling out the implications of another element in the Darwallian framework, namely his appeal to the idea of a normative felicity condition. To see why, it is instructive to pursue another question, namely this: what exactly does Darwall mean by “morality”?

At the beginning of the chapter, I pointed out that Darwall takes both applicable reasons in the case of the gouty-toed person to constitute moral reasons. The moral reason deriving from the moral badness of a state of affairs in which someone is in pain is formally continuous with reasons of other kinds, such as reasons of prudence, of etiquette, or the like. The moral reason deriving from the gouty-toed person’s morally valid claim not to have her toe stepped upon on the other hand embodies a sui generis form of normativity, namely that captured by the interdefinable circle of irreducibly second-personal concepts. This in turn suggests a partial answer to the question what Darwall means by morality. On the picture that seems to emerge, the second-person standpoint captures a distinct subdomain of morality, namely the domain constituted by the distinctly second-personal species of moral reasons. On this picture, then, the role of the second-person standpoint within Darwall’s framework is parallel to the idea of reasonable rejectability within Scanlon’s theory of “what we owe to each other” (1998): both mark out a distinct, internally unified, and arguably central subdomain within the domain of the moral, which in turn itself constitutes a subdomain of the domain of practical reasons.

However, Darwall’s own appeal to command within a military hierarchy as an example of second-personal address puts this picture into doubt. When a sergeant orders a private to do ten pushups, the sergeant’s act of address to her platoon “purports to address a reason second-
personally and thereby to hold the addressee responsible for compliance.” It “presupposes that its addressee can freely determine himself through accepting the reasons it addresses and the authority in which they are grounded and hold himself responsible for complying with it.” Finally, it “calls for reciprocal recognition of the authority it presupposes” and “attempts to direct an addressee’s will through the addressee’s own free acceptance of that authority” (2006, 259–60). What Darwall points to here are what he calls the “normative felicity condition” of second-personal address, i.e. the normative conditions that the addressor has to presuppose to be in place for the act of address in question to even make sense as the act of address that it purports to be, i.e. an instance of command.

Yet Darwall holds that the reasons deriving from acts of military command are military rather than moral second-personal reasons. The case of military command is supposed to differ on this count from the case of the gouty-toed person, where the relevant second-personal reason is internally related to a valid moral claim, and as such is supposed to constitute a moral second-personal reason. And indeed, a distinction of this sort suggests itself on theoretical grounds already. If there are state-of-the-world-regarding non-moral and state-of-the-world-regarding moral reasons, why shouldn’t there also be second-personal non-moral and second-personal moral reasons? On this picture, then, the distinction between state-of-the-world-regarding normativity and second-personal normativity cuts across the distinction between moral and non-moral normativity. The former distinction is a distinction between two distinct normative forms. The latter distinction is a distinction between two kinds of normative content (presumably with further substantive subdivisions applying within the domain of non-moral normativity). Either form might be filled with either content.

Philippa Foot’s argument in “Morality as a System of Hypothetical Imperatives” (1972) turns precisely on the fact that not only morality but also, say, etiquette deploys obligation as its normative form. Her question then is in virtue of what morality is supposed to have normative priority over etiquette or the like.
However, note that the picture just sketched conflicts with the one from two paragraphs before. On the earlier picture, the second-person standpoint was supposed to demarcate morality itself, or at any rate a key subdomain within morality. On the present picture, nothing of the sort holds, since the distinction marked out by the second-person standpoint seems to cut across the distinction between the moral and the non-moral. Hence, if the second picture represents Darwall's considered view, we are still at a loss for what the idea of morality is supposed to amount to for Darwall.

In a footnote to *The Second-Person Standpoint*, Darwall seems to gesture towards a line of thought that lends itself to an answer to this question. He says there: “With second-personal reasons other than those deriving from moral obligations, …the presupposition is only that the agent can freely determine herself to act on these reasons *pro tanta*, that is, other reasons to the contrary notwithstanding” (2006, 248n10). The idea here seems to be that non-moral second-personal reasons are merely *pro tanta*, the implication presumably being that *moral* second-personal reasons are conclusive. In his more recent “Making the ‘Hard’ Problem of Moral Normativity Easier” (2016), Darwall develops a related line of thought. As he argues there, “A proper understanding of the concept of moral obligation reveals, I argue, that it is conceptually necessary that there are always nonsubscripted reasons to comply with moral obligations” (2016, 264). Darwall's argument there invokes a thought we had already encountered in the Introduction, namely that those who fail to do what they are morally obligated to do are are not merely susceptible to rational criticism but are *blameworthy*. What he adds now is that blameworthiness entails something not merely about the agent’s specifically moral reasons but about her reasons in general. As he puts it,

> among the presuppositions of blame is that there was good reason for the person one is blaming to have complied with the moral obligation that one blames her for not having complied with. It is simply incoherent to blame someone for doing something while simultaneously accepting that there

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61 In personal correspondence, Darwall told me that the footnote did not represent his considered view. (I obtained his written permission to mention this.)
was no \textit{(nonsubscripted, nonperspective-relative)} reason for her not to have done it. (2016, 268, emphasis added)

The two proposals are related because according to both, specifically moral obligation enjoys a certain priority over other species of obligation. However, they differ in how they conceive of the relevant priority. In the suggestion in the footnote to \textit{The Second-Person Standpoint}, the thought seems to be that moral second-personal reasons are conclusive whereas non-moral second-personal reasons are merely \textit{pro tanto}. The account in “Making the ‘Hard’ Problem of Moral Normativity Easier” in turn has it that the internal relation between moral obligation and blame entails that someone who is under some moral obligation has “reason, period” to do what she is morally obligated to do. The implication then seems to be that non-moral obligation on the other hand does \textit{not} entail anything about the person’s “nonsubscripted, nonperspective-relative” reasons. In other words, the footnoted proposal describes the priority of moral over non-moral second-personal reasons in terms of the distinction between the “\textit{pro tanto}” and the “all-things-considered” level, whereas the account in “Making the ‘Hard’ Problem of Moral Normativity Easier” turns on the distinction between “subscripted” and “non-subscripted” reasons.

Both proposals fail, however, and they fail for the same reason. In ordering the private to do ten pushups, the sergeant \textit{also} presupposes that her addressee would be blameworthy were she to refuse to comply with the order, or else the relevant act of address wouldn’t qualify as the act of address it purports to be, i.e. an instance of command. In other words, in issuing her order the sergeant presupposes that the private is under an \textit{obligation} to perform the ten pushups, not merely that she has \textit{pro tanto} reason to do so. This seems to cut against the first, footnoted proposal. However, it also cuts against Darwall’s more recent account. If both moral and non-moral cases of second-personal address are internally related to the idea of blame as the proper reaction in case the addressee fails to
comply with her second-personal reasons, then it is not clear how the fact that blame presupposes that the addressee has “nonsubscribed, nonperspective-relative” reason to do the thing she failed to do is supposed to mark out a *distinction* between moral and non-moral second-personal address. Perhaps Darwall might argue that in the case of non-moral second-personal address the kind of blame in question is *itself* “subscribed.” However, this begs the question why the same wouldn't also hold of *moral* second-personal address, except that here the relevant subscript would be the subscript “moral” itself.

Here is what seems to me to be the underlying issue. Darwall starts with the idea that morality *just is* the second-person standpoint, with all its formal trappings. However, Darwall also wishes to explain the sense in which the case of the gouty-toed person is a case of *moral* obligation whereas the military cases are *not*. Given his second-personal conception of morality, he therefore invokes a concept internal to the second-person standpoint itself to draw the requisite distinction, i.e. obligation in the first case and blame in the second. However, since the military cases are also cases of second-personal address and as such also internally related to these concepts, the argument cannot accomplish what it is supposed to, namely to single out specifically moral second-personal reasons.

This leaves Darwall with two options. The first is to make good on the second picture—the one according to which second-personal and non-second-personal normativity represent two normative forms to be filled with either moral or non-moral normative content—by developing a purely substantive account of the distinction between moral and non-moral normativity, at the level of reasons and obligations alike. The second is to explain the difference between the two kinds of cases without giving up on the idea that morality is to be understood in the formal terms embodied by the second-person standpoint. In the following section I will sketch an argument of the latter sort.
2.6 The Austinian Model

Darwall concludes his discussion of the normative felicity conditions implicit in the sergeant’s order that the private do ten pushups by noting that “Although the sergeant, of course, addresses her order to not just any rational person but to the private, there is an important sense in which her addressee must be conceived to be a person-who-happens-to-be-a-private” (2006, 259–60). What Darwall seems to suggest here is that in her very act of address the sergeant grants that, even though the private is her military subordinate, she (the private) is her moral equal. What I want to suggest is to look no further than this in answering the question from the previous section. Rather than constituting one species of normative content among others that one person might address to another, morality just is “the sum of the normative felicity conditions of second-personal address.” I will call this the “Austinian Model.”

My formulation here recalls Kant’s formulation of the idea of right in the Doctrine of Right, according to which right is “the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom” (1999b, 387 (6:230)). However, it also recalls Kant’s formulation of the idea of morality in the Groundwork, which has it that morality is “the condition under which alone a rational being can be an end in itself; because it is possible only by this to be a legislating member in the kingdom of ends” (1999b, 84 (4:435)). I bring up the references to Kant for two reasons. The first is to drive home the kinship between the account I am offering here and Kant’s practical philosophy. The second is to exploit the fact that Kant deploys parallel formulations as a description of morality as a whole and as a description of one part of morality, i.e. right. What this suggests in turn is that on my account we might similarly
distinguish between different forms of morality in terms of the felicity conditions of different forms of interpersonal address.

In Chapter 3, I will distinguish four such forms of address: counsel, testimony, request, and command. In Chapter 4, I will discuss the normativity of the latter two of these forms in greater detail. These two forms of address are ones I classify as normatively creative forms of address. That is, both request and command are forms of address whose normative force depends on the very act of address for its existence. The form of morality proper to request and the form of morality proper to command might therefore be understood as the sum of the conditions under which one person can create normative force for another. Note that something like this seems to also be implicit in Kant's appeal to the notion that morality is the condition under which alone a rational being can be a legislating member in the kingdom of ends.

Note, moreover, that the “dilemma of authority” from §2.2.1 turns on a puzzle over this very idea, i.e. how one person might genuinely create a reason for another. The strategy in answering this puzzle proposed here has something of a “transcendental” character, in that it inquires into what is normatively presupposed in the activity of creating a reason for another. How compelling its answer is depends, first, on whether it gets the relevant presuppositions right, and second, on how “central and unavoidable…the conception of oneself on which the possibility of” these form of address depends, to paraphrase Thomas Nagel (1979, 18). The relevant conception of ourselves thus is one in which we address each other through acts of request and command. Since I take it that the possibility of these forms of interpersonal address is “central and unavoidable” to our self-conception, the account does look compelling on the second of the two counts just mentioned.

I believe that the Austinian model promises to explain the sense in which the kind of normativity at play in the case of the gouty-toed person might be said to be “moral” in a way in
which the normativity of military command is not. I will only indicate here how I take it that the argument would have to go. Take the case of the gouty-toed person first. We might start with the idea that stepping on another’s foot wrongs them not merely when and because we thereby cause them pain but because in doing so we infringe on their bodily integrity. The way to develop the argument then would be to argue that there is a form of interpersonal address whose normative felicity rests on the presupposition that we exert control over our own bodies. The act of stepping on another’s toe in turn is inconsistent with this presupposition. Incidentally, Kant’s account of right—which, again, he understands as “the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom”—turns on the assumption that there is an innate right to freedom understood as independence from another’s choice, within which our right to bodily integrity in turn plays a normatively privileged role (privileged, that is, vis-à-vis our rights to external objects). The obligation not to step on another’s foot therefore derives from the very structure of the relevant form of interpersonal address, i.e. presumably the form of interpersonal address internally related to what Kant calls “right.” This is the sense in which the case of the gouty-toed person is a case of a specifically—or perhaps “purely”—moral obligation. By the same token, no particular act of interpersonal address is needed to establish it. It is in this sense that we might speak of the “eternity and immutability” of morality.

The obligations deriving from military command on the other hand do not derive from the very presuppositions of the form of interpersonal address in question. Rather, the particular acts of military command in question are required to establish them. It is in this sense that the relevant obligations aren’t moral, or rather, aren’t purely moral in character. As Darwall’s discussion of the sergeant-private case brings out, however, morality constitutes the very condition under which military acts of address can establish military obligations. There is therefore something misleading
about speaking of military as opposed to moral obligations here. Talk of this sort suggests that military and moral obligations are somehow two species of the same genus, i.e. “obligation, period.” However, this is not how it is, at least on the view I advanced here. Rather, moral obligations are—or are internally related to—what is presupposed by the possibility of the non-moral obligations.

By the same token, the picture I sketched here suggests a different understanding of the relation between morality on the one hand and our concrete institutions—such as the law, or our system of etiquette, or the military—on the other. As it is usually conceived, these are viewed as conceptually independent “subscripts” of the same system of normative concepts. This in turn makes it difficult to explain how it is that morality is still supposed to enjoy a normatively privileged position vis-à-vis the others. (Incidentally, note that—as discussed in §2.5—this is the very thing Darwall is struggling with.) According to the picture I am proposing here on the other hand, morality enjoys priority over concrete normative systems such as law, etiquette, and the military both conceptually and normatively; conceptually in the sense that morality just is the normative form these systems embody and concretize, and normatively in the sense that it imposes internal constraints on the latter in virtue of the fact that it informs them.62

2.7 Conclusion

In this chapter I suggested an interpretation of the idea of Darwall’s second-personal account of morality centering around Darwall’s notion of a normative felicity condition. Rather than viewing morality as one possible content entering second-personal address, my suggestion was to consider morality as the sum of the formal presuppositions of second-personal address as such. Doing so

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62 In Chapters 4 and 5, I will suggest that, at least when it comes to right, the dependence relation runs the other way as well. That is, there is a sense in which law doesn’t just need morality but morality also needs law.
establishes not only the *sui generis* nature of the second-person standpoint but also the independence of morality from actual acts of address as the source of its validity; in fact, the relation runs the other way around: rather than rendering morality contingent on actual acts of address for its validity, morality constitutes the condition on which actual acts of second-personal address depend for their validity. While what I said was at times critical of Darwall’s development of his own position, I consider my argument here friendly to his larger view. My suggestion is merely to carry Darwall’s own “Austinian” starting point to its logical conclusion. In the next chapter, I will exploit the distinction between the two kinds of preemption developed in the previous chapter and the idea of a normatively creative act of address invoked here in order to spell out an account of the distinction between theoretical and practical authority.
Chapter 3:
Authority, Theoretical and Practical

3.1 Introduction

Whatever the nature of the disagreement between them in the debate discussed in Chapter 1, Raz and Darwall agree that its object is not authority simpliciter but rather specifically practical authority. As Darwall puts it, “The kind of authority that Raz and I are both concerned with is practical authority, as distinguished from various forms of epistemic authority or expertise, including the kind of authority on practical matters that a trusted advisor might have” (2010a, 258, emphasis in original). In his response to Darwall, Raz in turn concedes that “One of the failings of my explanation of the service conception…was a failure to explore the way it relates to epistemic authority” (2010, 300).

Raz and Darwall are not alone in drawing a distinction between theoretical and practical authority. In fact, most philosophers working on the concept of authority do. For instance, Scott Hershovitz in “The Role of Authority” says that “Most philosophers hold that authority (of the practical sort) consists in a right to rule, such that subjects are obligated to obey” (2011, 1, emphasis added), thereby implying that there is also a non-practical, i.e. theoretical, sort of authority. Similarly, while David Enoch in “Authority and Reason-Giving” disputes that “there can be epistemic authority strictly speaking,” he holds that “there can be an epistemic phenomenon that is close enough to that of authority, and that includes preemption (perhaps some special cases of expertise are of this kind)” (2014, 322n39).

Hershovitz briefly returns to the difference between the two kinds of authority later in the same article, noting that practical authority differs from theoretical authority in that it “attaches to roles, not to people” (2011, 17). As the discussion in Chapter 4 below will make clear, I am profoundly sympathetic to Hershovitz’s observation here.
Our linguistic practices also seem to bear out the idea that there are in fact two distinct kinds of authority. We tend to speak of experts and advisors as authorities in their areas of competence, whereas we say that parents, sergeants, and the law have authority over their subjects. The difference also shows up in how we describe the forms of address proper to the two kinds of authority. Those who have authority over others exercise their authority by commanding their subjects. The same cannot be said about those who are authorities in some subject matter. Instead, they are in a position to provide advice or counsel to those who do not possess like authority. The systematic distinction we seem to draw in our linguistic practices concerning the term “authority” suggests that there is a genuine difference there. At the very least, the philosophical burden of explaining away these linguistic phenomena as “signifying nothing” is at least as great as the burden of vindicating them by giving an account of what it is that they capture.

I in any case will attempt to discharge the latter rather than the former burden in this chapter, by explaining what the difference between theoretical and practical authority amounts to. More specifically, the challenge I will be tackling is this: how are we to conceive of the distinction between theoretical and practical authority in a way that captures not only their distinctness, but also the sense in which both qualify as forms of authority? Briefly, my answer will be that what characterizes the two forms of authority are precisely the two forms of preemption discussed in Chapter 1: theoretical authority is preemptive in the encompassing sense whereas practical authority is preemptive in the determining sense. What makes both theoretical and practical authority forms of authority therefore is their preemptive character. What distinguishes them in turn is the distinction in the kind of preemption proper to each of them. Theoretical and practical authority differ along a second dimension, however. The former merely transmits normative force that applies to its addressee independently of the act of address whereas the normative force of the latter only comes
into existence through the act of address itself. I will speak of this as the distinction between a “transmissive” and a “creative” form of address. The two dimensions create conceptual space for two additional forms of address, namely testimony and request.

I will proceed as follows. In §§3.2–3.4, I discuss three alternative accounts of the distinction between theoretical and practical authority, the “belief–action account” (§3.2), the “reason–duty account” (§3.3), and the “transmission–creation account” (§3.4), all of which are inadequate in one way or another. In §3.5, I introduce my own account of the distinction between theoretical and practical authority, the “two-wills account.” In §3.6, I round out my account by discussing the two additional forms of interpersonal address, i.e. testimony and request. §3.7 concludes.

3.2 The Belief–Action Account

A natural starting point for explaining the distinction between the two kinds of authority underlying the difference in our linguistic practices is to exploit yet another bit of linguistic practice, namely the very fact that philosophers have generally spoken of this distinction as the distinction between “theoretical” and “practical” authority. In other contexts, the terms “theoretical” and “practical” usually mean something along the lines of “concerning belief” and “concerning action,” respectively. For instance, “theoretical reason” and “practical reason” are taken to refer to our rational faculty as it governs our beliefs and our actions, respectively. The same goes for the terms “theoretical reasons” and “practical reasons,” which are generally used to refer to considerations in favor of this or that belief and this or that action, respectively. Applied to the present case, the suggestion thus emerges that the two kinds of authority in question differ in that one of them concerns its addressees’ beliefs whereas the other concerns their actions.
What I called the “standard account” in the Introduction and will call the “belief–action account” of the distinction between theoretical and practical authority here centers precisely on this line of thought. As we saw in Chapter 1, both Raz and Darwall agree that practical authority consists in the power to create preemptive reasons for others. (What they disagree over in turn is whether Raz’s service conception has the resources to ground a normative power of this sort.) The thought therefore suggests itself that practical authority more specifically consists in the power to create preemptive practical reasons—i.e. reasons for action—and that theoretical authority accordingly consists in the power to create preemptive theoretical reasons—i.e. reasons for belief—for others. And indeed, Raz seems to hint at something like the belief–action account when he says:

Theoretical advice preempts the reasons for belief that I would have relied upon otherwise. Just as with any practical authority, the point of a theoretical authority is to enable me to conform to reason, this time reason for belief, better than I would otherwise be able to do. This requires taking the expert advice, and allowing it to preempt my own assessment of the evidence. If I do not do that, I do not benefit from it. (2005b, 1033)

Both intuitively and theoretically speaking, the belief–action account has considerable appeal. Intuitively speaking, legal systems, parents, and sergeants do seem to have authority over their subjects in the sense that they get to tell them what to do. Experts on the other hand are authorities in their subject matter in the sense that their verdicts bear on what their audience has reason to believe. Theoretically speaking, the belief–action account has the virtue of systematic tidiness. It depicts theoretical and practical authority as sharing the same formal structure and differing only in the substance that fills said structure. Here is Raz again: “It is possible that practical and theoretical authorities have little in common. But it is more likely that, while they provide reasons for different things, they share the same basic structure” (1986, 53).

Note that the case of advice—understood as the conveying of one’s judgment as to what the advisee is to do—poses a potential problem for the belief–action account. Since advice so
understood pertains to what the advisee has reason to do rather than what she has reason to believe—advice thus tends to take the form “I would do X” rather than “I would believe that I should do X” or the like—the belief–action account is forced to consider advice to fall on the practical side of the divide between theoretical and practical authority. Yet advice qua advice brings with it the normative trappings of theoretical rather than practical authority as ordinarily understood. In particular, those who advise others precisely don’t command them, nor would we describe the adviser–advisee relationship as one characterized by the former’s power over the latter. The belief–action account therefore threatens to misclassify advice. But perhaps a defender of the belief–action account might reply that, its typical linguistic form notwithstanding, advice does in fact concern belief, namely precisely belief about what there is reason to do. The practical quality of practical advice therefore shows up in the practical content of the relevant beliefs.64

A more serious problem for the belief–action account is that it appears to be too tidy for its own good. The belief–action account’s claim that theoretical and practical authority share the same structure and differ only in the substantive content that enters it is difficult to square with the normative asymmetry between the two kinds of authority suggested by our linguistic practices. Counsel or advice and command as the forms of address applicable to the two kinds of authority seem to have different normative ramifications. For example, experts do not “get to tell” their audience what to believe, nor do advisors “get to tell” their advisees what to do, in the way in which sergeants, parents, and the law get to tell their subjects what to do. Indeed, the very fact that in the theoretical case we speak of a person’s being an authority in something and in the practical case of

64 Note that this reply gives rise to complications of its own. If practical advice creates reasons for belief about what to do, then, by symmetry, expertise or theoretical advice ought to create reasons for belief about what to believe, as opposed to straightforwardly reasons for belief, yet the latter is what the defenders of the current line of argument are presumably looking for. I believe that there are deep issues concerning the relation between theoretical and practical reason lurking here, but this is not the place to explore them.
someone’s *having authority over* someone else already indicates a difference in normative structure between the two kinds of authority, as opposed to a mere difference in substance.

Philosophers working on the idea of authority have sometimes attempted to capture the normative structure of practical authority precisely by appeal to the idea of preemption. As we saw in Chapter 1, Darwall does exactly that when he says: “In a slogan: ‘No preemptive reasons without the standing to hold accountable’” (2010a, 261). However, the trouble for the belief–action account is that it ascribes preemptiveness to both kinds of authority. The notion of preemption is therefore unavailable to the belief–action account for the purposes of accounting for the normative asymmetry between theoretical and practical authority. Perhaps it might be replied that the sort of preemption at play in the one case differs in kind from the sort of preemption at play in the other. As already suggested in the Introduction, this is where I myself will be heading. However, note that this reply effectively repudiates the belief–action account as stated above in favor of a formally more complex account of the distinction between theoretical and practical authority.

### 3.3 The Reason–Duty Account

Raz himself is in fact alive to these concerns. As he puts it,

> theoretical authorities, experts, cannot order us to believe one thing or another, and cannot impose duties to believe—the nature of belief and belief formation excludes such duties. Belief formation, just like actions, is responsive to reasons, but only actions, and not the formation of beliefs, involve the will. Duties exist only when (but not always even then) the response to reason involves the will. (2005b, 1034)

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\(^{65}\) Darwall’s slogan begs the question how he proposes to understand the normative structure of *theoretical* authority in that case, if it isn’t in terms of the notion of preemption.
In “Authority and Reason-Giving,” David Enoch picks up on an observation similar to Raz’s:

“What’s special about authority is that where it is present the authority can create not just any old reasons, but duties” (2014, 301).

Both passages suggest a second account of the distinction between theoretical and practical authority, according to which exercises of theoretical authority create (mere) reasons for their addressees, whereas exercises of practical authority impose (full-blown) duties on them. Let me call this the “reason–duty account” of the distinction between theoretical and practical authority.

As with the belief–action account, there is both an intuitive and a theoretical case to be made for the reason–duty account. Intuitively speaking, those with practical authority—i.e. those who have authority over others—do seem to impose duties on them. The tax law imposes the duty to pay certain amounts of money to the government. Parents impose duties on their children to go to bed or do perform this or that household chore. Sergeants impose duties on their platoons to fall in or to clean the barracks or the like. It would be odd on the other hand to say of experts and advisors that they impose duties on those whom they address, rather than saying that their verdicts create reasons for their addressees to believe or do this or that. Theoretically speaking, the difference between reasons and duties seems a promising starting point for an account of the apparent asymmetry in normative structure between theoretical and practical authority.

How are we to understand the distinction between reasons and duties on which the reason–duty account turns? A natural suggestion is to once again appeal to the idea of preemption. The idea here is that the difference between (mere) reasons and (full-blown) duties is that the latter are preemptive whereas the former are. Note that this is precisely Raz’s suggestion as we encountered it in §1.2. On Raz’s view, duties just are categorical preemptive reasons. However, understanding the distinction between reasons and duties in terms of the notion of preemption poses three problems for the
reason–duty account. The first is that an understanding of the distinction between reasons and duties in terms of the notion of preemption leaves unclear how we are to make sense of the authoritative nature of theoretical authority then. The problem is particularly clear in Raz’s case. If the distinction between theoretical and practical authority is supposed to turn on the distinction between reasons and duties, and if the distinction between (mere) reasons and (full-blown) duties is supposed to consist in the fact that the latter are preemptive and the former not, then it seems to follow that practical authority is preemptive whereas theoretical authority is not. As we saw in the passage quoted in §3.2, however, Raz believes that their preemptive character is what is essential to theoretical and practical authority alike: “Theoretical advice preempts the reasons for belief that I would have relied upon otherwise.” Something has to give here. Note that the belief–action account didn’t face this particular problem, since it ascribes preemptiveness to both kinds of authority.

The reason–duty account seems to fare better than the belief–action account on the other hand when it comes to accounting for the status of practical advice, at least at first sight. On the reason–duty account, the difference between (mere) practical advice and (full-blown) practical authority resides in the fact that the latter gives rise to preemptive and the former to mere non-preemptive reasons for its addressees. The difference between (theoretical) expertise and (practical) advice as the two sub-species of theoretical authority in turn consists in the fact that expertise provides (non-preemptive) reasons for belief and advice (non-preemptive) reasons for action. (Again, the reason–duty account’s denial that theoretical authority is preemptive raises the question what the authoritative nature of theoretical authority is supposed to consist in instead; this was the problem raised in the previous paragraph.) As we saw in the previous section, the belief–action account on the other hand was

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66 Note that this is precisely the issue Darwall runs into as well (see footnote 65).
forced to appeal to the more remote idea of a reason for belief about what there is reason to do in order to account for the normative status of advice.

However, the intuitive advantage the reason–duty account seems to enjoy over the belief–action account in this respect turns out to be limited once we notice the trouble the reason–duty account has with accounting for a particular species of practical advice, namely advice in obligatory matters. We had already encountered a case of this sort before, in the shape of Darwall’s example of the financial expert from §1.3. The example turned on the fact that the person seeking advice from the financial expert didn’t have a (mere) reason but a (full-blown) duty to invest her money wisely. The person might therefore be said to have a duty to do as the financial expert says. The trouble for the reason–duty account is that the financial expert does not thereby acquire authority over her advisee. The financial expert is an authority in financial matters, but no more than that. The fact that the advisee has a duty to do as the financial expert says does not make it the case that the latter’s advice is really a case of command. Her advice is still just that, advice. According to the reason–duty account, however, the distinction between practical advice as a species of theoretical authority on the one hand and genuine practical authority turns precisely on the distinction between (mere) reasons (for action) and duties. Hence, it is hard to see how the reason–duty account might be able to account for the case of the financial expert, and for cases of practical advice in obligatory matters more generally. A defender of the reason–duty account might offer a reply parallel to the one I entertained on behalf of the belief–action account in the previous section. She could argue that advice in obligatory and non-obligatory matters alike in fact concerns belief, namely belief about what there is (mere) reason to do in the former case and belief about what it is obligatory to do in the latter case. However, this reply would effectively turn the reason–duty account into a version of
the belief–action account, and one that lacks the tidiness of the straightforward version of the belief–action account discussed in §3.2 at that.

The third and final problem once again parallels one of the problems facing the belief–action account. As I argued in §1.7.1, the distinction between preemptive and non-preemptive reasons is a substantive distinction for Raz. Preemptive reasons just are reasons (simpliciter) with a particular kind of content on Raz’s view. If this is so, however, then the reason–duty account is on a par with the belief–action account in that the difference between theoretical and practical authority turns out to be purely a matter of substance, not of formal structure. Again, however, the difference in how we conceptualize as well as speak of the two kinds of authority seems to run too deep to be plausibly understood as merely a difference in the content filling a single normative structure.

Note that, as with the belief–action account, one possible solution to all three problems would be to suggest that there are really two formally distinct kinds of preemption at play in accounting for the notion of authority. Making good on this suggestion would solve the first problem insofar as it provides for a distinct sense of “preemption” in which theoretical authority is preemptive. It would solve the second problem insofar as it distinguishes the sense in which the notion of preemption figures in the practical advice in obligatory matters from the sense in which the notion of preemption figures in command. Finally, it would solve the third problem insofar as it provides for a distinction between the kinds of preemption at play in theoretical and practical authority sufficiently categorical to make good on the profoundness of the distinction we seem to be drawing between them both in our conceptual framework and in our linguistic practices. Again, this is the direction in which I myself will be taking matters below. However, as with the belief–action account, once we invoke a distinction between two kinds of preemption of this sort, we have thereby transcended or even rejected the reason–duty account.
3.4 The Transmission–Creation Account

Note that both the belief–action account and the reason–duty account locate the difference between theoretical and practical authority in a difference in the normative “objects” of the relevant acts of authoritative address. According to the belief–action account, theoretical authority has preemptive reasons for belief whereas practical authority has preemptive reasons for action as its object of address. According to the reason–duty account, theoretical authority addresses reasons whereas practical authority addresses duties to its addressees. We might accordingly speak of the belief–action account and the reason–duty account as “object-dependent” accounts of the distinction between theoretical and practical authority. The idea therefore suggests itself that the difference between theoretical and practical authority is located, not in the object that is being addressed, but rather in the relation between the act of address and its object.67 In the case of theoretical authority, the object being addressed does not depend for its existence on the act of address itself. In the case of practical authority, it does. What we are looking for might therefore be called an “address-dependent” conception of the distinction between theoretical and practical authority.

Note that a suggestion along these lines is already implicit in Hobbes’s distinction between counsel and command. According to Hobbes, in the case of counsel “the reason for following it is drawn from the matter itself” whereas in the case of command “the reason for following it is drawn from the will of the instructor.” Similarly, H. L. A. Hart in “Commands and Authoritative Legal Reasons” argues that “where a command is sincere the commander intends the expression of his intention to function as at least part of the hearer’s reasons for doing the act in question” (1982, 252).68 As we already saw in §2.2.1, Darwall also expresses a line of thought along these lines: “The

67 The point here recalls Kant’s critical project in its “Copernican” thrust. For Kant’s own comparison of his critical philosophy to the Copernican Revolution see (1999a, 110 (B xvi)).
68 Hart explicitly credits Hobbes as the inspiration for his own thinking on the notion of command. See (1982, 244).
only claim an advisor makes as such is on an advisee’s beliefs about independently existing reasons and about what actions these reasons support, not on her will,” the implication being that in the case of practical authority the relevant reasons do not exist independently. (Moreover, in Chapter 2 I suggested that the framework of the second-person standpoint as such must be understood in terms of the felicity conditions of normatively creative interpersonal address.) All three authors seem to suggest that what distinguishes theoretical and practical authority is that the exercise of the former merely transmits normative force that exists independently of the relevant act of address whereas the exercise of the latter creates the relevant normative force through the very act of address in question. I will therefore call this account the “transmission–creation account” of the distinction between theoretical and practical authority.

To put the point another way, theoretical and practical authority merit the labels “theoretical” and “practical” in the case of the belief–action account and the reason–duty account because the relevant objects of address pertain to belief and action, respectively. In the case of the belief–action account the point holds straightforwardly: the exercise of theoretical authority addresses reasons for belief whereas the exercise of practical authority addresses reasons for action. In the case of the reason–duty account, the same holds only indirectly, through something along the lines of Raz’s idea (quoted in §2.3) that “the nature of belief and belief formation excludes” the possibility of duties to believe something. If there is no such thing as a duty to believe something, then it follows that a kind of authority whose exercise addresses duties has to pertain to action rather than belief, on account of “the nature of belief and belief formation.” The transmission-creation account on the other hand seems to capture a distinction similar to the distinction between theoretical and practical reason as, say, Aristotle, Aquinas, or Kant understand it, as when Aquinas says in the Summa
Theologiae that practical reason is “the cause of things understood” whereas theoretical reason “derives its knowledge from things” (2012, 36 (IaIIae Q. 3, A. 5, Obj. 1)).

As was the case with the belief–action account and the reason–duty account, the transmission–creation account has its distinctive intuitive and theoretical appeal. Intuitively, the transmission–creation account seems to succeed where the reason–duty account failed, namely in classifying the financial expert as a case of theoretical rather than practical authority. While it seems right to say the financial expert’s advisee might have a duty to do as the financial expert says, we would be more hesitant to say that the financial expert imposes the duty in question on her, yet this is precisely how we would describe the relation between the law and its subjects, parents and their children, or sergeants and their platoons. The transmission–creation account has a powerful explanation for why that is so: the duty that applies to her advisee exists independently of the financial expert’s advice, whereas in cases of practical authority proper the relevant duties come into being only by way of some act of authoritative address or other. Theoretically speaking, the idea that those with practical authority constitute sources of normative force in a way in which those with theoretical authority do not does seem to possess the right level of fundamentality to be able to account for the systematic distinction we draw between the two kinds of authority both in how we structure them conceptually and how they enter into our linguistic practices.

However, the transmission–creation account faces trouble from another quarter. What I have in mind might be articulated by appeal to Enoch’s account of authority in “Authority and Reason-Giving.” Enoch’s account turns on a distinction much like that between the mere transmission and the creation of normative force, namely the distinction between someone’s giving another a reason

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69 The parenthesized appendage refers to volume of and “question,” “article,” and “objection” in the Summa.
70 The point might also be put in terms of the de dicto/de re distinction. In both the case of the financial expert and in the various cases of genuine practical authority we might say that there is a duty to do as the addressor says. The difference is that this holds de re in the former case and de dicto in the latter.
“purely epistemically” and her giving the other a reason “robustly” (2014, 299). The details of Enoch’s account need not concern us here.\textsuperscript{71} What does matter for my purposes is that not only acts of command but also acts of request create reasons robustly on Enoch’s view.\textsuperscript{72} Moreover, the observation that there is an element of “creation” shared between request and command is not unique to Enoch. Raz for instance picks up on the same thought when he says that “in requesting and in commanding the speaker intends the addressee to recognize the utterance as a reason for action” (1986, 37, emphasis added).

The trouble for the transmission–creation account is that request is precisely not the form of address proper to practical authority—that is, to one person’s having authority over another—yet if request really does amount to a normatively “creative” rather than merely “transmissive” form of address, then it is not clear what resources the transmission–creation account has available by which to distinguish request from command as the proper form of practically authoritative address. (By the same token, the transmission–creation account has nothing to say about the distinction of counsel or advice as the form of address proper to theoretical authority—that is, to someone’s being an authority in some subject matter—and other forms of “transmissive” address.)

Enoch himself proposes to account for the distinction between request and command by appeal to the distinction on which the reason–duty account turned, i.e. the distinction between reasons and duties. On Enoch’s view, while requests and commands both robustly create reasons, requests create mere reasons whereas commands create preemptive reasons. “What does the work here [i.e. in distinguishing request and command, M.G.]…is…the thought that the distinctive feature of authorities is that the reasons they can give robustly are reasons of a special kind, duties’” (2014, 306, 71 Enoch actually distinguishes a third kind of reason-giving, namely “merely triggering” reason-giving. In “Giving Practical Reasons,” Enoch argues that “the only plausible way of making sense of robust reason-giving is as a unique particular instance of triggering reason-giving” (2011b, 2). Again, however, these details need not concern us here.\textsuperscript{72} See for instance (2014, 306), where he says that “requests too are a case of robust reason-giving.”
emphasis in original). Raz makes a similar claim: “The difference [between requests and commands, M.G.] is that a valid command (i.e. one issued by a person in authority) is a [preemptive, M.G.] reason. We express this thought by saying that valid commands or other valid authoritative requirements impose obligations” (1986, 37).

However, appealing to the reason–duty account by way of distinguishing between request and command within the framework of the transmission–creation account won’t do, for the very reason the reason–duty account didn’t do as a freestanding account of the distinction between theoretical and practical authority in the first place. To see why, note that it is easy enough to conjure up a case parallel to Darwall’s example of the financial expert, which—recall—was the case that had created trouble for the reason–duty account (see §3.3). For example, suppose that there is a duty to tell someone the time or give them directions when they ask you to and doing so does not require “sacrificing anything of comparable moral importance” from you: you’re not rushing to a job interview or saving someone’s life right now, say, and all you have to do is look at your wrist or consult your memory. However, the fact that doing these things is obligatory under the circumstances described does not entail that the person asking for the time or for directions is in fact not asking but commanding you to tell her the time or give her directions, any more than the fact that you have a duty to invest your savings well entailed that the financial expert’s advice actually isn’t advice but command. Reintroducing the reason–duty account into the transmission–creation account in the subsidiary fashion just sketched thus also reintroduces the difficulty to which the reason–duty account as a freestanding account of the distinction between theoretical and practical authority was liable to begin with.

That being said, just as there was a kernel of truth in the reason-duty account as a conception of the distinction between theoretical and practical authority, there is a kernel of truth in the idea that
the distinction between request and command as forms of address must be understood in terms of
the distinction between reasons and duties. The appeal to the distinction between reasons and duties
by way of explaining how request differs from command is meant to capture the fact that acts of
command are meant to be preemptive whereas acts of request are not. However, what we need is a
different understanding of what this line of thought amounts to from the one operating in the
reason-duty account.

3.5 The Two-Wills Account

Let me begin with the observation that the philosophers sympathetic to the transmission–creation
account gravitate towards the notion of the will in accounting for the difference between theoretical
and practical authority. Hobbes in particular describes the source of the normative force of
command as originating in “the will of the commander,” as opposed to the normative force of
counsel, which resides in “the matter itself.” Hobbes’s reference to the will comports well with
Kant’s understanding of the concept. According to Kant, a creature with a will has “causality with
regard to its objects” (1999b, 96 (4:448)), where the will is “nothing other than practical reason”
(1999b, 66 (4:412)). Similarly, in the passage quoted in §3.4 above Darwall says that advisors qua
bearers of theoretical authority make claims on their addressee’s “beliefs about independently
existing reasons and about what actions these reasons support, not on her will,” the implication
being that those with practical authority do make such a claim. Raz also says something along the
same lines when he says, in the passage quoted at the beginning of §2.3, that “only actions, and not
the formation of beliefs, involve the will.”
However, note that there is an intriguing difference between Hobbes’s and Kant’s appeal to the will on the one hand and Raz’s and Darwall’s on the other. Whereas Hobbes and Kant speak of the will of the \textit{addressor}, Raz and Darwall refer to the will of the \textit{addressee} in explaining practical authority. What I want to propose is that each of these appeals gets one half right and that the full truth emerges when we put the two halves together. Specifically, we have to understand practical authority in terms of a relation between \textit{two} wills, the will of the \textit{addressor} \textit{and} the will of the \textit{addressee} of an act of command. A felicitous act of command is one in which the will of the addressor through her very act of address \textit{determines} the will of the addressee, where “determination” has to be understood in the sense of the determining conception of preemption I ascribed to Darwall in §1.7.2. Hence, what makes the relation between the addressor and the addressee of a command a relation of authority is its preemptive character so conceived.

\textit{Theoretical} authority on the other hand involves neither the addressor’s nor the addressee’s will in the way in which they figure in practical authority. The normative force of acts of counsel does not originate in the very act of address but rather transmits normative force that exists independently of the act of address itself. Nor is an act of counsel meant to determine the will of the counselee in the sense of “determination” at play in the determining conception of preemption. Theoretical authority is instead meant to be preemptive in the sense of the encompassing conception. In a felicitous act of theoretical authority, both addressor and addressee take the content of the addressor’s address to encompass the normative force of what Hobbes calls “the matter itself” and what Darwall refers to as “independently existing reasons.”\footnote{The appeal to the encompassing relation here returns us to the discussion from §1.7.1 about the distinction between an “internal” and an “external” understanding of the dependence thesis. As should be clear from the discussion there, I am inclined towards the former. However, I lack the space to expand on these matters here.} Given the explanatory pride of place it gives to the wills of both addressor and addressee in accounting for the idea of practical authority—

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and by extension the distinction between authority in its theoretical and practical guise—I will speak
of my account as the “two-wills account” of the relation between theoretical and practical authority.

Note that the sense in which the two forms of preemption are internal to theoretical and practical authority has to be understood in terms of Darwall’s notion of a normative felicity condition, as discussed at length in Chapter 2. The point is not that all purported acts of counsel or command are in point of normative fact preemptive in these two senses, respectively. I am not denying that there is such a thing as bad-faithed advice, just as there is such a thing as infelicitous command. Instead, the two forms of preemption are proper to the two forms of authoritative address in the sense that they serve as their internal standards of success. By this I mean that acts of counsel or command qua acts of counsel or command aim to be preemptive for their addressees, in the sense of “preemption” proper to the form of authority in question. A wouldn’t be in the business of giving counsel to B if she didn’t mean for her advice to preempt B’s own reasoning, in the encompassing sense of “preemption.” The same goes for command, in the determining sense of “preemption.” I take it that this is the sort of thought expressed in Hart’s appeal to the commander’s intention to create authoritative reasons for her addressees through her very act of command (see §3.4) or in Raz’s claim that “every legal system claims that it possesses legitimate authority” (1995, 215, emphasis added).

3.6 Request and Testimony

Note that the two-wills account of the distinction between theoretical and practical authority just sketched contains the resources to deliver an answer to the question that had tripped up the transmission–creation account, i.e. how to distinguish between request and command. I concluded
§3.4 with the suggestion that there was a kernel of truth in the idea that requests create (mere) reasons whereas commands impose (full-blown) duties. What the proposal got right was that acts of request and acts of command differ in that the latter are preemptive whereas the former are not. With the two-wills account in place, we are in a position to make sense of this idea. What distinguishes request and command is precisely that command is meant to be preemptive in the sense of the determining conception whereas request is not. What request and command have in common on the other hand is the fact that the normative force they apply to their addressees does not precede the relevant act of address but rather depends on the latter for its existence. In this sense, both request and command fall on the “creative” side of the transmission/creation divide on which the transmission–creation account turns (which in turn was the reason why request posed a difficulty for the transmission–creation account in the first place). It might therefore be said that request falls in between theoretical and practical authority, in the sense that its normative structure shares elements from both counsel (as the act of address proper to theoretical authority) and command (as the act of address proper to practical authority).

The sense in which request resembles counsel is not entirely straightforward, however. What I mean might be brought out by way of two complementary observations. First, the content of request is not meant to encompass anything in quite the sense in which the content of a given act of counsel is supposed to encompass its addressee’s independently applicable reasons. This is a straightforward implication of the “creative” status of request as a form of address. Acts of request are meant to create their own normative force, not merely transmit independently existing normative force, whereas the encompassing relation that defines the sense in which counsel is meant to be

Footnote: Again, the idea here must be read in terms of the notion of a normative felicity condition. The claim is not that all acts of command are actually—i.e. in point of normative fact—preemptive (in the determining sense of preemption) but rather that in a felicitous act of command both commander and commandee take the act of command to be preemptive, or else it would not be what it is, i.e. an act of command.
preemptive hinges precisely on the transmission of normative force that applies to the counselee independently of the act of counsel. Second, while counsel is the form of address proper to theoretical authority—that is, to someone’s being an authority in something—request is not a form of address proper to any form of authority. The two observations are complementary because, if I am right, the concept of authority needs to be understood in terms of the concept of preemption—and different forms of authority accordingly in terms of different forms of preemption—so if there is no form of preemption that is proper to request, then request is not an authoritative form of address. As I argue in Chapter 4 below, however, a “creative” analog to encompassing preemption, which I develop in terms of Kant’s idea of a “harmony of ends,” does apply to request.

If request falls in between counsel and command in sharing the former’s “non-determining” and the latter’s “creative” quality, then this suggests that there is conceptual space for a fourth form of address, one which falls between counsel and command in the opposite fashion, that is, by combining the “transmissive” character of the former and the “determining” character of the latter. I believe that testimony fits the bill here. Testimony is a transmissive rather than a creative act of address in the sense that a person giving testimony reports on something that holds independently of the act of testimony; or, more succinctly, testimony is transmissive rather than creative in the sense that it reports on something, whereas requests and commands don’t report on anything.

Another way to make the point is to note that, like instances of counsel, it is possible for testimony to be mistaken. Requests and commands on the other hand cannot strictly speaking be mistaken, although they can be defective in other ways. At the same time, it is a normative felicity condition of testimony that it determine its addressee’s beliefs concerning the subject matter in a manner analogous to the manner in which command is supposed to determine its addressee’s will, i.e. in the sense
described by the determining conception of preemption. On such an account, testimony thus amounts to something along the lines of a command to believe something.\textsuperscript{75}

A treatment of testimony on which testimony shares the normative trappings of command is likely to be controversial. In particular, it might be protested that “the nature of belief and belief formation excludes…duties [to believe, M.G.],” o recall the passage from Raz quoted in §3.3. By the same token, it is unclear whether such a thing as epistemic command is possible or even intelligible, or at least so it will probably seem to many. More fundamentally, the will is generally taken to belong to the faculty of reason in its practical rather than theoretical use, and so to govern action rather than belief.

I have two replies to this objection, the first more dismissive, the second more concessive. The first and more dismissive reply is that the objection rests on an unduly “passive” understanding of belief. For an instructive analogy, consider the notion of love as it appears in Kant's \textit{Doctrine of Virtue}. Kant says there:

In this context, love is not to be understood as feeling, that is, as pleasure in the perfection of others; love is not to be understood as delight (since others cannot put one under an obligation to have feelings). It must rather be thought of as the maxim of benevolence (practical love), which results in beneficence. (1999b, 569 (6:449), emphases in original)

Similarly, in this context belief is not to be understood as a feeling of credence or the like. Rather, belief in the relevant sense is practical. Scanlon’s discussion of belief as a “judgment-sensitive attitude” in \textit{What We Owe to Each Other} is suggestive as to what this thought amounts to. Here is Scanlon:

Having a judgment-sensitive attitude involves a complicated set of dispositions to think and react in specified ways. For example, a person who believes that P will tend to have feelings of conviction about P when the question arises, will normally be prepared to affirm P and to use it as a premise in further reasoning, will tend to think of P as a piece of counterevidence when claims incompatible with it are advanced, and so on. (1998, 21)

\textsuperscript{75}The understanding of testimony I sketch here is indebted to Richard Moran’s work. See in particular his “Getting Told and Being Believed” (2005) and “Testimony, Illocution, and the Second Person” (2013).
Note that only the first element in Scanlon’s list of belief-constituting dispositions refers to a feeling. The others all refer to ways of acting.

The second and more concessive reply is that, as was the case with counsel and request, the fact that testimony is a transmissive and command a creative form of address complicates the sense in which there is a shared element between them. As mentioned above, testimony differs from command in being liable to being mistaken. Hence, even though testimony is supposed to determine what the addressee believes, it is answerable to something whose existence does not depend on the act of address itself and as such is at least in principle accessible to the addressee independently of her being addressed by the person giving testimony. Testimony is therefore liable to a particular form of defeat, one not applicable to command. In his lectures on logic, Kant seems to endorse the existence of a duty to believe others’ testimony that is defeasible by falsehood in precisely this sense:

As for what further concerns the credibility and sincerity of witnesses who communicate experiences they have obtained, everyone is taken to be sincere and upright until the opposite has been proved, namely, that he deviates from the truth etc. According to the well-known principle of fairness [Billigkeit]: Quilibet prosumitur [read: praeasumitur] bonus, donec probetur contrarium. [Translation: Everyone is presumed good until the opposite is proved.] (2004, 24:246, emphasis added)⁷⁶

In particular, what characterizes the kind of defeat that falsehood signifies for an act of testimony is its completeness. This again reflects the fact that testimony is a transmissive form of address. Testimony reports on something that holds independently of the act of testimony itself. The fact that some act of testimony testifies to this or that fact therefore by its own lights has no bearing on its status (or absence thereof) as fact. This is why an act of testimony by its own lights leaves no normative “residue” when it is found to be mistaken. As Elizabeth Anscombe puts it in “What Is It to Believe Someone?”, “it would be a megalomaniac who complained of not being believed, when he agrees that the thing that was not believed was, anyway, not true. Falsehood lets one off all hooks”

⁷⁶ For a discussion of Kant’s view of testimony, see Axel Gelfert’s “Kant on Testimony” (2006).
The possibility of complete defeat of this sort explains the sense in which the kind of preemption—and hence the kind of authority—proper to testimony is of a “lesser” sort than the kind of preemption at play in command qua the form of address belonging to practical authority.\textsuperscript{77} I take it that this is the truth in Raz’s claim that “the nature of belief and belief formation excludes” duties to believe.

Here are the four forms of address at which we arrived, presented in table form:

<table>
<thead>
<tr>
<th>Encompassing preemption</th>
<th>Determining preemption</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transmissive address</strong></td>
<td></td>
</tr>
<tr>
<td>Counsel</td>
<td>Testimony</td>
</tr>
<tr>
<td><em>Theoretical authority</em></td>
<td></td>
</tr>
<tr>
<td><strong>Creative address</strong></td>
<td></td>
</tr>
<tr>
<td>Request</td>
<td>Command</td>
</tr>
<tr>
<td><em>Practical authority</em></td>
<td></td>
</tr>
</tbody>
</table>

Figure 1: The Two-Wills Account

Keep in mind here that the matrix needs to be read with the caveats implied by the two complications discussed in this section. First, the elements in the two columns—counsel and request on the one hand, testimony and command on the other—do not line up with one another as straightforwardly as the above diagram might seem to suggest. Second, while request and command both constitute creative forms of address, only in the case of command is it appropriate to say that

\textsuperscript{77} The fact that testimony “ultimately depends upon and is defeasible by epistemic authority” is precisely why Darwall holds that testimony may be “superficially second-personal” but that the form of authority at play in testimony is “not second-personal all the way down” (2006, 57). While I agree with the premise of Darwall’s argument here, I agree with Moran that his (Darwall’s) conclusion—that the kind of authority at play in testimony isn’t second-personal “all the way down”—doesn’t follow. However, discussing these matters in greater detail here would take me too far afield.
the relevant normative force issues (to once again quote Hobbes) “from the will of the instructor,” and only in the case of command—and so only in the case of genuine practical authority—is it therefore appropriate to speak of a relation between two wills. In the case of request, the relevant normative force is more properly described as originating in the addressor’s wish. It is this distinction—i.e. the distinction between wish and will—around which the argument in the following chapter is going to revolve.

I believe that there is a profound philosophical point lurking behind these caveats. The diagram makes it tempting to think that there is more continuity in the kind of normative force being transmitted or created by the acts of address in question than there actually is. For instance, it might be tempting to understand the difference between counsel and request in terms of the distinction between the (mere) transmission and the (full-blown) creation of reasons. On this line of thinking, then, counsel and request differ in that the former merely transmits whereas the latter actually creates reasons for its addressee. In both cases, normativity takes the shape of reasons here. It is just that in one case these reasons exist independently of the act of address and in the other they don’t. 78

Enoch’s distinction between “merely epistemic” and “robust” reason-giving from §3.4 for example suggests an account of this kind. It is therefore not surprising that, like Raz, Enoch is tempted to account for the difference between acts of request on the one hand and acts of command (i.e. instances of genuine practical authority) on the other in terms of the distinction between reasons and duties, where this distinction is once again understandable without reference to the distinction between the transmission and the creation of normative force. In other words, even if there was a genuine difference in normative kind between reasons and duties, the difference would

78 There is a structural parallel to consequentialism here. The units of normative significance according to consequentialism are states of affairs, with no fundamental difference being drawn between states of affairs that exist independently of what anyone does and states of affairs that are the product of someone’s agency.
not turn on the difference between the one’s being merely transmitted and the other’s being created by some act of address by Enoch’s and Raz’s lights.\textsuperscript{79}

My own hunch—which I do not have the space to pursue more fully here—is instead that the insight on which the transmission–creation account qua address-dependent conception rests, when taken to its logical conclusion, is that we cannot think of the nature of the relevant normative force independently of its source. In other words, it is part of the very nature of the kind of normative force at play in creative acts of address that it is the product of an act of interpersonal address.\textsuperscript{80}

The diagram therefore suggests greater formal commonality than there really is.

\textsuperscript{79} It is also not surprising that neither Raz nor Enoch think that there is a deep distinction between reasons and duties. Here is Raz: “I tend to think that in contemporary usage, ‘duty’ does not signify a normatively distinctive category, other than the fact that only categorical reasons, that is, ones whose application is not conditional on the agent’s inclinations or preferences, and so on, can give rise to duties” (2010, 290–1).

\textsuperscript{80} I take it that something like this goes for Kant’s critical enterprise in its “Copernican” impetus (see footnote 67 above) as well. For instance, their deployment in the activity of judging is part of the very nature of the categories of the understanding. Not only could there be no judging without the categories, there also could be no categories without judging; not merely in the sense that the categories depend on instances of judging for their own instantiation, but in the sense that they are not even intelligible without reference to their deployment in the activity of judging. I also believe that something parallel constitutes the deeper point behind Rawls’s distinction between the summary and the practice conception of rules in “Two Concepts of Rules.” What distinguishes the two concepts of rules is the difference in how they answer the question whether the actions falling under a given rule by their very nature make reference to the rule. The practice conception asserts, whereas the summary conception denies, that they do, or, in Rawls’s words, the practice conception holds that “the rules of practices are logically prior to particular cases” (1999c, 36) whereas the summary conception holds that “the decisions made on particular cases are logically prior to rules” (1999c, 34). On the practice conception, then, an action falling under some rule depends on the latter not merely in the sense that it could only occur given that the rule is in place but rather that we could not understand the action as the action it is without reference to the rule in question. As I understand him, Rawls’s ambition is to thereby provide for a version of utilitarianism that does not amount to an “unstable compromise” between “two potentially conflicting forms of moral reasoning” in Scanlon’s words. Since under the practice conception the actions falling under a given rule by their very nature could not be subject to the principle of utility but only to the normative standard set by the rule itself, a version of rule utilitarianism that deploys the practice conception’s concept of rules is not liable to even a potential conflict of the sort mentioned by Scanlon. This is the sense in which the account in “Two Concepts” is supposed to create the conceptual space for a more defensible version of utilitarianism.
3.7 Conclusion

Let me conclude this chapter on a conciliatory note. While I have criticized the belief–action account, the reason–duty account, and the transmission–creation account as inadequate to the task of accounting for the distinction between theoretical and practical authority, the matrix at the end of the previous section drives home the sense in which there is something correct about all three of them. The belief–action account is correct in the sense that only the exercise of practical authority is supposed to determine the addressee’s will. The exercise of theoretical authority even in practical matters—i.e. even practical advice—on the other hand isn’t supposed to operate on the addressee’s will in this immediate a manner. The move I ascribed to the belief–action account in §3.2 in reply to the challenge as to how to account for advice in practical matters—i.e. that such advice does concern the addressee’s beliefs, except that here the beliefs in question are beliefs about what there is reason to do—might be understood as making good on the greater degree of mediacy between the act of address and the addressee’s practical reasoning in the case of practical advice vis-à-vis command.

The reason–duty account is correct in the sense that practical authority is preemptive in a formally distinct sense in which theoretical authority isn’t. The transmission–creation account in turn is correct in that theoretical authority merely transmits whereas practical authority creates the normative force the relevant normative force. The two-wills account might therefore be viewed as the synthesis rather than the rejection of the three accounts of the distinction between theoretical and practical authority found in the literature.
Chapter 4: Request and Command

4.1 Introduction

Perhaps the most enduring moral legacy of the Enlightenment movement is the idea that all humans are “created equal.” The history of much moral and political philosophy since then may be viewed as an evolution in our understanding of the moral and political implications of our natural equality. Even those who are in the business of defending the moral legitimacy of this or that form of de facto inequality between persons tend to do so by arguing, or simply taking for granted, that their naturally equal condition is compatible with, or even requires, permitting the form of inequality in question.

In this chapter I bring the idea of our natural equality to bear on the distinctions in forms of interpersonal address I discussed in the previous chapter, and specifically the distinction between request and command. I argue that command faces justificatory burdens not applicable to request, where these justificatory burdens might be understood as deriving from the natural equality holding between addressee and addressee. I then discuss how these justificatory burdens might be borne by different kinds of command, concluding in a discussion of the command the law exercises over its citizens. Once again, I inquire into the justificatory burdens of counsel and command by way of investigating the normative felicity conditions built into these two forms of address. My question is what addressee and addressee have to take to be true in order for the relevant act of address to be normatively felicitous, in the sense that the relevant justificatory burdens are being met.

I should say a word about what I mean by “justification” here. The notion of justification is frequently understood in terms of the idea of a reason. For instance, an action is justified on this
view if the balance of reasons speaks in its favor, of if there are no decisive reasons speaking against it, or the like. This sort of view is particularly tempting—or even all but inescapable—if one takes normativity as such to be understandable by reference to reasons. However, I myself am going to take “justification” to mean something similar to what the criminal law means by “justification” here, as for instance when it distinguishes between justification and excuse. An act of address that is justified is one that does not constitute wrongdoing or, more specifically, one that does not wrong the addressee, and to whose performance the addressee as such is entitled against the addressee. To frame it in Darwall’s language—see §2.1—justification belongs to the register of obligation rather than that of mere reasons.

I will proceed as follows. In §4.2, I develop Kant’s understanding of the notion of a means as something over which the agent presumes to have causal power. In §4.3, I distinguish between request and command by appeal to Aristotle’s distinction between wish and choice, which—like Kant’s conception of the idea of a means—turns on the notion of what is (and is not) within the agent’s power. In §4.4, I discuss some of the intricacies of the normativity of request. In §4.5, I invoke the Formula of Humanity with its prohibition on using persons merely as means by way of

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81 As many philosophers do, for instance Raz (“The normativity of all that is normative consists in the way that it is, or provides, or is otherwise related to reasons” (1999a, 67)), Scanlon (“I am tempted to characterize the normative domain as consisting simply of truths about reasons, including reasons for action and reasons for belief and other attitudes” (2011, 443)), Mark Schroeder (“Reasons Basicness: What it is to be normative, is to be analyzed in terms of reasons” (Schroeder 2007, 81, emphasis removed)), or John Skorupski (“Reasons Thesis: the sole normative ingredient in any normative concept is the concept of a reason. …To grasp its distinctively normative content it is necessary and sufficient that one grasps the concept of a reason” (2012, 510, emphasis removed)).


83 This is why the analogy to criminal law isn’t perfect. At least on one interpretation, what distinguishes criminal from private law is precisely that the latter but not the former constitutes an order of “directed” or “bipolar” relations; hence “the people v. [private party]” in the case of a criminal trial as opposed to “[private party] v. [private party]” in the case of civil proceedings. On this point see Thompson’s “What is it to Wrong Someone?” (2004, 343–5).

84 I am not claiming here that those subscribing to a reasons-first view of the sort just mentioned could not possibly make sense of the idea of justification in these terms. Scanlon in What We Owe to Each Other for instance spells out an account specifically of the idea of moral wrongness. Moreover, Scanlon holds that moral wrongness is a matter of what it is reasonable for the relevant parties to reject, and in this sense a matter of “what we owe to each other,” so it might be said that his account of wrongness in fact has a specifically relational character.
explaining the sense in which command faces justificatory burdens not applicable to request. In §4.6, I argue that the notion that we are each other’s natural equals points the way towards a strategy for discharging these burdens, namely through a system of public institutions. In §4.7, I discuss Rawls’s and Kant’s appeals to the idea of the social contract as interpretations of the idea of publicity in question here. In §4.8, I discuss the difference between them in terms of their differing conceptions of the relation between law and morality. In §4.9, I anticipate my discussion of Kant’s conception of the state of nature in Chapter 5 and indicate how my account of the distinction between request and command might explain how the state of nature is morally incoherent in a manner structurally analogous to Kant’s. §4.10 concludes.

4.2 Kant on Means

In §3.6, I described the distinction between request and command in terms of the notion of “determining preemption” introduced in §1.7.2. Both request and command amount to what I called normatively “creative” forms of address. The normative force of both originates in the act of address itself. Neither of them merely transmits the normative force of something existing independently of the act of address. This, I there suggested, is the truth captured by Hobbes’s distinction between counsel and command, which Hobbes describes precisely in terms of a difference in the normative source at play: in the case of counsel “the reason for following it is drawn from the matter itself” whereas in the case of command it is “drawn from the will of the instructor.” Request as a form of address is unlike counsel and like command in this respect. Where request and command differ in turn is that command does whereas request does not determine the will of the
instructee; or, more accurately, it is a normative felicity condition of command but not of request that it determine the will of the instructee.

What does the idea of one person’s determining the will of another amount to? In §1.7.2, I related the idea of determining preemption to Kant’s “fact of reason.” The fact of reason says that our awareness of our capacity to act morally grounds our awareness of our freedom. Kant’s illustration of the fact of reason is the well-known example of the man who is urged by his ruler to give false testimony against someone on pain of being sent to the gallows. According to Kant, such a person would consider it possible to overcome his love of life, however great it may be. He would perhaps not venture to assert whether he would do it or not, but he must admit without hesitation that it would be possible for him. He judges, therefore, that he can do something because he is aware that he ought to do it.85 (1999b, 163–4 (5:30))

According to Kant, awareness of our capacity to act morally instructs us about our freedom precisely because acting morally consists in acting not merely in accordance with but from duty. Awareness of the capacity to act in accordance with duty would merely provide us with empirical knowledge concerning the contingent make-up of our natural incentives. The capacity to act from duty on the other hand proves to us our motivational independence from our natural incentives. It is in this sense that our capacity for morality is the ratio cognoscendi of our freedom. This is also why the knowledge we thereby acquire is not empirical but practical.

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85 Kant’s remarks on the person pressed to give false testimony in fact mark the second half of the illustration only. The first half of the illustration runs as follows: “Suppose someone asserts of his lustful inclination that, when the desired object and the opportunity are present, it is quite irresistible to him; ask him whether, if a gallows were erected in front of the house where he finds this opportunity and he would be hanged on it immediately after gratifying his lust, he would not then control his inclination. One need not conjecture very long what he would reply” (1999b, 163 (5:30)). I am bringing this up because I take the relevant reasoning here to be of the sort underlying the encompassing conception of preemption (see §1.7.1). The reply Kant implicitly ascribes to the person of his example—that he would be able to control his “lustful inclination”—reflects the person’s judgment that staying alive outweighs gratifying the inclination in question this once. If the person were to weigh that judgment against her “lustful inclination,” she would be guilty of a form of double-counting. However, the charge of double-counting was precisely what defined the encompassing conception of preemption.
Kant’s illustration here is often taken as evidence for his endorsement of the principle of “ought implies can.” On one reading of the principle, this observation is both correct and critical, but the reading in question differs crucially from the one standardly assumed. What philosophers tend to mean when they refer to the principle of “ought implies can” is that the limits of our psychophysical capacities are also the limits of what we might be morally obligated to do, where our grasp of the former is independent of and prior to our grasp of the latter. By contrast, what Kant seems to have in mind instead is that we are able to grasp the limits of what it is possible for us to do through our grasp of what we are morally obligated to do. The order of explanation in Kant’s account thus runs counter to that implicit in “ought implies can” as it is usually conceived.

Moreover, what the person who “judges that he can do something because he is aware that he ought to do it” learns by way of his judgment is not anything about the empirical limits of his practical capacities. For that he needs experience, not moral judgment, whereas the knowledge we acquire through our awareness of the capacity to act morally is not empirical knowledge.

This does not mean that the question of our mental or bodily limitations is irrelevant to what we are morally obligated to do on the Kantian picture. On the contrary, reference to our material capacities is built into the very form of rational action for Kant. Kant understands rational action in terms of the idea of a maxim, i.e. a “subjective principle of willing” (1999b, 56n (4:400n)) of the form “I will take such-and-such means for the sake of such-and-such end.” However, to reason practically is to view oneself under the aspect of one’s participation in the causal order of the world. This is why according to Kant the instrumental principle—“Whoever wills the end also wills (in so far as reason has decisive influence on his actions) the indispensably necessary means to it that is in

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86 See for instance Jeanine Grenberg’s Kant’s Defense of Common Moral Experience: “‘Ought implies can’ is part of the common experience of the Gallows Man” (2013, 253).

87 This point recalls Anscombe’s understanding of practical knowledge as non-empirical (see footnote 44).
his control”—that informs all hypothetical imperatives is, “as far as willing is concerned, … analytic; for in the willing of an object, as my effect, my causality is already thought, as an acting cause, i.e. the use of means, and the imperative already extracts the concept of actions necessary to this end from the concept of a willing of this end” (1999b, 70 (4:417)). 88 Hence, the very notion of taking some means to some end—and hence the very form of rational action—contains within itself the thought that the means is something over which we have causal power. This, then, is the sense in which reference to our material limitations are built into the form of rational action itself for Kant.89

4.3 Wish and Choice

Aristotle’s understanding of practical reason parallels Kant’s in this respect. In Book III of the Nicomachean Ethics, Aristotle says that “we deliberate [i.e. reason practically, M.G.] about things that are in our power and can be done” (1984, 35 (1112a31)).90 The passage just quoted follows immediately on Aristotle’s closely related discussion of the distinction between wish and choice. As Aristotle has it, we can wish “even for impossibles, e.g. for immortality,” and for “things that could in no way be brought about by one’s own efforts, e.g. that a particular actor or athlete should win in a competition.” Choice on the other hand “seems to relate to things that are in our own power.”

88 The Categorical Imperative in turn is synthetic because it presupposes participation not merely in the causal but also in the noumenal order. Note that I am channeling a point internally related to Kant’s deduction of the moral law in the Groundwork here, whereas the fact of reason invoked a moment ago is at the core of the argument in the Critique of Practical Reason, which says that a deduction of the moral law is neither necessary nor possible. However, my larger concern in this chapter does not depend on sorting out the difficult relation between the two arguments.

89 Note that Kant’s concern here is with what is presupposed in the activity of reasoning practically, not what is in fact the case about the agent’s causal faculties; I take it that this is what the qualifier “as far as willing is concerned” in the passage just quoted signifies. Arthur Ripstein in Force and Freedom puts the points as follows: “You might be mistaken about what your powers can achieve, but your freedom to choose your own purposes just is your freedom to decide how to use the powers you have. Hobbes could set out to square the circle, even though he was mathematically doomed to fail, because he took himself to have the requisite means—a compass, a straightedge, and one of the best minds of the seventeenth century” (2009, 40). I take this point to mark a similarity between Kant’s view and my own, address-dependent approach.

90 The parenthesized appendages to references to Aristotle refer to the pagination in the Bekker edition.
What seems to follow when we put these two passages together is that practical reason concerns what we choose rather than what we wish for. Since “wish relates…to the end” whereas “choice to what contributes to the end” (1984, 34 (1111b22-7)), Aristotle seems to agree with Kant that what “means” simply refers to what falls within our power (and as such constitutes the proper subject matter of practical reason on Aristotle’s view).

What I want to suggest here is that command is the form of address proper to interpersonal choice and request the form of address proper to interpersonal wish in a sense analogous to Aristotle’s, that is, in the sense of a distinction between what is and what is not “within our power.” More fully spelled out, my suggestion is that the distinction between wish and choice so conceived is fundamental to a proper understanding of the distinction between request and command as forms of interpersonal address. My account therefore opposes the kinds of accounts that attempt to explain the distinction between request and command in terms of a difference in the kinds of reasons that apply to the addressee or the like.\textsuperscript{91} The most basic such theory would be one according to which the reasons to which requests give rise are weaker or less stringent to those arising from acts of command.\textsuperscript{92} A naïve theory of this sort is likely to fall before easily contrivable counterexamples involving comparisons between relatively weighty requests and commands that are comparatively minor significance. My claim is that more sophisticated theories of this sort don’t work either. The point here is not that it that the distinction between requests and commands could not properly be framed in terms of a distinction in the kinds of reasons to which these forms of address give rise altogether. The point is rather that the latter distinction is one that itself stands in need of explanation, and the proper explanation will be one that appeals to something like the distinction

\textsuperscript{91} This point is related to my understanding of the idea of justification, as discussed in §4.1.
\textsuperscript{92} We encountered a theory of this sort in §3.3.
between wish and choice. In other words, talk of a distinction in the relevant kinds of reasons as such need not be mistaken, but it does threaten to put the cart before the horse explanatorily speaking.

Note that the relevant sense of what is within a person’s power is normative rather than descriptive. When you command me, what is presupposed in your command is that you are entitled to my compliance. Your act of command thus contains as one of its felicity conditions your normative power over my agency in the particular matter at hand. Another way to put the point is that request differs from command in that the requestor qua requestor ascribes discretion to the requestee as to whether she (the requestee) will do the thing requested whereas a commander qua commander does not grant such discretion to the commandee. We sometimes invoke our having ascribed such discretion to someone else by way of justifying our having made some request, “justifying” again in the sense of “claiming that we did not wrong the addressee by making the request,” not in the sense of “claiming that we had good or conclusive reason to do so.” Suppose that you had asked me to help you carry a mattress up the stairs, say, and I complain about the imposition. One thing you might conceivably say to me in return is that, seeing that your request was just that, a request, there wasn’t really any imposition going on: “Look, I wasn’t telling you to help me carry the mattress up the stairs. I was asking you a favor. Just say no if it’s too much to ask.” Someone who commanded someone else on the other hand could say no such things without contradicting herself. “(I hereby command you to) do such-and-such, but feel free to say no” has the air of paradox of a Moore sentence.

I believe that this account is well placed to accommodate the fact that a command may give its addressee more or less “playroom” in how to discharge it. In fact, volumes of books in the “Business” section at the bookstore address the question which level of leeway of this sort makes
for the highest level of productivity or employee satisfaction: on how tight or loose a leash should supervisors keep their supervisees? should they deploy different “leash policies” for different personality types amongst those supervisees? and so on. The point is that differences in the degree of leeway or specificity of this sort leave intact the notion that the commander takes herself to have power over the commandee. Leeway of the sort at play in issuing commands is categorically different from discretion of the sort presupposed in acts of request. In fact, the two distinctions cut across each other. We can imagine a whole range of leeway in the sense just discussed that requests might give to the requestee. Your request that I help you carry the mattress up the stairs is relatively specific. Your request that I “be there for you” over the coming months as you go through a difficult personal situation on the other hand has a great deal more “open texture,” to use a term of Hart’s.93

4.4 The Intricacies of Request

In the previous section I spelled out the distinction between request and command in terms of the distinction between wish and choice. Like choice and wish, command and request refer to the things the addressor takes herself to have or not to have within her power. I made a point in emphasizing that the sense of power at play in the distinction between command and counsel is normative rather than descriptive. A person who commands another ipso facto takes herself to be entitled to the other’s compliance. In this section I will explore some of the intricacies of request as the form of address proper to interpersonal normative wish.

Consider Raz’s discussion of request in *Practical Reason and Norms*.

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93 Note that this picture fits well with an Aristotelian conception of practical reason, according to which the process of practical reasoning proceeds from some abstract practical principle through successive stages of increasing specificity and concludes in action as a fully determinate particular. We might conceive of the work of the commandee entering at various stages of the process of successive specification. The point is that the commander qua commander has to conceive of the process of practical reasoning as a whole as her own.
A person who makes a request intends his making the request to be a reason for the addressee to comply with it. He hopes no doubt that his request will be a conclusive reason, but he does not intend it to be an exclusionary reason. If his request is turned down and he is shown that there were sufficiently strong reasons to refuse his request he may be disappointed but he has nothing to complain about. Admittedly, his request was not complied with but it was considered in precisely the way he intended it to be. (1999b, 83)

Raz’s reference to the notion of an exclusionary reason indicates that, like his account of authority as encountered in earlier chapters, his account of the distinction between request and command amounts to a sophisticated version of the sort of account against which I am arguing here, i.e. an account that attempts to explain the distinction between request and command in terms of a distinction in the sorts of reasons applying to the addressee. However, what interests me for present purposes is Raz’s description of the person whose request is being turned down, which is on target for the most part but not entirely.

In particular, I believe that Raz is correct in arguing that a person who is “shown that there were sufficiently strong reasons to refuse her request be may be disappointed but…has nothing to complain about” but mistaken in claiming that in such a scenario the person's request was “considered in precisely the way she intended it to be.” What the addressee of a request wishes is for the addressee to comply with the request, not merely to consider it. When A requests that B do X and B refuses to (i.e. turns down A’s request), then there is a straightforward sense in which A’s request failed on its own terms. It would be odd if A were to say by way of reply to B's refusal to do X: “Well, you considered the matter, and that’s all I cared about.” The disappointment experienced by someone whose request isn’t honored is indicative of the failure in question here. Raz gets this much right in the passage quoted in the previous section. However, Raz’s appeal to the requester’s disappointment is at odds with his own claim that her request was “considered in precisely the way
she intended it to be.” If a request that was declined really was considered in precisely the way the requester intended it to be, then on what grounds could she possibly be disappointed?

Note that it would seem perfectly appropriate for A to say: “Well, you considered the matter, and that’s all I can ask for.” The italicized phrase here really seems to refer to something in the register of demand than request. For B to refuse to even consider A’s request and so to recognize A as someone who is entitled to address requests to her would amount to a slight vis-à-vis A of a sort that would make it the case that A has “something to complain about.” In other words, B’s refusal to even consider A’s request would make resentment towards B on A’s part appropriate, which in turn suggests that we consider ourselves to have a standing entitlement against our requestees that they give our requests consideration.

However, this is still oversimplifying things. We sometimes feel that we have “something to complain about” even when some request of ours was turned down upon consideration. This is because we feel that our request as a matter of fact was reasonable and as such should have been honored rather than merely considered. These situations characteristically arise when we believe that the benefit that would accrue to us were the requestee to honor our request is disproportionately greater than the cost to the requestee of so doing. For the requestee to turn down our request therefore suggests that they consider a modest imposition on them of greater practical significance than the comparatively greater setback we suffer as a result of their refusal to do as requested. There is a sense, then, in which the requestee seems to think that they matter more than we do. The resentment we experience in cases such as these thus reflects our judgment that the person we are dealing with just revealed their selfishness.

However, note that the same resentment might run the other way. Suppose that I ask you to drive across town to help me troubleshoot some issue with my laptop and it turns out that I easily
could have figured out the problem on my own. I assume that you would feel at least a tinge of irritation towards me, which I assume would reflect your judgment that I treated your time as less valuable than mine and so displayed selfishness of the sort just mentioned. Or suppose that I asked you to, say, deed me your car. At first you would probably think that I was joking, but once you realize that I was actually being serious, you would likely get supremely angry with me. I take it that here the issue wouldn’t have to do with any comparison of our respective benefits and burdens, since presumably your anger would survive the observation that your car would be of as much benefit to me than it is and will be to you. Rather, my request exceeds the boundaries of what we can reasonably request of one another, and so clearly that I should really know that.

In fact, one aspect of your sense of resentment in cases such as the ones considered here—and perhaps the aspect that hits closest to home—might turn on the fact that I am asking you to do something that it only makes sense for you to do if you share my judgment as to the relative preciousness of your time versus mine. That is, part of your resentment might turn on the fact that I seem to think of you as someone who thinks of herself as mattering less than I do.

Note—and this is crucial here—that it wouldn’t help for me to point out that, since my request was just that, a request, I left it open to you whether to comply: “Look, I was just asking. I didn’t tell you to deed me your car. Just say no if you don’t want to do it.” It is true that we sometimes say things like “You can always ask!” or “It can’t hurt to ask!” The account of the distinction between request and command in terms of the distinction between wish and choice defended here explains the sense in expressions like these. Since a request leaves its addressee discretion to decline, as far as

94 What about a case in which my request pushes said boundary but does not clearly exceed it? Suppose for example that you think that I am asking for more than is reasonable, yet you recognize that the case is not one in which you can simply assume that “I should know that.” You might experience a kind of higher-order irritation here, that is, irritation over the fact that you are being denied the moral satisfaction that would come with a sense of certainty in being justified in your resentment towards me.
the addressee’s responsibility whether to comply. Whatever “hurt” may result from compliance is therefore ascribable to the addressee’s rather than the addressor’s agency.\footnote{Hobbes’s claim that counselors are not responsible for the actions of their counselees, in the \textit{Leviathan} (1996, chap. 25), is pertinent here, since the point here turns on the very thing which—as I argued in Chapter 3—is shared between counsel and request, namely the fact that in neither case does the addressor presuppose preemptive power in the sense of the determining conception over her addressee.} However, what the reply fails to acknowledge is that, given its excessiveness, I shouldn’t have made my request in the first place. Indeed, my reply here might be the source of additional irritation to you, since I not only made an unreasonable request, but I also turn out to be unapologetic about my having done so.

These considerations portray request as a form of interpersonal address with an intriguing array of normative facets. On the one hand, request differs from command precisely in that in making her request the requester leaves it up to the requestee whether to comply. Command on the other hand is premised on the notion that it \textit{isn’t} up to the commandee whether to do the thing commanded (although, as discussed in the previous section, the commander may grant the commandee a significant degree of leeway as to how to discharge the command). On the other hand, addressing a request to someone isn’t like throwing the mud of one’s own interests against the wall of the other’s agency and seeing what sticks. Rather, it is what might be called a “regulative principle” of request-making that a request be reasonable in the sense of being addressable from a standpoint \textit{shared} by both addressor and addressee.

Kant’s discussion of duties of love in the \textit{Doctrine of Virtue}, which he describes as resting on a principle requiring \textit{harmony} with another’s ends (1999b, 6:488) is, I think, suggestive as to how to conceive of the principle in question. The idea here is that it is a regulative principle of request \textit{qua} form of address that the requester moderate her request so as to produce—or at least allow for the possibility of—harmony between the addressee’s compliance with the request and her (the
addressee’s) own ends. My request for the gift of your car elicits resentment on your part on this account because a request of this sort doesn’t qualify as a *bona fide* attempt at harmonization with your own ends and thus constitutes an abuse of the form of address it instantiates. Or, to put it in the language of the later Rawls, the idea that request as a form of interpersonal address has the addressee’s compliance as its internal standard of success needs to be read in the normative register of *reasonableness* rather than *rationality* (see for instance (2005, 48–54)). Both the requester’s request and the requestee’s compliance with the request need to be expressive of a shared understanding of what is a fair distribution of benefits and burdens between the parties. It is not enough that the requestor simply succeed at furthering her own interests by way of the requestee’s agency.

Note that this explains not only the sense of resentment felt by the person who is subjected to an unreasonable request but also that of the requester whose reasonable request is being turned down. Suppose that I have tried my best to sort out my laptop issues on my own and have been unable to sort out the issue despite my best efforts. Suppose also that it is of the essence that my laptop work properly right now, say because I need to finish my dissertation. However, your reply is that, while you appreciate the urgency of my situation, you would rather stay at home and watch TV right now. Here I would likely resent you, since I take my request to be *bona fide* in the sense that I take myself to be addressing you from a standpoint of reasonable harmony between our respective ends. You on the other hand appear to refuse to act from the same standpoint and so refuse to act reasonably in the Rawlsian sense. Note how completely different the situation would be if you were

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96 This is why it is appropriate to make larger requests when we are in need or when it comes to our friends. In either situation we may reasonably expect to loom larger in their ends than we would otherwise, although in different ways and on different grounds.

97 For the notion of “abuse” see J. L. Austin’s *How to Do Things with Words* (1975, 16). It might be objected that the reason I wouldn’t dream of asking you to deed me your house is because I would thereby likely incur your anger or annoyance. However, so long as it treats anger or annoyance not merely as a brute behavioral datum but as occurring “in the space of reasons,” the objection in fact concedes the point, since your likely ill will towards me would reflect the abusive nature of my request.
to tell me: “Normally I would be happy to help, but my sister was rushed to the hospital earlier today, and I am babysitting her young child tonight.” I may feel disappointed here about the fact that I am not getting my laptop issue sorted out, but I would have “nothing to complain about.”

Note that an account according to which requests are simply attempts at furthering one’s own interests through other people’s willing cooperation has difficulty to make sense of the difference here. After all, my laptop remains equally unfixed in both scenarios, so there is no difference as far as the satisfaction of my own interests is concerned. This is of course not to say that such an account has nothing to say by way of explaining the difference between the two cases. Rather, the point is that any such explanation would be an explanation of the wrong sort, since it would treat my sense of resentment in the first scenario as having a purely “consequentialist” significance. The point here is parallel to Peter Strawson’s complaint about “consequentialist” accounts of our reactive practices more generally as I discussed it in §1.3, except that here the relevant consequences concern my own interests, not the interests of the relevant community at large.

This is not to say that there isn’t room for genuinely open requests, of the sort to which statements such as “Can’t hurt to ask!” attach. However, the account offered here does suggest that the range of cases in which it genuinely doesn’t hurt to ask is not unlimited. “Can’t hurt to ask!” also tends to make sense in cases of (blameless) ignorance on the part of the requester as to how much of an imposition her request might be. However, note that the “can’t hurt” cuts the other way as well, in the sense that a rejection of the request has to be one where there isn’t too much at stake for the requester either. If, say, you had a medical emergency and asked me to run over to the neighbor’s for a ride to the emergency room, it would be odd for me to respond: “Sure! Can’t hurt to ask!”
4.5 The Formula of Humanity

Consider the following schematic exchange. Suppose that \( A \) requests of \( B \) that \( B \) do \( X \). Now suppose that \( B \) discusses \( A \)'s request with \( C \) and says the following: “\( A \) requested that I do \( X \), and what \( A \) requested seems reasonable to me, so I will do \( X \).” \( B \)'s response to \( A \)'s request is fully satisfactory as far as \( A \) is concerned. \( A \) really does have “nothing to complain about” here. Now suppose that \( A \) instead commands \( B \) to do \( X \), and suppose that \( B \) tells \( C \) the following: “\( A \) commanded me to do \( X \), and what \( A \) commanded seems reasonable to me, so I will do \( X \).”

Whatever the merits of \( B \)'s response, it does not qualify as a response to command qua command. Rather, even though \( B \) does what \( A \) commanded her to do, by adding the clause “…and the command seems reasonable to me” \( B \) indicates that she rejects \( A \)'s command qua command and instead treats it as a case of request.\(^{98}\) \( B \)'s response to \( A \)'s command qualifies as a rejection of the latter because \( B \) grants herself the very discretion that \( A \) had denied her by commanding her to do \( X \), rather than requesting that she do so.

Suppose now that \( B \) rejects \( A \)'s command that she do \( X \), not by ascribing to herself the discretion \( A \)'s command qua command denies her, but more directly, by telling \( A \): “You don’t get to command me!” or “You don’t get to tell me to do anything!” What is happening here is that \( B \) is not rejecting \( A \)'s particular act of command, i.e. the command that \( B \) do \( X \), but rather the very form of address of command as such. Indeed, \( B \) might have no objection to doing \( X \) or even believe that doing \( X \) is what she should be doing anyway. However, what matters to \( B \) here is that it be her choice whether to do \( X \); not merely in the sense that she not be physically coerced to do \( X \) or the like, nor in the sense that, as a matter of actual normative fact she be entitled to make the choice, but in the

\(^{98}\) Christine Korsgaard’s example of the logic requirement in The Sources of Normativity (1996, §1.3.3 and §3.3.4) seems to me to turn on a related point.
sense that the exchange between her and $A$ be expressive of her entitlement to make up her own mind about whether to do $X$, and in order for this to be the case, $A$ has to address her by way of request rather than command.

Now suppose that $B$ rejects $A$'s request that she do $X$ along the same lines: “You don’t get to request anything from me!” Again, $B$ is not rejecting $A$’s address in virtue of its particular content here but rather rejects the very form of address in question. However, $B$’s ground for rejecting $A$’s request cannot be the fact that $A$ denies $B$ discretion as to whether to do $X$, since request as a form of address precisely ascribes such discretion to her. Nor does the reason for rejection have to do with the unreasonableness of $A$’s request that she ($B$) do $X$, since by hypothesis $B$ rejects not $A$’s specific request that she do $X$ but rather $A$’s form of address as such. What this suggests is a justificatory difference between request and command qua forms of address. There are justificatory resources invokable in rejecting command but not in rejecting request, namely those referring to the addressee’s entitlement to exercise her own choice. Note that this observation is related to one made in the previous section, namely that $B$’s refusal to even consider $A$’s request and so to recognize $A$ as someone entitled to address requests to her provides $A$ with cause for resentment.

This is not to say that there is no such thing as justified rejection of the very form of address of request. For instance, suppose that I request that you conduct your relationship with your friend or life partner in some specific fashion. Here it seems that you are entitled to tell me that I don’t get to request any such thing, and hence to reject the very form through which I address you, however sensible and wholesome my vision for your relationship might be. Indeed, it strikes me as odd to

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99 I am indebted to Thom Scanlon for the example and for discussion.
100 However, it is still open to me to wish in my heart that you carry out your relationship in a certain way. (Note that expressing such a wish to the person concerned as a genuine wish rather than a request in disguise requires some delicacy. Parents with grown-up children will recognize this point immediately, as will their grown-up children.) Hence, request in fact seems to fall between choice and wish in its normative felicity conditions.
even say that I actually requested anything of you here, rather than having merely attempted to request something and failed.

Setting this complication aside, however, what I want to explore here is how to interpret the sense in which request is justificatorily privileged over command. In order to do so, I believe that it is instructive to return to an observation made in §4.2, namely that for Kant the formal structure of rational action is that of a maxim understood as the taking of a means for the sake of an end, where it is internal to the very idea of a means that it is something that falls within the agent’s power. If what distinguishes command from request is that the addressor of a command takes herself to have the power to determine the addressee’s will, however, it follows that she views the addressee’s will as a means to whatever end it is that she is setting in issuing her command. Again, the sense of “power” and “means” has to be understood in normative rather than causal terms here. When $A$ commands $B$, then $A$ takes herself to be entitled to determine $B$’s will, not that she has causal power over $B$. This reflects the fact that what $A$ takes to be her means is another person. The fact that what serves as $A$’s means is another person is also reflected in the fact that $A$ would resent $B$ if she failed to do as she is commanded, where it makes no sense to, say, resent your hammer if it hits your thumb rather than the nail (although we have presumably all had the experience of getting upset at some tool that didn’t perform as we wanted or expected it to, however little sense these sentiments make on reflection).

Now, the idea of one person’s using another as a means recalls a well-known bit of Kant’s moral philosophy, namely the “Formula of Humanity” of the Categorical Imperative, which says: “So act that you use humanity, in your own person as well as in the person of any other, always at the same

101 Compare a case where I steal something from you. Here it is not the case that I took ownership of the stolen object, albeit wrongfully so. Rather, I took (physical) possession of the object, but insofar as my doing so was an attempt to (also) take ownership of the object, I was thereby attempting the normatively impossible. I believe that the observation here gets at something profound and worth exploring, but I have neither the space nor the time to do so here and now.
time as an end, never merely as a means” (1999b, 80 (4:429), emphasis removed). What I want to suggest is that the Formula of Humanity provides for a way of framing the justificatory difference between request and command as forms of address. Request is justificatorily privileged vis-à-vis command on this framing because the discretion the requester qua requester grants the requestee provides for a straightforward sense in which the former does not use the latter merely as a means and so acts consistently with the Categorical Imperative in its guise of the Formula of Humanity.

Note that the normative asymmetry between request and command parallels the more frequently discussed normative asymmetry deriving from the presence or absence of consent. Consent creates normative asymmetry because its presence makes permissible something that would otherwise be impermissible. For example, I wrong you in using your car if I don't have your consent but not if I do. However, my justification in using your car when I have your consent resides precisely in the fact that, by granting your consent the status of a “supreme limiting condition” (Kant 1999b, 81 (4:430)) on my action, I am treating your car as something that is not under my power but under yours. In doing so, I in turn treat you as an end-in-yourself, and so act consistently with the Categorical Imperative. Request and consent thus might be thought of as belonging to a category of concepts capturing a particular form of interpersonal justification. One way to bring out the normative commonality between them is by pointing out that both of them are explicable in terms of the idea of the addressor's ascribing a certain form of discretion to the addressee.

Another concept falling in this category is the notion of invitation. It is internal to the idea of one person's inviting another to do something that it is up to the latter to choose whether to accept. Just

102 Note that the idea of a supreme limiting condition stands in an internal relation with Kant’s distinction between acting in accordance with and acting from duty. To act from duty just is to treat the moral law as the supreme limiting condition of one’s action. Given that I understand the idea of determining preemption introduced in §1.7.2 in terms of the notion of acting from duty, this suggests that we have to understand determining preemption in terms of the idea of a supreme limiting condition. Thus, for A’s command to determine B’s will is for the former to constitute a supreme limiting condition for the latter.
as with request, however, it does not follow that a person whose invitation is being declined therefore has “nothing to complain about.” After all, the refusal of an invitation, like the refusal of a request, might constitute a refusal to participate in the project of creating a reasonable harmony of ends. By the same token, an unreasonable invitation might provoke resentment in a manner strictly parallel to that of an unreasonable request, and here as there the retort that it is up to the addressee to turn down the invitation, while correct, is inadequate in point of justification.

In fact, I believe that the Formula of Humanity provides the resources to explain the sense in which unreasonable requests constitute a form of bad faith. While the unreasonable requester qua requester grants her addressee the entitlement to exercise her own choice and so deploys a form of address through which the addressee views the addressee as an end in herself rather than as her (the addressee’s) means, the content of what is being addressed is such that by the requestor’s own lights the requestee’s compliance with the request would amount to a defective exercise of her (the requestee’s) powers of choice. It is in this sense that unreasonable requests constitute abuses of the form of address they deploy.

4.6 Natural Equality

Command as the form of address that precisely doesn’t ascribe discretion to the addressee, on the other hand, cannot appeal to the addressor’s deference to the addressee’s agency by way of justification. This raises the question of the conditions under which command as a form of address might nonetheless be justified. The Formula of Humanity again provides for a way of framing the question. The crucial elements for my purposes here are the qualifiers “at the same time as” and “merely.” The Formula of Humanity does not rule out using other persons as means unconditionally.
What it rules out instead is using other persons merely as a means, without at the same time treating her as an end. In terms of the Formula of Humanity, then, the question under which conditions command as a form of address is justified becomes the question under which conditions command does not count as using the commandee as merely a means.

It is here that the notion of our natural equality to which I referred in the Introduction comes into its own. The Formula of Humanity might be understood as a specifically relational interpretation of the idea that we are each other's natural equals, namely that there is no such thing as a human being who is merely the means to another's ends, again in the normative sense that the latter is entitled to treating the former as such. If in turn we interpret the Formula of Humanity in terms of the idea of a form of interpersonal address proposed in the previous section, what our natural equality amounts to is that there is no such thing as a natural commander–commandee relation between human beings. “Natural” here needs to be understood in the sense deployed by Hume or Rawls among many others, namely as normatively prior to our being governed by shared public institutions or conventions. The idea here is therefore that we are each other's natural equals in the sense that any relation of command depends for its legitimacy on its being mediated by a system of public institutions governing the parties to the relation.

I believe that this interpretation of the idea of natural equality sits well with the historical significance of the idea of our natural equality. Part of the moral heritage of the Enlightenment I was speaking of in the Introduction is the conclusive rebuttal of the notion that there are natural masters and slaves. However, a master–slave relation is precisely one governed by the giving and receiving of commands. The abolition of the system of tiered estates in France in the course of the French Revolution in turn likewise contains the relevant elements of my account, in that relations between members of the Second and Third Estate in particular were systematically built around the
presupposition that the former were entitled to command the latter in a variety of ways and that these relations were justified as founded on some natural or divine order that was supposed to precede and so account for the social institutions in question.

I have made two points in this section. First, I have argued that, if relations of command are to be justified, we need some account of the conditions under which the commander does not treat the commandee as merely a means in commanding her. Second, I have proposed an interpretation of the idea that all humans are naturally equal in terms of the idea that commander–commandee relations rest for their justification being mediated by a system of public institutions. Putting these two points together, the idea has to be that institutional mediation of this sort makes it the case that the commander treats the commandee not merely as a means. However, before picking up this line of thought again, I want to briefly bring up a relation that seems to be one of commander and commandee yet whose justification does not seem to depend on institutional mediation of this sort, namely the relation between parents and their children. Nowadays there is of course a far-reaching and sophisticated legal structure surrounding the parent–child relation. Even setting aside these institutional trappings and treating the relation between parents and children as purely “natural” (i.e. extra-institutional), what structures it is not the relation between commander and commandee but rather that between guardian and ward. As such, the normative structure of the parent–child relation reflects the fact that a child is precisely not yet competent, or not yet fully. While the issuing of commands is a standing feature of the relation between parents and their children, its normative significance is therefore very different, at least as we here and now understand parent–child relations. However, it is worth pointing out that throughout history children have frequently been regarded not under the aspect of human-competence-in-the-making but rather as their parents’ property.

103 This is why Rawls considers the family to be part of the basic structure of society. See (2001, §50).
When viewed in the latter light, parental command does seem to straightforwardly amount to a case of someone’s using another merely as a means.

4.7 Publicity

Some relations of command are entered into contractually, such as when you hire me to mow your lawn or when I join some corporate or other organizational hierarchy within which I am your subordinate. Here the requisite justification seems readily at hand, namely in the fact of our having contracted and so engaged in a voluntary transaction of the sort whose normativity is captured by the concepts of request, consent, and invitation discussed in §4.5. By the same token, however, the very intricacies that applied in the case of request apply here as well. When I consent to mowing your lawn or joining the company in which you are then going to be my supervisor, my action needs to be conceived of as one aspect of a transaction between you and me the other aspect of which consists in an invitation on your part addressed to me, however implicitly. However, in order for your invitation to count as *bona fide* and so as not abusive of the form of address it instantiates, certain conditions will have to be satisfied, where these conditions will again be structured by the notion of possible harmony between your (respectively the company’s) ends and mine. This is not the space to elaborate on what this amounts to, except to point out that the kind of harmony in question operates in the category of the reasonable rather than the rational, to use Rawls’s

*terminology from above again.*

I suspect that this line of thought provides for what might be called an “internal critique” of certain forms of capitalist labor relations: if the normative standard internal to the agreements underlying these relations is that of a *reasonable* harmony of ends, then certain kinds of exploitative employer–employee relation cannot be understood as *bona fide* by the lights of the very form of interaction they purport to instantiate. Note that the form of bad faith at play here does not depend on something frequently identified as the core problem with labor relations under capitalism, namely that employees lack genuine alternatives and in this sense aren’t *really* free to turn down the invitation in question. While the absence of meaningful alternatives may also be described as giving rise to a kind of bad faith of its own, the kind of bad faith I am concerned with here does not depend on the absence of meaningful alternatives or the like. Much of the
However, the idea of deferral to an actual exercise of its subjects’ discretion, such as consent, is not available by way of justification of the command the law exercises over them, however appealing the idea of actual consent has seemed to many political philosophers. The point is not so much that no one has ever actually consented to the political system governing them. Rather, the point is that it cannot be part of the the normative self-conception of a political system that the justification of its authority over its subjects depends on consent of this sort. In other words, it is not merely a contingent fact about the law but rather part of its built-in normative felicity conditions that its effects are “profound and present from the start” (Rawls 1999a, 7).

What might justify the command the law exercises over its subjects instead? I believe that the key to answering this question resides in the fact that law is a system of public rules, under a certain interpretation of what the notion of publicity amounts to. Note that both Kant and Rawls make appeal to the idea of publicity as the justificatory standard of law, although in interestingly different ways. The original position on which Rawls’s account in A Theory of Justice turns embodies the standpoint of a specifically public form of practical reason. What makes the original position a public standpoint is its abstraction from anything that is specific to particular private individuals. All that remains is the exercise of “common human reason” (2005, 115) applied to the “general facts about human society” (1999a, 119). Given its public character, the form of practical reason embodied by the original position is therefore ascribable to all citizens. If the basic structure of society is regulated, and publicly known to be regulated—i.e. “well-ordered” (1999a, 4) in Rawls’s terminology by principles chosen in the original position, we can therefore ascribe a (figurative) kind of

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105 For a prominent contemporary defender of actual consent as the “gold standard” of political legitimacy, see the work of A. John Simmons, in particular his Moral Principles and Political Principles (1979).
consent to its citizens, which in turn entails that the rules making up the basic structure do not treat its subjects merely as means. Rawls expresses this point most clearly in the following passage of *A Theory of Justice*:

No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair. In this sense its members are autonomous and the obligations they recognize self-imposed. (1999a, 12)

Rawls’s account in *Political Liberalism* in turn is even more explicit in its articulation of the justificatory structure just laid out than the account in *A Theory of Justice*, on two counts. First, in *Political Liberalism* Rawls explicitly speaks of “public reason” as the standpoint of practical reason proper to choosing principles of justice, which brings out the fact that the idea of publicity is key to Rawls’s conception of justice. Second, Rawls there speaks of the relevant justificatory standard as the “liberal principle of legitimacy” (2005, 137), which drives home the point that the justification of the basic structure has to be understood in terms of what would constitute a wrongful imposition on its subjects.¹⁰⁶

Kant invokes the idea of the social contract along lines strikingly similar to Rawls’s appeal to the original position. Like the original position, the social contract as Kant understands it is not an historically datable event but “only an idea of reason,” which, however, “has its undoubted practical reality,” namely that of serving as “the touchstone of any public law’s conformity with right” (1999b, 296–7 (8:279), emphasis removed). The significance of both Rawls’s original position and Kant’s social contract is therefore that of a justificatory device. According to this touchstone,

¹⁰⁶ Note that same line of thought also explains why Rawls believes that the principle of utility would not be chosen in the original position as a principle of justice. A basic structure arranged around the principle of utility would be one that treats citizens as mere means, namely as mere means to aggregate happiness. Whatever moral value we ascribe to aggregate happiness, its pursuit through the rules making up the basic structure is not consistent with the kind of moral status on which the idea of our natural equality turns. This, I take it, is what Rawls’s well-known complaint that “utilitarianism does not take seriously the distinction between persons” (1999a, 24) amounts to.
If a public law is so constituted that a whole people could not possibly give its consent to it (as, e.g., that a certain class of subjects should have the hereditary privilege of ruling rank), it is unjust; but if it is only possible that a people could agree to it, it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind that, if consulted about it, it would probably refuse its consent. (1999b, 297 (8:279), emphasis in original, footnote removed)

Note that the justificatory standard Kant specifies here by appeal to the contract device makes reference to the very thing that gives normative significance to the public form of positive law in the first place, namely the idea of the people qua collective agent. It follows that unjust law isn’t merely law that is defective by some standard outside of law itself. Rather, unjust law might be considered a form of abuse of the very form of law, to put it in terms already used in this chapter.

As Kant emphasizes in the passage immediately following the one just quoted, however, the “practical reality” of the social contract

obviously holds only for the judgment of the legislator, not that of a subject. Thus if a people now subject to a certain actual legislation were to judge that in all probability this is detrimental to its happiness, what is to be done about it? Should the people not resist it? The answer can only be that, on the part of the people, there is nothing to be done about it but to obey. (1999b, 297–8 (8:279), emphasis in original, footnote removed)

This points to what might be the theoretically most striking difference between Kant’s and Rawls’s political philosophy, that concerning the “right to revolution.” As Rawls has it, in a sufficiently unjust or downright tyrannical basic structure there is a right—or eventually perhaps even a duty—to engage in civil disobedience or even violent resistance (see in particular (1999a, Chapter 4)).107

Whether a basic structure is morally deficient in the requisite degree in turn is something that it is at least in principle possible for anyone, or at least persons equipped with the two moral powers (i.e. a sense of justice and a conception of the good; see (2005, 19)) to ascertain, simply by measuring its de facto condition against the principles of justice established in the original position or through

107 Presumably, for Rawls the principles governing the justification of civil disobedience and forceful resistance would have to be ones chosen by the parties in the original position. I believe that this raises issues parallel to the ones Thompson raises about Rawls’s account of promising in A Theory of Justice, as discussed in footnote 38 above. However, elaborating on this parallel would take me too far afield here.
public reason. The moral space for justified civil disobedience and forceful resistance in the Rawlsian framework thus depends on a certain conception of the kind of practical reason in question. While the subject of deliberation in the original position or of public reason may be the basic structure of society, it is at least in principle open for any person endowed with the two moral powers to engage in public practical reasoning so understood. As Rawls puts it at the conclusion of *A Theory of Justice*, the original position constitutes “a certain form of thought and feeling that rational persons can adopt within the world” (1999a, 514).

Kant on the other hand (in)famously denies that there is such a thing as a right to revolution or even civil disobedience. The difference here turns on the fact that a “rightful condition” (i.e. a system of public positive laws) is not merely the subject matter but also the bearer of public reason for Kant. There is no right to revolution for Kant because a private person could not engage in public practical reasoning properly understood. *Any* form of practical reason carried out by a private individual counts as private reason in the relevant sense, however public its matter.108 In other words, public reason properly understood has to be ascribable to a public reasoner, which according to Kant has to be the political community—i.e. “the people”—as a whole.109 Public institutions in turn represent the form in which the political community as a whole exercises its agency according to Kant. The point might also be developed in terms of an idea introduced in §4.2, i.e. the idea that causal efficaciousness in the world is a presupposition of the very activity of practical reasoning. In order for public practical reason to be public, its causality also has to take public form. A rightful

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108 Kant's distinction between the “public” and the “private use of reason” in “What Is Enlightenment” (1999b, 11–22) is related to this point, although his terminology is misleading for present purposes. What Kant means by the “public use of reason” is roughly equivalent to what Rawls refers to as public reason—something that any citizen is in a position to engage in—whereas the “private use of reason” refers to what persons perform in some official capacity or other, and so in their capacity as the representatives of some bearer of public reason or other.

109 To put it in terms familiar from Korsgaard's philosophy, public reason might therefore be viewed as an entire people's activity of self-constitution.
condition in turn provides this very form. A private person qua private person on the other hand is incapable of reasoning publicly in the relevant sense because her causality lacks the requisite public form.\footnote{Note that this is not a question of the relevant causal outcomes or effects viewed in isolation. Presumably any particular causal outcome could be brought about through the work of public or private agents alike, at least in principle. To adopt a bit of Rawlsian terminology here, the relevant difference here is therefore one of "pure" rather than "imperfect" causal procedure. (For the related distinction between pure and imperfect procedural justice, see (1999a, 74–5).)} For Rawls on the other hand, the relation between the original position and the basic structure as its subject matter appears to be merely contingent. That is, there isn’t anything internal to the “logic” of the original position in virtue of which it might not be applied to some subject matter that lacks institutional form. Rawls’s claim that “the primary subject of justice is the basic structure of society” (1999a, 6) thus enters merely as external stipulation, again at least as far as the internal structure of the original position is concerned.

4.8 Law and Morality

There is another aspect to the difference between Rawls and Kant explored in the previous section. As I argued there, there is a sense in which the relation between the basic structure and the original position is merely contingent for Rawls whereas the relation between a rightful condition and the original contract is internal for Kant. Similarly, there is a sense in which the existence of a basic structure is morally indifferent in the Rawlsian framework in which the existence of a rightful condition is not for Kant.

Let me begin by discussing several ways in which the basic structure is not morally indifferent for Rawls. To begin with, Rawls argues that the parties in the original position would agree on the “natural duty of justice” requiring us to “support and to comply with just institutions that exist and apply to us” (1999a, 99). Moreover, the parties in the original position may well agree on a natural
duty to develop “institutions that exist and apply to us” but aren’t fully just yet towards an ever greater degree of justice. Rawls’s discussion of civil disobedience as a public invitation directed at one’s fellow citizens to reconsider some less-than-fully-just institutional arrangement at any rate seems congenial to this line of thought. Finally, Rawls also argues that the concept of justice becomes applicable only in the “circumstances of justice,” that is, “the normal conditions under which human cooperation is both possible and necessary” (1999a, 109). One way to understand this claim is that the circumstances of justice give rise to a problem—what are the proper principles governing the distribution of benefits and burdens arising from human cooperation?—to which a conception of justice—such as justice as fairness—proposes a solution.\footnote{Korsgaard interprets Rawls’s distinction between concept and conception along these lines in “Realism and Constructivism in Twentieth-Century Moral Philosophy” (2008, 321–2).} The fact that these are the circumstances of justice—and so circumstances that give rise to a moral problem—suggests that the sense in which human cooperation is necessary in the circumstances of justice is itself to be understood in moral terms. For instance, it might be thought that the absence of human cooperation in the circumstances of justice would amount to a moral defect of some sort, that the presence of human cooperation is morally preferable to its absence, and that human cooperation that is just to a greater degree is always morally preferable to human cooperation that is just to a lesser degree.\footnote{Although it is not entirely clear what would make these preference orderings moral ones in the Rawlsian framework. Perhaps the theory of “goodness as rationality” he develops in Part III of \textit{A Theory of Justice} holds the answer here. Roughly speaking, the line of thought here would be that these preference orderings are rational, and therefore good. However, it is not clear how an appeal to goodness understood purely as rationality (i.e. in abstraction from reasonableness) would not itself be morally indifferent.} All these, then, would amount to senses in which the existence of a basic structure, in particular a just basic structure, is not morally indifferent on the Rawlsian picture.

However, the existence of a basic structure is morally indifferent for Rawls in the sense that the coherence of the principles chosen in the original position does not depend on the presence of a
basic structure. In the case of the natural duties, the matter is straightforward: the very idea of a
natural duty is precisely that it applies independently of this or that institutional arrangement. The
principles of justice on the other hand themselves “kick in” only when there is in fact a basic
structure in place; the same goes for what Rawls calls “obligations,” which are “always defined by an
institution or practice the rules of which specify what it is that one is required to do” (1999a, 97).
However, the fact that principles of justice apply only conditional on the existence of the relevant
institutions has no bearing on their very coherence. By the same token, obligations understood as
institutionally defined requirements are “covered by the principle of fairness” (1999a, 97), which
says that “a person is required to do his part as defined by the rules of an institution when two
conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of
justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage
of the opportunities it offers to further one’s interests” (1999a, 96). Since its content isn’t “defined
by an institution or practice,” the principle of fairness is therefore a natural duty, and institutionally
defined obligations are merely its application when the two conditions it specifies are met.

In other words, Rawls’s account channels a version of the positivist credo that “the existence of
the law is one thing, its merit or demerit is another.”

What the rules of a given institution require of its participants—and who these participants are in the first place—is simply a question of social fact. Conversely, whether institutional requirements of this sort are also morally binding is a matter of how these institutions measure up to the standards of justice, where we can make sense of these standards without reference to the institutions to which they apply, even if some of them happen to be applicable only where the relevant institutions actually exist. What is required of us by the

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113 The credo is from John Austin’s *The Province of Jurisprudence Determined* (1995, 157). Rawls’s view of the relation between institutional requirements and moral duties bears heavy resemblance to Hart’s, as Rawls himself acknowledges (see (1999a, 96n26) and (1999a, 97n28)).
institutions that apply to us on the one hand and what we are morally obligated to do on the other are therefore two conceptually separate questions on Rawls’s view. It is just that the content of one particular principle chosen in the original position—i.e. the principle of fairness—happens to grant leeway to those institutional requirements as to the determination of what exactly it requires of individuals in particular circumstances.

This is not Kant’s picture as I understand it. The starting point of Kant’s political philosophy is the claim that “freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to man by virtue of his humanity” (1999b, 393 (6:237), emphasis in original). From our mutual right to freedom it follows that “any action is right if it can coexist with the freedom of everyone in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law” (1999b, 387 (6:230)). Kant calls this the “Universal Principle of Right.”

The right to freedom is a natural right, just as the Universal Principle of Right gives rise to natural duties, in the sense that neither is “defined by an institution or practice.” However, Kant holds that the very concept of the right to independence from each other’s choice presupposes a rightful

114 Martin Stone develops the point that legal positivism turns on the mutual independence of law and morality (as opposed to merely the unilateral independence of law from morality suggested by the positivist credo just quoted) in “Legal Positivism as an Idea About Morality” (2011). My argument here is indebted to his in the article and to many discussions with him on the matter.

115 The choice of terminology is deliberate here. The relation between the principle of fairness and the institutional requirements compliance with which it requires really is not unlike the relation between a commander and her commandee in which the former grants the latter leeway in the sense discussed in §4.3. Just as the relevant moral principles are intelligible independently of the institutional requirements to which they refer, the relevant action remains the commander’s alone, i.e. the leeway she grants the commandee does not make what transpires a genuine transaction. Morality might therefore be said to “rule over” the various institutional requirements there are on this picture in the same way a commander rules over her commandee, at least in a manner of speaking.

116 What I am describing here is what I take to be Rawls’s view ca. 1971. This is largely speculation, but it seems to me that in his later work Rawls moves away from the “positivist” perspective he seems to hold in Theory, albeit towards a position that seems closer to Hegel than to Kant, in that Rawls seems to come to think that the very form of thought embodied in public reason is an historical achievement premised on the emergence of the modern liberal nation-state.
condition for its “conclusive” application. One way to understand the point is by noting that the idea of a right is a practical concept. Its application—i.e. its ascription to particular individuals vis-à-vis others—therefore amounts to an instance of practical reasoning, which—as we saw above—just is an exercise of choice on Kant’s view. Hence, if the right to freedom is to be applied consistently with itself, the choice in question must not itself wrongfully constrain those to whom it applies the concept of a right. As Kant has it, only an exercise of choice that by its very form can be ascribed to all the parties involved—i.e. the exercise of public practical reason—is consistent with their mutual independence. A rightful condition—more specifically, a state with its tripartite division of powers\textsuperscript{117}—in turn provides for the relevant form of publicity, namely that of a system of public institutions representing the people as a whole.\textsuperscript{118}

This is the sense, then, in which the very idea of a right to freedom makes internal reference to the notion of a rightful condition. Moreover, note that the qualifier “to freedom” is really an explication of the very idea of a right for Kant, not simply a reference to one object among others to which persons may or may not have a right against one another. In other other words, for \(A\) to have a right against \(B\) to \(X\) just is for \(A\) to be independent from \(B\)’s choice with respect to \(X\). If this is so, then it follows that the very concept of a right depends on a rightful condition for its conclusive application, in the sense that the exercise of practical reason in which applying the concept of a right consists has to take public form. Nothing of the sort is true on the other hand of the concept of a natural duty on the Rawlsian picture, which anyone endowed with the two moral powers—in other words, anyone capable of entering the original position in thought—is at least in

\textsuperscript{117} The separation of governmental powers into the three branches is itself an internal aspect of the idea that the application of the concept of right is an exercise of practical reason according to Kant, since he takes the three branches of government to correspond to the three stages of a practical syllogism (see (1999b, 457 (3:313))).

\textsuperscript{118} Hence Kant’s emphasis on the representative nature of the public offices provided for in a rightful condition, as well as his rejection of direct forms of democracy as lacking the representative character through which we understand the relevant notion of omnilateral agency.
principle capable of deploying conclusively. The basic structure of society in turn provides merely one set of circumstances to which the concept of a duty might be deployed.

This is why the question whether there is a right to revolution is conceptually open on Rawls’s view (and, moreover, its answer is a qualified “yes”). Since the bearer of public reason is not the public itself but any person with the two moral powers, it is conceptually open to the latter to act as the final arbiter over the justice or injustice of the basic structure, and to do so with a “practical aim” (1999b, 461 (6:318)), as Kant puts it in a related context; that is, with a view to potentially engaging in disobedient revolutionary activity. For Kant on the other hand, only reform of a morally defective rightful condition is morally possible, since reform, unlike revolution, is an exercise of practical reason ascribable to the system of public institutions being reformed itself. Private persons on the other hand are bound by Frederick the Great’s dictum “Argue as much as you will and about whatever you will, but obey!” (1999b, 18 (8:37), emphasis in original).

4.9 The State of Nature

For all I have said so far, the argument sketched in the previous section has a merely conditional character. Even if it is true that rights depend on a rightful condition for their conclusive application in the sense discussed there, it does not follow that there are any rights. To be sure, Kant claims that the right to freedom is innate, but nothing I have said so far suggests that this assertion isn’t just that, mere assertion. To put the same question in other words, why couldn’t there be a state of nature in which no one has any rights? To be sure, a state of nature of this sort might be

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119 The problem I am about to discuss may be viewed as parallel to the problem Kant confronts in Part III of the *Groundwork*: if there is such a thing as morality, the Categorical Imperative is valid, yet for all that has been said in Parts I and II it is still possible that morality is a “chimerical idea without any truth” (1999b, 93 (4:445)).

120 Joel Feinberg considers a scenario of this sort at the beginning of his “The Nature and Value of Rights.” He suggests that such a scenario “would hardly have satisfied Immanuel Kant” (1970, 243). In what follows, I am going to agree with
inferior to a rightful condition in the same sense in which the absence of human cooperation in the circumstances of justice is inferior to its presence—that is, everyone would be “worse off” in the state of nature than they would be in a rightful condition—and perhaps we might even attach the label “moral” to the kind of inferiority at play here. However, nothing I have said so far suggests that a state of nature of this sort would be morally impossible.

Kant takes this problem very seriously. As he puts it in the *Doctrine of Right*,

If no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect. … So if external objects were not even provisionally mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave the state of nature. (1999b, 456 (6:312-13))

What Kant seems to be suggesting here is that the very possibility of a legitimate exercise of political authority depends on the fact that there is a sense in which rights already exist in the state of nature, at least so long as the state of nature is conceived as one that involves human interaction. Conversely, the same goes for their merely provisional character. If rights were conclusively applicable in the state of nature, there would be no legitimate political authority either, and we would end up with philosophical anarchism. However, note that this line of argument only demonstrates just how high the stakes are for Kant on this count. It still leaves unclear why there are provisional rights in the first place. In other words, it is still not clear how the innate right to freedom amounts to anything more than mere assertion. Again, why could there not be a state of nature in which no one has any rights?

Feinberg, although on different grounds than the ones he invokes. What Feinberg has in mind is the fact that Kant might hold that without rights there would be no duties, and so no actions done from duty, and so nothing of moral worth. My own concern here is with Kant’s theory of right rather than his ethics, whereas the idea of moral worth belongs to the latter rather than the former.

I will set aside the added complication that Kant speaks only of rights to external objects here, rather than all rights, including rights in one’s own person.
I will develop a fuller interpretation of Kant’s claim that rights hold only “in a provisional way” in the state of nature in the next chapter. For now, however, note the deep affinity between Kant’s political philosophy and the account of the distinction between request and command I developed in this chapter. Above I argued that command faces special justificatory burdens vis-à-vis request because it presupposes preemptive power over another’s agency, in the sense of the determining conception of preemption. However, to presuppose such power over another just is to deny them “independence from being constrained" by another’s choice,” namely one’s own. What I refer to as “justification” in turn seems to be the very thing Kant has in mind when he speaks of the conditions of an action’s being “right” in the Universal Principle of Right. The idea that we are each other’s natural equals suggests how the justificatory burden applicable to command might be met, namely by falling under a system of public institutions. However, this line of thought seems to run parallel to Kant’s argument that it is internal to the concept of a right that it is only conclusively applicable in a rightful condition.

Accordingly, just as Kant’s account faces the question why there have to be rights at all, my account needs to explain why there has to be command at all. Why could there not be such a thing as a “condition of pure request,” that is, a system of social interaction in which persons only take themselves to be entitled to request this or that of one another, never to command each other to do anything? I can only indicate here what I believe such an argument would look like. Above I depicted the distinction between request and command in terms of the distinction between the addressee’s ascribing to the addressee and ascribing to herself normative power over the object of the act of address. Hence, both request and command involve the ascription of normative power.

122 I take it that the idea of constraint to which Kant is appealing here is the “external” counterpart to the idea that the Categorical Imperative constitutes a “supreme limiting condition” on the good will’s choice of maxims. See also footnote 102 here.
What they differ in is in whom they locate it, i.e. addressee or addressor. An argument to the effect that a condition of pure request is impossible would have to show that any assignment of normative power of this sort—i.e. not merely normative power over others but also over external objects as well as oneself already depends on a system of public institutions for its justification. If an argument of this sort could be made out, then it would follow that a system of pure request is morally impossible. The only morally possible state of nature would be one in which all of us “shun all society” (1999b, 392 (6:236)) not in the sense that we do not encounter one another in a shared physical space but rather that we do not enter our mutual acts of address as bearers of practical reason.123

4.10 Conclusion

In this chapter I explored the distinction between request and command by appeal to a difference in their normative felicity conditions. I argued that command raises justificatory burdens not applicable in the case of request and that a system of public institutions provides the form through which the burdens in question might be borne.

I did so by reference to Kant’s understanding of the notion of a means, Aristotle’s distinction between wish and choice, Kant’s Categorical Imperative as expressed in the Formula of Humanity, and the idea that we are each other’s natural equals. I argued that the distinction between request and

123 The state of nature as I sketch it here contrasts in interesting ways with the state of nature as Rousseau conceives of it in the Second Discourse (1997). Rousseau takes the state of nature to be one in which others occur merely as things, not as persons, precisely in the sense that they are viewed as at least in principle falling within one’s power. In a condition of pure request as I understand it on the other hand, others do occur as persons, but precisely not as potential objects of an exercise of our normative power. If I am correct that this conception is incoherent, it follows that to see others as persons is to see them not merely as loci of freedoms but also as potential objects of our normative power. This relates to the well-known Kantian theme that freedom and constraint are mutually dependent. In Darwall’s account, this line of thought finds expression in the idea that he understands practical freedom through the idea of second-personal competence, i.e. our capacity for mutual accountability. I am indebted to Byron Davies’s work for bringing Rousseau’s views in this matter to my attention.
command corresponds to Aristotle’s distinction between wish and choice, where the latter stands in an internal relation to Kant’s concept of a means as something the agent presupposes to fall within her power. The justificatory burden faced by command therefore might be understood in terms of the Formula of Humanity, and specifically in terms of the question under what conditions command does not count as treating the addressee merely as a means. I developed an answer to this question out of the idea of our natural equality, by arguing that justified command has to fall under an artificial system of public institutions.

I suggested that the theories of justice of both Rawls and Kant also revolve around the idea of publicity, which both propose to conceive in terms of the idea of a social contract understood as the form of public practical reason. The key difference between them is that, for Rawls, public reason of this sort can be carried out by any rational and reasonable person, whereas for Kant, the agent has to be the public itself, as embodied by a rightful condition. This in turn explains why there are no conclusive rights in the state of nature according to Kant: such rights would need to be brought into being through a process of public practical reasoning, yet no such reasoning is possible outside of a rightful condition. Yet Kant thinks that rights do have to apply in the state of nature, however provisionally. In the following chapter I will develop a more thorough account of the “mezzanine” character of the state of nature in the Kantian framework.
Chapter 5:  
Kant on the State of Nature

5.1 Introduction

The last fifty or so years have been a period of sustained engagement with Kant’s ethics in Anglo-American political philosophy. Rawls deserves particular credit here. In *A Theory of Justice*, Rawls not only presents his conception of justice—“justice as fairness”—as an attempt to “generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant” (1999a, xviii), but also suggests that the original position might be viewed as a “procedural” interpretation of Kant’s Categorical Imperative (see 1999a, §40). The Kantian character of justice as fairness arguably becomes only more pronounced in *Political Liberalism* (2005), in spite of Rawls’s “political turn” there (i.e. the replacement of Kant’s practical philosophy as the “comprehensive” moral foundation of justice as fairness with the “fundamental ideas seen as implicit in the public political culture of a democratic society” (2005, 13)).

More recently, there has been a surge of interest in Kant’s own legal and political philosophy, owing not least to its forceful restatement in Arthur Ripstein’s *Force and Freedom* (2009). The larger purpose of this chapter is to add credence to such interest by showing that the perspective of Kant the political philosopher does not reduce to that of Kant the ethicist but instead carries philosophical interest in its own right. I will pursue this purpose by developing an account of the place of the state of nature as a figure of thought within Kant’s legal and political philosophy. I will do so indirectly, by working through two recent criticisms of Kant’s theory of what he calls “right” (*Recht*), i.e. the part of his moral philosophy concerned with external actions rather than internal
motives. The two criticisms are A. John Simmons’s in “Democratic Authority and the Boundary Problem” (2013) and Michael Thompson’s in “What is it to Wrong Someone? A Puzzle about Justice” (2004). It will turn out that the state of nature enters Kant’s account in a fashion radically different from the role it occupies with other political philosophers, such as Hobbes or—even more so—Locke, and that the two criticisms just mentioned fail to do justice to this fact.

I will proceed as follows. In §5.2, I introduce the “particularity requirement” which Simmons argues poses a problem for Kant and locate it within Simmons’s larger anarchist outlook. In §5.3, I turn to Thompson’s “puzzle about justice,” whose explication requires somewhat more elaboration, which I provide in §5.3.1 and §5.3.2, before I state the puzzle proper in §5.3.3. In §5.4, I discuss two assumptions as they jointly figure in the two criticisms, namely the assumptions that morality is both “abstract” (§5.4.1) and “independently determinate” (§5.4.2). In §5.5, I spell out the sense in which Kant takes there to be a duty to leave the state of nature. In §5.6, I in turn spell out the sense in which the duty to leave the state of nature is supposed to derive from our physical proximity. In §5.7, I explain why Kant’s appeal to physical proximity does not reintroduce Simmons’s objection from the particularity requirement. In §5.8, I recapitulate the relation between Simmons’s and Thompson’s criticisms of Kant. In the Postscript (§5.10), I discuss the relation between “What is it to Wrong Someone?” and Part III of Thompson’s Life and Action, which in turn provides me with the materials for exposing a fundamental difference in outlook between Simmons and Thompson concerning the relation between morality on the one hand and our actual practices on the other. Thompson turns out to be much closer to Kant on this count than he himself seems to recognize.
5.2 Simmons’s Particularity Requirement

A. John Simmons is a self-described philosophical anarchist. For Simmons, “Commitment to one central claim unites all forms of anarchist political philosophy: all existing states are illegitimate” (1996, 19). Put another way, philosophical anarchists hold that there is no duty to obey the law. Put yet another way, philosophical anarchists hold that there is no such thing as political obligation, at least not here and now, and perhaps nowhere and never.124

The crux of Simmons's position, of which his Moral Principles and Political Obligations is the first and still most comprehensive statement, is the “particularity requirement.” According to Simmons, those who wish to defend the existence of a duty to obey the law “need a principle of political obligation which binds citizens to one particular state above all others, namely that state in which he is a citizen” (1979, 31–2). The candidate theories of political obligation Simmons considers are: principles appealing to explicit or tacit consent, Hart’s principle of fair play, Rawls’s natural duty of justice, and appeals to gratitude. According to Simmons, some of these candidate theories of political obligation rest on inherently dubious ideas. This is true in particular of the notion of tacit consent. Some of them seem to operate in the wrong normative “register” as candidate grounds of a supposed duty to obey the law. This is true of appeals to gratitude, which seems to have too “supererogatory” a character. However, even those still left standing fall before the particularity requirement, Simmons argues. None of them are able to account for the obligation we have to obey the laws of the particular political communities of which we are members.

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124 I am not claiming that all these ways of putting the anarchist position are in fact equivalent. Certainly much debate in the literature concerning philosophical anarchism depends on possible conceptual discrepancies between them. The point here is rather that these are the terms in which various self-described philosophical anarchists typically define their own position.
Simmons’s later argument in “Democratic Authority and the Boundary Problem” invokes a distinction between two kinds of theories of political obligation, which in turn suggests a distinction between two kinds of failures with a view to the particularity requirement. A “structuralist” theory is an account that “grounds the state’s legitimacy in its successful performance of its morally mandated functions or…in the structure of its basic institutions” (2013, 327). An “historical” theory on the other hand explains political obligation by appeal to historical factors, such as citizens’ de facto consent to their government.

Structuralist theories fail the particularity requirement because they are committed to claiming that we owe obedience to any state possessing the relevant structural qualities, and thus not merely “that state in which we are citizens,” which is what the particularity requirement requires. Historical theories on the other hand have the right conceptual “shape” to account for appropriately particularized obligations according to Simmons. However, they fail on the ground that the sorts of historical considerations that are supposed to ground the obligations we owe to our actual states in fact do not apply and—more fundamentally—even where they do apply, this fact seems to be merely

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125 To be precise, in “Democratic Authority and the Boundary Problem” Simmons focuses on the “boundary problem” rather than the particularity requirement. However, he considers the former to be a special case of the latter, which in turn poses the “more general problem for theories of political authority” (2013, 328).

126 There is a complication here, which is that states do not generally claim to have authority over the citizens of other states. This in turn suggests a possible answer to the question why we don’t owe obedience to states other than our own: we only owe obedience to a state that not only has the requisite structural qualities but also claims authority over us. (Compare Rawls’s understanding of the natural duty of justice here. According to Rawls, the natural duty of justice “requires us to support and to comply with just institutions that exist and apply to us” (1999a, 99). If we understand the latter condition—that the institutions in question also have to apply to us—in terms of their own claims as to who their subjects are, then Rawls’s natural duty of justice is analogous to the proposal under consideration here.) However, this answer presumably wouldn’t satisfy Simmons, since he might argue that it is both descriptively and morally contingent that states have by and large harmonized their claims to authority in the way they in fact have; descriptively because the harmony in question exists merely because of states’ contingent choices as to whom to claim authority over and morally because on Simmons’s view the question whether a state possesses the requisite moral quality is distinct from the question whom it claims authority over. (Simmons actually considers a case of a just institution that starts to claim authority over us in his very discussion of the second clause of Rawls’s natural duty of justice in Moral Principles and Political Obligations; see (1979, 147–52). His argument there is precisely that the fact that the institution in question is just and claims authority over us is not sufficient for our in fact being obligated to it.) I am indebted to Christine Korsgaard for pressing me to address this point.
contingently related to our membership in the state in question. For instance, hardly any of us ever explicitly consented to the legal system under which we live, and even if we had, it is not clear that it would make any difference to our being subject to them as far as the legal system itself is concerned.

However, Simmons’s chief target in “Democratic Authority and the Boundary Problem” is the family of “theories of political obligation that participate in the Kantian tradition of thought on these subjects,” all of which share the structuralist “determination to justify political authority and territorial jurisdiction solely by appeal to structural or functional features of states” (2013, 330). Kantian theories in Simmons’s sense include “not only Kant’s own theory (and the theories of those who follow Kant’s quite closely), but also those of contemporary Kantians like John Rawls (and the many who work on defending and developing Rawlsian political philosophy)” and “what can…be fairly identified as the most recent wave of Kantian theories of political authority and obligation: the theories of democratic political authority defended by David Estlund, Thomas Christiano, Scott Shapiro, Anna Stilz, Jeremy Waldron, and others” (2013, 329–30).

My own interest in Simmons’s case here is its application to Kant’s theory specifically. Simmons depicts Kantian accounts of political obligation as taking a two-stage form. The first stage is “designed to establish ‘the moral necessity of the state’ and its system of justice, …the moral duty on each person to leave the state of nature and submit to or to help create (and then submit to) some districted political authority and its omnilaterally authorized determination and enforcement of peoples’ rights” (2013, 332–3). On Simmons’s reading, Kant’s first-stage case appeals to

the necessity of persons possessing secure, conclusive, enforceable rights conjoined with the impossibility of persons possessing such rights in a state of nature (that is, in the absence of a body authorized by all to determine and enforce those rights). In a state of nature, rights over things cannot be acquired unilaterally, imposing obligations on others by one’s own act of will, even where things are morally available for appropriation. Nor can rights once established legitimately be enforced, since people have no obligation to refrain from interfering with others when they lack the assurance that others will refrain from interfering with them. Nor can rights in a state of nature even
be characterized in an objective, determinate form that allows for their application to particular subjects. Since no person is any more entitled than any other to determine the terms of their interactions, all must remain free to act on their own judgments of right in the absence of some body entitled to judge for all. … But this puts all in a wrongful condition with respect to others, making the creation of a state to do such judging morally mandatory for all. (2013, 333)

However, even accepting arguendo the soundness of Kant’s own or some alternative Kantian first-stage argument, Simmons argues that Kantians owe us an explanation of why the current conventional/legal division of the world into states with specific territories and subject populations should be thought to be the division that fixes mandatory moral boundaries of political authority and obligation, that sets mandatory targets for what seemed (according to the terms of the first-stage argument) to be merely duties to subject ourselves to some political authority or other. (2013, 334, emphasis in original)

In other words, the structuralist take on political obligation to which Kantians subscribe imposes on them the requirement to address two separate stages of argument yet leaves them without the resources to discharge the second stage, or so Simmons has it.

5.3 Thompson’s Puzzle about Justice

Michael Thompson’s paper “What is it to Wrong Someone? A Puzzle about Justice” divides into two parts, whose contents are roughly reflected in the two clauses making up the paper’s title. In the first part, Thompson explores a particular system of normative concepts, which he calls “dikaiological concepts,” following the Greek term to dikaion, i.e. “what is just/fair/right.” Thompson’s suggestion is that dikaiological concepts represent a sui generis form of practical normativity, which he calls “bipolar normativity.” Bipolar normativity is formally distinct from “monadic” forms of practical normativity, in particular the form of normativity that governs the system of practical concepts making up what Thompson calls “deontology.” The second part of the paper then raises a puzzle about the interpretation of specifically moral judgments making reference to dikaiological concepts. It is here that Thompson’s critique of Kant enters.
5.3.1 What It Is to Wrong Someone

Bipolar normativity as Thompson understands it is the form of normativity at play in judgments such as “A has a right against B that B do X” or “A wrongs B by doing X.” According to Thompson, there is a formal difference between judgments such as “A has a duty to B that she (A) do X” or “A wrongs B by doing X” and judgments such as “A has a duty to do X” or “A does wrong by doing X.” The former are bipolar, the latter (merely) monadic. According to Thompson, bipolar judgments might be thought of as deploying a more determinate form of normativity than merely monadic judgments, “more determinate” in a sense analogous to that in which judgments deploying two-place predicates are more determinate than those deploying one-place predicates. Judgments of the former form may always be represented as judgments of the latter form, by (as it were) pulling one of the relata into the content of the predicate itself, but not vice versa. For example, the judgment “Everest is taller than McKinley” might be represented as deploying the two-place predicate “… is taller than …,” but also as deploying the one-place predicate “… is taller than McKinley.” However, the same is not true the other way around. The judgment “Everest is a mountain” can only be represented by reference to the one-place predicate “… is a mountain,” not by reference to any two-place predicate.

Something analogous goes for the relation between bipolar and merely monadic judgments according to Thompson. The judgment “A wrongs B in (say) breaking her (A’s) promise to her (B)” might be represented as deploying the bipolar predicate “… wrongs …” or “… commits a wrong against …” but also as deploying the monadic predicate “… does wrong” or “… commits a wrong.” In the latter case, B might be said to constitute, not the “pole” on the receiving end of a bipolar nexus, and so “someone whom someone might wrong,” but rather the “raw materials for
wrongdoing” (2004, 352, emphasis removed). The judgment “\(A\) commits a wrong in littering” on the other hand can only be represented by reference to the monadic predicate “… does wrong”/“… commits a wrong”, not by reference to the bipolar predicate “… wrongs …”/“… commits a wrong against …,” since there is no particular person there who is being wronged by the wrongful act of littering. We may of course resist the substantive moral claim made by the judgment in question and assert that there is no such thing as wrongdoing without there being someone who is thereby being wronged—that is, we might assert that there is no such thing as a “victimless wrong”—but such a “blanket denial of the possibility of acting wrongly, or ‘immorally’, where no one is wronged, would be a strong and implausible substantive claim, amounting…to a sort of moral libertarianism” (2004, 340, emphasis in original, footnotes omitted).

Thompson puts this line of thought as follows:

It is presumably true that I ‘act wrongly’, monadically, whenever I wrong another. But justice isn’t the only virtue, and so I can intelligibly be said to do wrong or go wrong or act wrongly, morally speaking, even when no one is wronged. If, for example, you are making an unjustly intrusive enquiry, and I tell you a lie in response, it certainly doesn’t seem that I wrong you. But a lie would cover me with shame nevertheless. The claims of honesty thus seem to outrun those of justice. The intellectual content of my feeling of shame is a deontological, not a dikaiiological, judgement. ‘I did wrong in that I lied to you’ contains representations of a pair of agents, indeed, but the combination is not properly bipolar: the representation of you falls inside the scope of the action description that is fitted into this monadic normative form; it does not go to characterize the form of normativity itself. You are the occasion, not the victim, of my fall. (2004, 339–40, emphasis in original, footnotes omitted)

As Thompson uses the term here,

‘justice’ bears its traditional sense, naming a virtue of individual humans like you and me, and not a feature of the larger social structures into which we fall. The mark of this special virtue of human agents, as Aristotle says, is that it is ‘toward another’, pros heteron or pros allon; it is, as St Thomas says, ad alterum, or as Kant says, gegen einen Anderen” (2004, 337, footnotes omitted),

and hence precisely its relational or bipolar form. The term “person” as Thompson uses it in turn refers to something dikaiiological in this sense, namely the potential doer and sufferer of justice or injustice. A person is therefore always a person to some other person or persons, in the way that, say,
a sibling is always a sibling to some other sibling or siblings. As such, “person” is formally distinct from “agent” for Thompson, which refers to individuals under the aspect of their susceptibility to merely monadic normativity. An agent, unlike a person, is a normative island, entire of herself.127

5.3.2 Lombards and Schlombards

So far, so formal. However, if bipolar normativity is to amount to anything more than empty formalism, bipolar judgments need to be given a particular interpretation. As Thompson puts it,

If we are to get anywhere with them in thought—if they are to register truth or even falsehood—they must first be shifted into a particular gear. Or, if you prefer, they must be sung in a particular key. In addition to a pair of relata, our relational O’s and P’s [i.e. the modal operators referring to dikaiological concepts in bipolar judgments, M.G.] must always at least implicitly be supplied with an index or subscript. (2004, 342, emphasis in original)

Morality constitutes one such interpretation according to Thompson: “One of these is specifically moral, or, as we might say, directly normative” (2004, 342, footnotes omitted). However, it isn’t the only one: “Customs, practices, and institutions of quite various sorts can give sense to our bipolar linkages” (2004, 341). Systems of private law—i.e. the part of law governing torts and contracts and such—in particular are paradigmatic instances of “dikaiological orders,” or “orders of right,” as I will call them.128

However, the idea of a specifically moral interpretation of the form of bipolar normativity is precisely where Thompson’s puzzle enters. The illustration by which Thompson approaches the puzzle involves two fictitious Roman Empire-era tribes, the “Lombards” and the “Schlombards,” who happen to develop qualitatively identical legal systems, but in perfect geographical isolation from each other. Suppose now that a Lombard and a Schlombard encounter one another without

127 Note that Thompson’s distinction between agent and person here is analogous to the distinction between the two senses of authority I discuss in the Introduction, according to which in the first sense someone is an authority in something whereas in the second sense someone has authority over another.

128 See (2004, 343–5) for discussion of the distinction between private and public law understood in terms of the distinction between bipolar and merely monadic normativity.
realizing that they are members of different tribes. (Suppose that they look and dress alike, that their languages are also qualitatively identical, and that both call themselves “Lombards.”) Could these two successfully conclude a contract with one another?

According to Thompson, no. While there need be no qualitative difference between the attempt at a Lombard–Schlombard contract and the corresponding successful conclusion of a Lombard–Lombard respectively Schlombard–Schlombard contract, in the Lombard–Schlombard case the two would-be parties attempt to enter their contract under numerically distinct orders of right and so in deployment of bipolar thoughts with different implicit subscripts or indices. A Lombard–Schlombard contract is a contract neither under Lombard law, nor under Schlombard law, nor under any other law, and hence no contract at all. Lombard and Schlombard are, as Thompson puts it, “like ships passing in a juridical night” (2004, 373).

However, what accounts for the difference between the bipolar judgments being deployed in the Lombard–Schlombard case and those being deployed in the Lombard–Lombard/Schlombard–Schlombard cases, if it isn’t anything qualitative? According to Thompson, what distinguishes the unhappy Lombard–Schlombard case from its happier Lombard–Lombard/Schlombard–Schlombard counterparts is that what transpires between the parties is merely accidental in the former case but non-accidental in the latter. Here is Thompson:

In assigning a determinate content to the dikaiological thoughts of either agent—that is, in seeing the pairings he frames as set into some one among the many particular gear settings the cosmos makes available—we must indeed advert to something through which we can see another agent’s correlative or mirroring thought as no accident.129 (2004, 373, first emphasis added, second emphasis in original)

129 This does not mean that every single person falling under a given order of right is “in actual possession of suitably adjusted dikaiological concepts or the associated person conception” (2004, 367). However, it has to be the case that “the apprehension of the appropriate deployment of bipolar deontic concepts—and the same deployment, in the same gear setting—is a typical attainment within the associated manifold of persons. Otherwise no dikaiological nexuses can join any of them to any of them; we would have a mere set of agents, not a manifold of persons. And so too the imagined deployment of dikaiological concepts will be contentless. A manifold of persons must be a genus, an indefinitely extensible class, within which apprehension of the associated form of practical opposition holds typically or ‘as for the most’, hos epi to polu, as Aristotle says” (2004, 368, emphasis in original).
What accounts for the non-accidental nature of the Lombard–Lombard/Schlombard–Schlombard cases, which in turn makes the parties involved persons-to-each-other under a numerically single order of right? Here we encounter the thing that will be central to Thompson's puzzle. According to Thompson, there needs to be a “single, naturalistically intelligible, trait-transmitting historical succession” in place, or at any rate “this is the only way we can understand [a numerically unified order of right, M.G.] to be realized in nature as we know it to be” (2004, 365, footnote omitted).

Two points left implicit here deserve fuller explication. First, what has to be non-accidental for Thompson’s purposes is not merely the individual but the joint attainment of the relevant forms of bipolar judgment. After all, it presumably is “no accident” in the relevant sense that Lombard and Schlombard taken individually acquired the relevant concepts, given that they each enjoyed “habituation into a practice” (2004, 365, emphasis removed) governed by the concepts they deploy in their ill-fated attempt at contracting with one another, namely their respective, numerically distinct practices. What is accidental, however, is the way in which these concepts figure in what transpires between them.130 Since Lombard and Schlombard don’t manage to get a contract off the ground, it

130 It is difficult to even articulate what it is that is supposed to occur merely accidentally in the Lombard–Schlombard case. In particular, it is not the case that Lombard and Schlombard actually entered a contract, but only accidentally so, in the way you might, say, spill a glass of milk either accidentally or deliberately. Lombard and Schlombard didn’t enter a contract, and they didn’t do so precisely in virtue of the fact that what they did was merely accidental. Again, however, what is it that they did merely accidentally? The trouble here is that merely accidental interaction isn’t really interaction at all, that is, that the notion of merely accidental interaction is a contradiction in terms, that is, that “accidental” functions as an alienans here. However, what exactly is it then that occurs accidentally? Compare the claim “Fake money isn’t money.” “Fake” here also operates as an alienans. Again, if “fake money” isn’t money, then what exactly is it that the term “singles out”? What distinguishes fake money from, say, oak foliage or Flint, MI, tap water, about which it is also true that it “isn’t money”? Here the answer seems obvious: fake money is something that pretends to be real money, or, if this is too anthropomorphic, that is made to resemble real money. However, the Lombard–Schlombard contract cannot properly be called a “fake” contract, since no one is engaging in any forgery there. So, the answer has to be something else. I suspect that Austin’s distinction between a misfire and an abuse in How to Do Things With Words (see (1975, 16)) is instructive here. Fake money constitutes an abuse of sorts of the real thing, whereas what is going on in the Lombard–Schlombard case is a kind of misfire. (However, note that fake money isn’t exactly analogous to an abusive speech act—“abusive” in Austin’s technical sense here—since it is part of the concept of abuse that an abusive speech act succeeds by its own standards, whereas fake money is still fake money even if people aren’t fooled.) Whatever the correct analysis, what emerges in both the case of the Lombard–Schlombard “contract” and the case of fake money is that the “happy” or “non-fake” case enjoys a kind of priority vis-à-vis the infelicitous respectively fake case. We cannot even specify what it is that occurs accidentally or what exactly fake money is faking without reference to the
follows that, for the joint action of entering a contract to be possible, what has to be non-accidental is the very jointness of the parties itself.\textsuperscript{131}

Second, if bipolar judgments have to make at least implicit reference to this or that “index” or “subscript” in order to be determinately applicable, and if it is only possible to individuate the orders of right to which the relevant subscripts refer in their turn by appeal to something like their “natural history” (in the sense of a “single, naturalistically intelligible, trait-transmitting historical succession”), then it follows that bipolar judgments are themselves only determinately applicable with the “stage-setting” by some natural history or other in place. This much seems to follow by transitivity. Moreover, Thompson himself seems to say as much when he says, in the passage quoted above, that “in assigning a determinate content to the dikaiiological thoughts” of Lombard and Schlombard, we have to make reference to something through which we can understand these thoughts as “no accident,” and “in nature as we know it to be” this has to be their (shared) natural history.\textsuperscript{132}

5.3.3 The Puzzle

Thompson’s puzzle about justice concerns how we might make sense of the idea of justice in light of these strictures, where “justice” is, again, understood as the specifically moral order of right. Thompson considers three candidate accounts, the “Humean,” the “Aristotelian,” and the “received Kantian” view, each of which raises difficulties of its own.

\textsuperscript{131} Suppose that an adult Lombard moved to Schlombardy and came to participate in the Schlombard order of right. In getting habituated into Schlombard practice, would she be learning something new? It seems so. This in turn suggests that “learning ain’t in the head.”

\textsuperscript{132} This raises the question as to whether there could be such a thing as a practice with only one participant, a “private practice” as it were. It seems not, but this is not the place to develop a “private practice argument” of this sort.
The “Humean view” has it that “justice” in this sense simply refers to one more historically actual practice, on a par with this or that system of etiquette or private law. Since justice is something that possesses a natural history of the requisite kind, the Humean view has no trouble accounting for its intelligibility or determinate contentfulness. However, the Humean view has “intolerable moral commitments” (2004, 374), namely the implication that we do not stand in relations of justice with those who do not share in the practice in question. Outsiders to our practice of justice might enter into it only as “third parties,” that is, as the potential “materials” of the wrongs we commit against the other participants in the practice. As such, their position is on a par with the position occupied by anyone (other than the bearer of the relevant duties) in a “deontological order” specified by merely monadic judgments.

Perhaps it might be replied that the relevant Humean practice in fact does cover humanity as a whole, at least in “today’s globalized world,” so that the outsiders to which Thompson’s objection refers don’t in fact exist. This reply gives rise to awkward questions concerning the moral status of, say, the victims of the Conquistadores, which in turn point to the more fundamental problem that the Humean view seems to get the order of explanation wrong. It is not the case that we stand in moral relations of right with all human beings because we share some actual practice of justice with them. On the contrary, we stand in moral relations of right with all human beings whatever our actual moral practice, and the latter morally ought to track our “pre-practical” moral relations of right, or at least so it seems.

The “Aristotelian view,” to which Thompson himself is broadly partial, has it that justice does not consist in some particular social practice, of which human beings may or may not be members, but instead attaches to the human life form itself. On the Aristotelian view, the human being is a creature which conceives of other members of its species in dikaiological terms of the relevant
moral variety. Here our relations of justice to each other do not seem to be objectionably contingent in the way they were with the Humean view. Or rather, they are not with respect to other human beings.

The trouble facing the Humean view reenters for the Aristotelian view when we consider our relations to non-human rational animals, say Martians. Once again, the idea here is that we do seem to stand in specifically moral relations of right with such creatures, despite not sharing a life form with them. By the same token—but more fundamentally—even moral relations of right with other human beings do not seem to be contingent on our shared natural history as human beings in the way suggested by the Aristotelian view.133

This turns Thompson to the third, “received Kantian” view, which he describes as follows:

The just agent, on such a view, looks past the Humean practices into which she and others are sunk; she sees through the particular Aristotelian nature she and others bear; she attaches herself simply to the agency or the rationality of the one by whom she proposes thereby to ‘do right’, or to whom she has a horror of doing wrong. (2004, 379)

Since the received Kantian view makes no reference to a shared natural history or the like, it does not seem to run into the moral difficulties faced by the Humean and Aristotelian views, although of course questions might be raised about the moral status it ascribes to the non-rational animals.134 By the same token, however, the received Kantian view lacks the resources to account for the fact that the capacity for justice is a typical joint attainment between rational agents. After all, cases of agency or practical rationality “might chance to break out in the Andromeda galaxy quite as well as it might

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133 I am focusing here on only one of the two concerns Thompson raises for the Aristotelian view, and the one Thompson himself presumably finds the less profound and interesting one. The other concern turns on a disanalogy between the capacity for justice on the one hand and our, say, liver function on the other, both understood as “typical attainments” of ours qua bearers of the human life form. The disanalogy resides in the fact that the former is inherently “self-conscious” in a way the latter is not. The fact that I have no intellectual grasp of the function of my liver does not render me defective qua bearer of the human life form. There would be something defective about me on the other hand if I had no grasp of the order of justice under which I relate to all other human beings. The question is how to make sense of all that, that is, the essentially self-conscious aspect of justice understood as a typical attainment within the human life form. Thompson calls this a “difficult epistemological commitment” (2004, 376).

134 On this topic see Christine Korsgaard’s recent work, in particular “Interacting with Animals: A Kantian Account” (2011). Note that the problem of how to understand our relations to the non-rational animals also arises for the Humean and the Aristotelian view.
down here” (2004, 365); indeed, the fact that we might stand in relations of justice with rational agents from faraway galaxies is, or at least is internally related to, the very thing that accounts for its moral appeal over and above the Humean and the Aristotelian views.135

However, if a shared natural history is inadmissible as an account of the joint attainment of the relevant dikaiiological concepts in their specifically moral key, then it is not clear what gets relations of justice between rational agents qua rational agents off the ground in the first place. What, in other words, accounts for the difference between the (felicitous) case of you and I relating to one another as beings who might be morally wronged and the (infelicitous) case of Lombard and Schlombard? As Thompson sees it, the Kantian is forced to appeal to the idea of a “single intelligible cause hidden below this superficial diversity of crude, empirically given mechanical causes” (2004, 382) or the like. Without appeal to some such “noumenal” cause, there is nothing to appeal to in order to show that the relation between two rational agents on the Kantian account isn’t like that of Lombard and Schlombard. While there is nothing incoherent about a noumenal appeal of this sort, its object is almost by definition something outside of “nature as we know it to be,” and so something that is at odds with even a “mild naturalism” (2004, 383). Still, a metaphysically extravagant “unreconstructed” Kantian view of this sort is philosophically preferable to a neo-Kantianism that tries to retain the moral “superstructure” of the Kantian edifice while doing away with its metaphysical “base,” since the latter account lacks the resources to even render itself coherent qua account of justice, Thompson seems to think.

135 Thompson’s argument has another wrinkle here, which turns on the claim that rational agency in the Kantian sense might “sometimes be entirely devoid of dikaiiological concepts and incapable of attaining them. . . . If a member of this extensive class happens to have otherwise suitable ‘correlative’ representations, this will just be an accident” (2004, 380). I will set this added complication aside, except to note that the conception of practical rationality Thompson ascribes to Kant here bears striking resemblance to the idea of a merely first-personal “naive practical reasoner” on whose supposed compatibility with Kant’s practical philosophy Darwall’s criticism of Kant in The Second-Person Standpoint (see (2006, 216–7)) turns. For doubts about the naive practical reasoner’s compatibility with Kant’s account of practical reason, see Christine Korsgaard’s comment on The Second-Person Standpoint, “Autonomy and the Second Person Within” (2007), as well as Darwall’s reply to Korsgaard (2007).
Thompson’s puzzle might be put in terms of the following dilemma. A defensible account of justice would have to steer clear of two kinds of contingency, the moral contingency of a shared natural history on the one hand and the metaphysical contingency of shared rational agency on the other. The Humean and Aristotelian views manage to avoid the former but run into the latter. With the neo-Kantian view it is the other way around. The unreconstructed Kantian view does avoid both moral and metaphysical contingency, but only at the price of metaphysical extravagance. There is thus a “conflict between metaphysical and moral desiderata, and it is difficult to say in which direction we should turn” (2004, 383).

5.4 Two Assumptions about Justice

Those familiar with Kant’s practical philosophy may have noticed a seemingly glaring but as yet unaddressed difference between Simmons’s and Thompson’s critiques of Kant, namely that only Simmons takes up materials from Kant’s philosophy of right proper, whereas Thompson’s references to rational agency and noumenal causation ring more of the Groundwork, the Critique of Practical Reason, and even the Critique of Pure Reason, and so if anything of Kant’s ethics. If this is so, then the idea suggests itself that Thompson’s account misses its target simply by aiming at the wrong half of Kant’s practical philosophy. I will address this concern in passing in the following section, where I develop the normative significance of the state of nature as it figures in Kant’s account of right and use these materials to mount a defense against his two critics on his behalf. Briefly, I will suggest that things are in fact more complicated in this department than they may seem
at first glance and that Thompson’s criticism is actually the one more faithful to the spirit of Kant’s account of right, even if not to its letter.

Even waiving the interpretive concern just mentioned for the time being, however, it may not yet be clear what the common ground between Simmons’s and Thompson’s criticisms of Kant is supposed to be such that they merit a unified reply on Kant’s behalf. The purpose of the present section is to provide an answer to this question. Specifically, I will argue that there are two assumptions on which both criticisms turn, albeit in different ways and with different degrees of implicitness. The two assumptions are, first, that morality, or at any rate the relevant subdomain of morality, is abstract (§5.4.1), yet, second, that it is, or at any rate is thought to be, independently determinate (§5.4.2). It is the combination of these two assumptions that underlie the two lines of criticism of Kant, although in instructively different ways.

5.4.1 Abstractness

As we saw in §5.3.1 above, Thompson distinguishes the (monadic) concept of a mere agent from the (dikaiological) concept of a person. The latter concept might be thought of as “derelativized” in the sense in which the concept sibling is derelativized: just as a sibling is a sibling to some other sibling or siblings, a person is a person to some other person or persons, namely those who share in the same dikaiiological order. By the same token, the concepts person and order of right might be viewed as interdefinable. A person under a given order of right someone who stands in bipolar relations with the other persons under that order of right. Conversely, an order of right is the system of persons who relate to one another in terms picked out by the relevant bipolar judgments.\(^{136}\)

\(^{136}\) I believe that something analogous goes for Rawls’s twin conceptions of society as a “fair system of social cooperation over time” and the citizen as “reasonable and rational.” See, in general, his Political Liberalism (2005).
Like these judgments themselves, particular instances of the concept person thus have to be thought of as having an implicit index or subscript attached to it, such as “person under Lombard law.” This circumstance provides Thompson with another aspect under which to describe his puzzle concerning the received Kantian view. The conception of the person deployed by this view is “abstract” in precisely the sense that it makes no reference to the sort of natural history that would put us in a position to view the various specimens as relating to one another under a single order of right, and so as relating to one another in bipolar terms at all. A conception of the person that does make a natural-historical reference of the requisite sort in turn would be “concrete.” Lombard and Schlombard are both concrete conceptions of the person in this sense, as is human being in the sense deployed by the Aristotelian view. As Thompson puts the point,

There would...appear to be a radical distinction between concepts like animal, rational animal, Boethian person, agent, and speaker, on the one hand, and those like Norway rat, human, twin human, speaker of English, player of chess, and Lombard, on the other. The former we might call 'abstract' class concepts, and the latter 'concrete'. The mark of a Kantian or neo-Kantian or 'received' type of account can then more clearly be stated: it uses an ostensibly abstract class concept to identify the manifold of persons in which our heroine implicitly locates herself. Just for this reason, though, received views are all very difficult to maintain once the nature of our bipolar nexuses is properly grasped; the metaphysical consequences of all such views are quite extraordinary. (2004, 366)

The dilemma in terms of which I framed Thompson’s puzzle at the conclusion of §5.3.3 might therefore also be put in terms of the distinction between abstract and concrete concepts of the person just introduced, as follows: accounts of justice making reference to concrete concepts of the

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There is a complication here. As just noted, Lombard and Schlombard are concrete concepts of the person. The reason the Lombard–Schlombard contract from §5.3.2 nevertheless fails to get off the ground is just that the two would-be parties belong to numerically distinct practices, i.e. practices with numerically distinct natural histories. On Thompson’s received Kantian view on the other hand, justice concerns the dikaiological relation between two abstractly conceived persons. Hence, the nature of the dikaiological infelicity (such as there is) between two Kantian persons is formally distinct from that which stands between Lombard and Schlombard. One way to put the point might be that, with concrete concepts of the person there is, whereas with abstract concepts of the person there is not, a fact to the matter whether they are numerically identical or distinct. Thus, we might say that the dikaiological relation between Lombard and Schlombard suffers from first-order infelicity whereas the relation of justice between two persons as the received Kantian view conceives of it labors under higher-order infelicity.
person—i.e. the Humean and the Aristotelian view—are morally problematic whereas accounts of justice making reference to abstract concepts of the person are metaphysically suspect.

As I interpret Simmons’s argument in favor of anarchism—and more generally the structure of the debate over whether there is a duty to obey the law, of whose “nay” side he is the indispensable partisan—there is an implicit reference to a structurally analogous distinction. Simmons’s particularity requirement turns on the idea that the duty to obey the law attaches to a practice—namely a legal system—that possesses concreteness in Thompson’s sense. Historical principles do make reference to something concrete—such as a datable act of consent—this is why they have the right conceptual “shape” to meet the particularity requirement. However, the “structuralist” candidate principles grounding the duty to obey the law Simmons considers in “Democratic Authority and the Boundary Problem”—the principle of fair play, the natural duty of justice, and Kant’s duty to leave the state of nature—are all abstract, in the sense that they abstract from any concrete natural history of the sort Thompson has in mind. Just as rational agency might chance to break out in the Andromeda galaxy, just institutions might chance to break out in the eastern half of Timor island, say. Since on the principles in question we are fundamentally no differently related to these institutions than we are to our own, they all fail the particularity requirement.

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138 I take it that “concreteness” as Thompson uses the term in “What is it to Wrong Someone?” is related to “actuality” in the sense at play in Part III of Life and Action (see (2008, 160)). For more on the continuity between the two works, see the Postscript (§5.10).

139 In fact, the very notion of a system of institutions’ being “our own” is one with which Simmons is struggling. That this should be so is no surprise given the strictures of his account. On Simmons’s view, positive institutions always merely form the morally inherently inert circumstances to which independently determinate moral principles then apply. As such, no actual system of institutions thus carries any distinct moral significance for us on this picture. (I will return to this point in the Postscript (§5.10).) However, designating some institutions but not others as “ours” seems to indicate just that, which is why any such designation is problematic on a view like Simmons’s. At the very least, the idea of a set of institutions’ being “ours” stands in need of a “positivist” interpretation that preserves its inherent moral neutrality. Note that the point here is parallel to the one raised in footnote 130, in that the difficulty in even articulating the position at hand derives from much the same source.
The “gap” between the concreteness of the institutions to which the particularity requirement makes reference on the one hand and the abstract nature of the candidate principles that are supposed to ground the duty to obey the law on the other is, I think, the deep motivation underlying Simmons’s anarchist outlook, deeper than the fact that existing states happen to fall short of this or that moral ideal. It is also the deep explanation for why the debate over Simmons’s “anarchist challenge” has played out so manifestly in his favor. Even those who wish to oppose him and defend the existence of a duty to obey the law have tended to take for granted Simmons’s conception of what an argument in favor of such a duty would have to look like, namely an inference from an abstract moral principle to the duty to obey the law making up some concrete legal system. Since the gap between morality in its abstractness on the one hand and the duty to obey the law in its reference to something concrete on the other is built into the very dialectic in question here, Simmons’s anti-anarchist opponents have thereby effectively sealed their own fate.

5.4.2 Independent Determinateness

Let me turn to the second assumption, i.e. the one concerning what I called the “independent determinateness” of morality. In Thompson’s case, the assumption is explicit, namely in the idea that justice is one interpretation or “gear setting” of the formal structure of dikaiology, on a par with this or that concrete legal system, system of etiquette, or the like. His puzzle about justice with respect to the “received Kantian view” is then precisely how this could be so, given that justice is also supposed to be abstract according to Kant. As we saw above, Thompson thinks that the only way in which we can make sense of the idea that two persons fall under a determinate order of right—the only way in which we can make sense of the fact that Lombard and Schlombard belong to
numerically distinct legal systems—is by appeal to some natural history or other, yet justice on the received Kantian view precisely abstracts from any such history.

In Simmons’s case, the appeal to the independent determinateness of morality plays out in a more implicit fashion, namely in the idea that the candidate principles grounding the duty to obey the law apply to persons determinately “in the state of nature,” that is, independently of this or that set of institutions. This idea is implicit in how Simmons imagines the various candidate arguments in favor of the existence of a duty to obey the law to proceed, however unsuccessfully, namely precisely from some such independently applicable moral obligation to the duty to obey the law. Unlike Thompson, however, Simmons finds nothing puzzling about the idea of justice understood as simultaneously abstract and fully determinate as such. The particularity problem enters only with the inference, that is, once an obligation of this sort is supposed to account for the duty to obey the law, and so again something concrete.

In other words, Simmons’s and Thompson’s respective concerns about Kant both turn on the supposed abstractness of the relevant moral obligations, but their concerns enter in different places and in different manners. Thompson is puzzled how there might be relations of justice between persons when the idea of justice and the corresponding concept of the person are conceived in purely abstract terms, as he thinks they are for Kant. For Simmons on the other hand, the abstractness of justice as such poses no puzzle. All it does is impugn a certain line of argument in favor of the duty to obey the law, one to which Kant also subscribes on Simmons’s reading. However, this is so much the worse for Kant and the other opponents of anarchism, who ought to simply follow the argument where it takes them, or rather not go where it doesn’t take them.

140 This is oversimplifying things. For one thing, Simmons himself does not address Thompson’s distinction between merely monadic and dikaiological practical normativity. There is also a more fundamental difference between Simmons and Thompson lurking here, which I elaborate on in the Postscript (§5.10).
Another way of putting the point is that Simmons—and the debate over the duty to obey the law more generally—takes for granted the notion that philosophical anarchism is a morally coherent position. The question at stake is merely whether it is the morally correct position, that is, whether the application of the correct fundamental moral principles to “the world” and specifically the institutional circumstances in which we find ourselves yields a duty to obey the law, which is what the anarchist denies. For Thompson on the other hand, the supposed abstractness of justice does pose a puzzle, since he cannot see a way to make sense of an abstract yet independently determinate and applicable order of right. To frame the contrast between Simmons and Thompson in yet another way, Thompson’s puzzle about justice concerns the internal intelligibility of the very idea of justice, whereas Simmons’s particularity problem turns on the “gap” between the abstractness of the various candidate grounds of our duty to obey the law and the concreteness of the systems of institutions to which the duty to obey the law is supposed to tie us.

5.5 The Duty to Leave the State of Nature

In the Metaphysics of Morals, Kant distinguishes between two types of duties, duties of virtue and duties of right. Whereas duties of virtue command agents to adopt a certain end, duties of right require external actions. It follows that duties of virtue and duties of right differ along two further and mutually related dimensions. First, since we might pursue a given end through different actions, duties of virtue leave what Kant describes as “playroom (latitudo)” (1999b, 521 (6:390)) in how we discharge them and as such are “wide” duties. Since duties of right do specify particular actions, they leave no such latitude and accordingly constitute “narrow” duties. Second, only duties of right correlate to rights. In the case of duties of virtue on the other hand, there is no correlative right-
holder. This is because Kant thinks that it is possible to coerce someone to take a certain external action but not possible to coerce someone to adopt a certain end, yet rights are precisely “connected with an authorization to coerce someone who infringes upon” them (1999b, 388 (6:231)) according to Kant.

Note that, as Simmons reads Kant, the duty to leave the state of nature amounts to a wide duty. As we saw in §5.2, Kant’s view according to Simmons is that while we are obligated to leave the state of nature, all we are obligated to do is to “subject ourselves to some political authority or other.” As Simmons reads Kant, we thus have precisely the sort of “playroom” in honoring the duty to leave the state of nature that distinguishes duties of virtue from duties of right. From an interpretive perspective, this poses an immediate problem, since Kant takes the duty to leave the state of nature to be a duty of right, and so a narrow duty. In the first place, this shows up in the fact that Kant’s treatment of the duty to leave the state of nature occurs in the part of the Metaphysics of Morals concerned with the concept of right, the Doctrine of Right. More to the point, others are entitled to force us into a rightful condition, which in turn suggests that the duty to leave the state of nature is a duty to perform a certain external action—i.e. to unite with others under a “rightful condition,” that is, a system of public positive laws—not to adopt a certain end.

There is nevertheless something instructive in Simmons’s apparent misinterpretation of Kant. The point might be put as follows. Kant’s larger objective in the Doctrine of Right is to show that rights are conclusively applicable only in a rightful condition.141 It follows that the duty to leave the state of nature is not merely one duty of right among others that might conclusively apply in a

141 I sketched my interpretation of Kant’s argument in §4.8. To recapitulate briefly, the application of the concept of a right qua application of a practical concept constitutes an act of choice, in the sense defined in §§4.2–4.3. However, the only agent who is in a position to exercise the relevant choice in a manner that is consistent with the very nature of a right—indeed, from another’s choice—is the people considered as a whole. Somewhat paradoxically speaking, we can only realize our mutual independence together. A rightful condition represents the form in which we do just that.
rightful condition. Instead, it concerns the very possibility of rights and, correlative, the very possibility of duties of right. One way in which Kant expresses this point is that those who violate the duty to leave the state of nature “do one another no wrong at all” (1999b, 452 (6:307)). This suggests that, unlike other duties of right, the duty to leave the state of nature isn’t owed to the holder of any particular correlative right. By the same token, to force someone into a rightful condition is not the same as to exercise a conclusive right against them.

However, Kant continues, those who refuse to leave the state of nature “do wrong in the highest degree” (1999b, 452 (6:307)). By the same token again, forcing someone into a rightful condition does not amount to committing a wrong against them. Another way he puts the point is that those who refuse to leave the state of nature commit a wrong that is merely “formal” and not also “material,” since they “take away any validity [Gültigkeit, M.G.] from the concept of right itself” (1999b, 452n (6:308n), emphasis added). Again, the fact that a refusal to leave the state of nature amounts to holding the very concept of right in contempt according to Kant points to the fact that, on his view, a rightful condition is the condition of the very possibility of conclusive rights. Finally, this is also why the duty to leave the state of nature amounts to a postulate on Kant’s view, namely the “postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition” (1999b, 451–2 (6:307)). Within Kant’s framework, a postulate is a presupposition that needs to be in place if some system of concepts is supposed to have validity, the concept whose validity is at stake here being precisely that of right. Those who refuse to leave the state of nature act as though there was no such duty, which in turn means that they hold that there are no such things as rights.
5.6 The Significance of Physical Proximity

However, the argument developed in the previous section does not yet answer the question why there is a duty to leave the state of nature in the first place. Even if we grant Kant’s claim that persons have conclusive rights against each other only once there is a rightful condition in place, it is not clear how this fact is supposed to imply anything about the state of nature. The point is particularly pressing for Kant as I have interpreted him because a rightful condition concludes its members’ mutual rights not merely in the sense of providing for a particularly efficient instrument in enforcing them, but in the sense of constituting the form in which rights could alone be realized in a consistent manner. Hence, the state of nature cannot be a condition in which people’s rights are merely under *de facto* threat or the like. It has to be a condition in which the very idea of one person’s having a right against another does not properly apply. The question then is, why think that it applies *at all*? Why not think that there are simply *no* rights whatsoever in the state of nature? As we saw in §4.9, Kant is very much alive to this challenge. As he puts it there, “if external objects were not even *provisionally* mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave the state of nature” (1999b, 456 (6:312-13)). Note that “command” here has to be understood in the register of right rather than virtue. We could imagine a scenario where people’s general happiness was better served in a rightful condition than in the state of nature. In that case, there might be a duty of *virtue* even within Kant’s framework—which has it that other people’s happiness is an obligatory end for us—to enter a rightful condition.¹⁴²

I already hinted at Kant’s answer to this challenge in §4.9, where I sketched my own answer to an analogous question, i.e. why there could not be such a thing as a “condition of pure request.” As

¹⁴² Note that, as I argued in the previous section, this suggestion is formally on a par with Simmons’s reading of the duty to leave the state of nature.
Kant puts it in his formulation of the postulate of public right, the duty to leave the state of nature applies to us if we “cannot avoid living side by side with all others.” Our obligation to “unite in a rightful condition” thus turns on our mutual physical proximity on Kant’s view. However, note that physical proximity as such is not sufficient to ground the postulate of public right. After all, we are also physically proximate to trees and rocks and waterfalls, yet we do not thereby stand in provisional relations of right with them. Hence, it also matters what it is that we are physically proximate to. Specifically, what we encounter in space are other persons, understood as endowed with the innate right to independence or, as Kant also puts it, the right to “be their own masters.” To put the point another way, right is the aspect of morality that governs our relations with other persons viewed under their aspect as extended beings—i.e. as bodies—sharing the same space with other persons also conceived as extended beings. Qua persons, they are ends in themselves. Qua spatially extended beings, the sense in which they are to be treated as ends in themselves itself has to take spatial form. For Kant, this means respecting their rights to their own persons—understood again as their bodies—and to the external objects they own. Again, since doing so in a conclusive manner is only possible in a rightful condition according to Kant, refusing to leave the state of nature is doing “wrong in the highest degree.”

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143 I am again (see footnote 134) setting aside the difficult case of the non-rational animals.
144 As Ripstein puts it in Force and Freedom, “right governs the relations between free and rational beings who occupy space” (2009, 358). Note here the kinship to Hobbes’s political philosophy, which starts with the idea that we are material bodies moving through space and so potentially colliding with one another in more or less intricate ways. Hobbes develops this point most clearly in his Elements of Law, Natural and Politic (1999) here.
145 This also suggests an account as to how the Categorical Imperative relates to the Universal Principle of Right on Kant’s view. The Universal Principle of Right is the form the Categorical Imperative—or, more precisely, the Formula of Humanity—takes when the relevant ends-in-themselves are conceived of as spatially extended beings encountering one another in a shared space. See the Appendix to Ripstein’s Force and Freedom (2009, 355–88) for an ingenious interpretation of the relation between the Categorical Imperative and the Universal Principle of Right precisely by appeal to the notion that the latter but not the former makes internal reference to the fact that we are embodied beings who encounter one another in space.
According to Kant, a particular form of morality—right—thus becomes applicable only in a rightful condition. If we are to refuse to leave the state of nature, we therefore refuse to engage in a particular form of moral thought altogether.  This is just another way of getting at Kant’s point that those who refuse to enter a rightful condition commit a “formal” rather than a “material” wrong. By the same token, to “avoid living side by side” with all others is also not merely a matter of psychophysical inconvenience but constitutes a particular form of moral impoverishment on the Kantian picture. This returns us to a point already encountered in §2.6, namely Nagel’s claim that the philosophical success of such a picture is a matter of how “central and unavoidable…the conception of oneself on which the possibility of” this form of thought depends turns out to be for us. The point I wanted to raise here is simply that this is precisely what is at stake when Kant speaks of having to “avoid living side by side with all others” in order not to be under a duty to exit the state of nature: not merely empirical inconvenience but the possibility of a particular moral standpoint.

5.7 And Who is My Neighbor (in the State of Nature)?

However, the reading of Kant just offered does not yet seem to address the question with whom we stand in (inconclusive) relations of right in the state of nature in the first place. Note that Simmons’s objection from the particularity requirement threatens to reappear here. Even granting the sui generis status of the duty to leave the state of nature, our relations of de facto co-citizenship do not track our mutual physical proximity. As a resident of Boston, I am in much closer proximity to those living in, say, Toronto than I am to those living in, say, Los Angeles. (The matter becomes even more

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146 The case here is analogous to a refusal to enter the original position in the Rawlsian framework.
pronounced as we move to, say, Niagara Falls.) The appeal to physical proximity is therefore as problematic as the appeal to the principle of fair play or some other “structuralist” principle, and for the same reason: the boundaries of actual states do not satisfy the conditions specified by the moral principles that are supposed to confer moral legitimacy on them, and even if they did, it would be a matter of mere contingency.

I believe that the proper reply on Kant’s behalf to the question with whom we stand in relations of right is simply this: the persons with whom we stand in inconclusive relations of right in the state of nature are the very persons with whom we are in fact united in a rightful condition. It may seem that this reply amounts to a particularly egregious form of occasionalism. Are we really supposed to think that the actual political boundaries to which we are subject simply happen to track the (inconclusive) relations of right in which we stand in the state of nature? Worse still, it is unclear what it is that actual political boundaries are supposed to be tracking here, if it isn’t supposed to be some moral factor or other. Without the political boundaries tying them together, the corresponding collections of individuals amount to “mere heaps” morally speaking.

In a sense, this is exactly Kant’s point when he speaks of rights in the state of nature as “inconclusive” not merely in the sense of not being fully effective but rather in the sense of not being applicable, as laid out in §4.8. The state of nature is not merely an inconvenient condition, it is not a coherent condition at all, at least so long as we think of ourselves as spatially extended ends-in-ourselves sharing the same space. In the absence of a rightful condition, there really isn’t anything to track then morally speaking. It follows that in order to think of ourselves as standing in relations of right with one another at all, there is a sense in which we have to think of ourselves as standing in conclusive relations of right, and so as already united in a rightful condition. The moral significance of the actual political structures that apply to us in turn is to make it possible to do just that. We are able
to think of ourselves as standing in conclusive relations of right in virtue of the actual institutions that apply to us. In other words, the moral significance of our actual political structures is to allow us to discharge the duty to leave the state of nature here and now. However, note that the dependence relation runs the other way as well. It is not as though we have some independent and prior grip on what our actual political structures are, which for some reason we are then supposed to bring to bear on the problem of how to conceive of our relation to other spatially extended ends-in-themselves. Rather, what a political structure is in the first place is defined by the very moral problem it is supposed to solve, namely to make it possible for us to stand in conclusive relations of right with each other.147

Here is another way to put what amounts to the same point. As I argued in §5.5 above, what follows from the fact that those who refuse to leave the state of nature “do wrong in the highest degree” is that forcing others into a rightful condition does not constitute a wrong against them. However, what follows from the fact that those who refuse to leave the state of nature “do one another no wrong at all” is that no individual person has an entitlement against them to force them out of the state of nature.148 Rather, the entitlement to force individuals out of the state of nature belongs to the people considered as a unity. This explains Kant’s seemingly paradoxical perspective on revolution. As we saw in §4.7, Kant holds that there is no right to revolution. However, the prohibition on revolution holds only prospectively. Retrospectively, a successful revolution—successful in the sense that it manages to establish a rightful condition—has to be viewed as carried out in

147 For a proper development of this point, see Ernest Weinrib’s The Idea of Private Law (2012), especially Chapter 2 (“Legal Formalism”). If the legal positivist slogan that “the existence of law is one thing, its merit or demerit is another” is understood as the claim that we have a grip on what a legal system is without any reference to morality, then those who read Kant as a partisan of legal positivism misread him badly.

148 Kant’s view contrasts with Locke’s here, according to whom the “inconveniences” of the state of nature do generate a private right of this sort. The better-known fact that Locke takes there to be a private right to punish violations of the natural law in the state of nature—whereas Kant rejects such a right—derives from the same fundamental difference between them, namely how they conceive of the moral defectiveness of the state of nature.
representation of the people as a whole, and so as legitimate (which in turn entails that there is no right to revolt against the rightful condition established by it).

## 5.8 Simmons and Thompson Revisited

The state of nature is therefore defective in the Kantian framework, not in the sense that it represents a fully intelligible counterfactual scenario whose moral inconvenience is then supposed to justify the existence of the state—as it does on Locke’s view for instance—but rather that it contains a problem—namely the merely provisional character of our relations of right—that by its very nature it lacks the resources to solve. The idea of a rightful condition in turn concerns the form of the solution to the problem in question, namely the condition under which we can conceive of the actions of particular individuals as representing the people as a whole.

Note the profound kinship between Kant’s theory of right and Thompson’s puzzle about justice; this is why I said (at the beginning of §5.4) that Thompson’s argument is more faithful to the spirit of Kant’s account than Simmons’s is. What puzzles Thompson is how there could be such a thing as justice, understood as a purely abstract moral order of right, given that it is unclear how we could view persons as relating to each other under a joint order of right in the absence of some natural-historical nexus in the shape of a shared practice or life form. For Kant, the state of nature is defective because in it we are formally inadequate to the task of concluding our relations of right, precisely because in the absence of a rightful condition no joint application of the concept of right is possible.

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149 I therefore think that Rawls is not quite correct when he says that justice as fairness carries Kant’s contractualism “to a higher order of abstraction.” At least within Kant’s legal and political philosophy, the state of nature and the social contract as its theoretical complement are fully abstract ideas, and certainly no less abstract than the original position.

150 The parallel in fact runs even deeper than this. As I already indicated in footnote 117—where I mentioned that Kant thinks of the tripartite division of the state as corresponding to the tripartite sequence of a practical syllogism—part of
What Thompson and Kant differ over is that Thompson assumes that justice constitutes one determinately applicable order of right on a par with all the others and then is puzzled by how this could be so, given that justice is also abstract. Kant on the other hand starts with the idea that right qua abstract concept precisely doesn’t constitute one conclusively applicable order of right among others. Rather, its very abstractness entails its need for conclusion by way of a rightful condition, and so a concrete order of right in Thompson’s sense. In other words, justice in Thompson’s sense is not the “specifically moral” interpretation of the system of bipolar concepts for Kant. Rather, it is the system of bipolar concepts itself, which then stands in need of interpretation by some concrete rightful condition or other for its own conclusion.\footnote{This raises the question how we are to conceive of those orders of right that are not systems of public positive law, such as systems of etiquette or the like. I don’t have anything non-speculative to say here, except to note that I stand by the implication of the argument just sketched, namely that morality informs practices like these too, and again not merely in the sense that they provide the circumstances to which this or that independently understandable moral principle applies, but in the sense that their internal form is one we have to understand in moral terms. I believe that this line of thought is friendly to the one Thompson develops at the end of Part III of Life and Action, where, in response to Rawls’s example of “deviant” practices of promise-making and -keeping, in which persons are bound to keep promises they made while asleep, or under duress, or in the face of intolerable consequences (“pacta sunt servanda et nuc etiam”), he suggests that these practices are just that, deviant embodiments of the same underlying moral principle, say the principle of fidelity, rather than embodiments of different principles.}

I suspect that the underlying difference here is a difference in how Kant and Thompson conceive of the question what it is for an order of right to exist. What permits us to consider an order of right as numerically unified according to Thompson is the presence of a corresponding concrete natural history. What permits us to consider ourselves as standing in conclusive relations of right with others according to Kant—and so as standing in a jointly authored and thus numerically unified order of right—is the existence of a concrete rightful condition. However, the sense of “permission” at play here is different in kind. For Thompson, the question whether there is numerical identity in the order of right that governs particular deployments of bipolar concepts is what the conclusion of is precisely the exercise of judgment in Kant’s sense of the term, i.e. the subsumption of a particular under a universal. (For Kant’s understanding of judgment, see his Critique of the Power Judgment (2001, 66 (5:179))).
one of metaphysics, and in this sense fundamentally theoretical.\textsuperscript{152} For Kant on the other hand, the question whether a rightful condition exists is practical, on two counts. First, as I argued in §4.8 above, the conclusion of our relations of right is the exercise of a particular form of practical reasoning, namely collective or public reasoning. The system of public institutions making up a rightful condition constitutes the form of the activity of our collective or public practical reason.\textsuperscript{153} Second, and more fundamentally still, our permission to think of ourselves as standing in a rightful condition with each other is itself practical, both in the sense that it governs how we relate to others practically and in the sense that it is warranted not on theoretical but on practical grounds, i.e. by what Nagel calls the “centrality and unavoidability” of thinking of ourselves in these terms.\textsuperscript{154}

5.9 Conclusion

In this chapter I defended Kant against two criticisms, Simmons's argument that Kant is unable to account for our obligation to obey the law of the particular state to which we in fact belong and Thompson's puzzle as to how we could have rights against and duties towards one another simply qua rational agents. Both arguments ascribe to Kant the view that justice is a purely abstract yet nevertheless independently determinate domain of morality. In Simmons's case, this assumption takes the form that the duty to leave the state of nature is simply one determinately applicable duty

\textsuperscript{152} For a similar observation, see Nataliya Palatnik's (unpublished) “Kantian Agents and Their Significant Others” (2015), to which I am much indebted.

\textsuperscript{153} Thompson might in fact agree. As he observes, “An order of private-legal right is not something that just stands there like a lake. It is not something to which an agent might just happen to refer in making judgements about ‘rights’ and ‘duties’. That is admittedly how things would stand with a comparative jurist or legal anthropologist who happens upon the scene. But (I want to suggest) the bearers of the system cannot intelligibly be supposed generally to relate to it in that sort of way. … A dikaiological order cannot exist unless the manifold of ‘persons’ or nonis or heteroi it joins and opposes manage to throw these abstract forms of judgement into a gear that refers to or expresses it, even if they are not in a position explicitly to name it with a phrase like ‘ius civile’. A ius and the concepts through which the associated nexuses are expressed must come into the world together” (2004, 367).

\textsuperscript{154} This is why Kant speaks of the Universal Principle of Right as a “postulate incapable of further proof” (1999b, 388 (6:231), emphasis added), proof being the thing that delivers the theoretical grounds of a judgment.
applying to persons in the state of nature. With Thompson the assumption takes the more explicit form that justice is supposed to be one interpretation of bipolar normativity among others. The puzzle then is how this could be so, given that morality is abstract rather than concrete. In reality, Kant’s account of right in reality turns precisely on the provisional character of our relations of right in the state of nature. This is why the duty to leave the state of nature does not constitute one determinately applicable duty among others but instead defines a formally distinct wrong, which Kant calls “wrong in the highest degree.” By the same token, justice is not merely one independently determinate interpretation of bipolar normativity but rather the very form of bipolar normativity itself, which then stands in need of conclusion by way of some concrete order of right or other.

It might be objected that my interpretation leaves Kant’s account of right in the same morally intolerable position as Thompson’s “Humean view.” After all, isn’t Kant as I describe him committed to the claim that we do not wrong someone if we kill, maim, torture them in the state of nature? The proper reply here again turns precisely on the fact that we do stand in relations of right in the state of nature, if only provisionally.155 On Kant’s view, we have to conceive of ourselves as standing in relations of right with others, and so of each other as beings whom we would wrong by doing to them the things just mentioned. It is just that, in the absence of a rightful condition, we cannot think of our moral rights against and moral duties to one another as jointly authored, yet this is how we need to view them if they are to be consistent with their own principle, i.e. “independence from being constrained by another’s choice.” On the Humean view on the other hand, no moral

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155 There is a second reply on Kant’s behalf, which speaks to an aspect of Kant’s account in the Doctrine of Right not discussed here. Kant’s argument as I develop it here in the first place concerns the relations between persons with respect to external objects. The relations between persons merely as persons, that is, as spatially extended beings endowed with mutual independence, follows a different logic, with a less comprehensive dependence for its conclusiveness on a rightful condition, which in turn provides Kant with the resources to resist the charge that we do not wrong one another in the state of nature by treating each other in the ways mentioned.
contradiction ensues without justice qua concrete practice, however morally lamentable its absence might be from a sympathetic point of view.

5.10 Postscript: Practices, Stations, Duties

The purpose of this brief Postscript is twofold. The first is to investigate the relation between the argument in Part III of Thompson’s *Life and Action* and that of the paper we have been considering here, i.e. “What is it to Wrong Someone?” The second is to exploit these materials in order to contrast Simmons’ and Thompson’s fundamental outlooks on the relation between abstract morality on the one hand and our actual, concrete practices on the other.

Thompson’s concern in Part III of *Life and Action* is the structure of what he calls “two-stage theories” such as the “practice version” of utilitarianism Rawls entertains in “Two Concepts of Rules” (1999c). According to “practice utilitarianism,” the principle of utility as a principle of substantive moral justification applies to practices considered as a whole. The justification of particular actions falling under a given practice in turn is a matter of the justificatory status of the practice as a whole, which then gets “transferred,” by way of a purely formal “transfer principle,” to the actions falling under the practice. The justification of the practice of promise keeping considered as a whole for instance is a matter of its expected general beneficial consequences according to practice utilitarianism, which justification then transfers or devolves to the particular actions falling under it—that is, particular acts of promise-keeping—by way of a purely formal practice-to-(action-falling-under-the-practice) transfer principle.

According to Thompson, the account of the practice of promise-keeping sketched above is theoretically preferable to the one Rawls develops in *A Theory of Justice*. On the latter account, the
principle of fidelity—i.e. the principle requiring us to keep our promises—is a special case of the principle of fairness, which says that “a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one’s interests” (Rawls 1999a, 96). The crux for Thompson is that the practice of promise-keeping as a whole and the principle of fairness are on a par with each other justificatorily speaking, in that the parties in the original position are imagined to agree to both, rather than merely to the former, which then formally transfers its justification on to the latter. However, if the justificatory relation between the practice of promise-keeping and the principle of fairness is understood on the model proposed in A Theory of Justice, then an agent exhibiting the virtue of fidelity as the account proposes to conceive of her is not in fact a participant in the practice of promise-keeping, or at least not ipso facto. As Thompson puts it, “Rawls’s…hero acts by reference to the practice she faces, in consideration of its merits, but the practice itself in no sense governs her operation: her action is at best governed by the principle of fairness, …taken now as a principle of action that she has internalized” (2008, 174, emphasis in original).156

My suspicion—and it really is no more than that—is that there is an internal relation between Thompson’s distinction between an agent who merely acts by reference to some practice and a genuine participant in the practice in Part III of Life and Action on the one hand and his distinction

156 By the same token, the account of promise-keeping in A Theory of Justice treats it as a happy substantive happenstance that we are in fact required to act in a way that “fits” with the practice of promise keeping. (Once again, and not coincidentally, we are faced here with a difficulty of even describing what we wish to describe, of the sort already encountered in footnotes 130 and 139.) After all, the justificatory symmetry between the practice of promise-keeping on the one hand and the Principle of Fairness on the other seems to suggest that it was at least conceptually open that the parties in the original position select the former but not the latter or vice versa (or neither). As Thompson puts the point, “We might speak of a preestablished harmony of good practice and good action” (2008, 174).
between merely monadic and bipolar normativity on the other. For the agent who merely acts by reference to this or that practice, the practice constitutes “material for virtuous action” in the very sense in which other agents constitute “material for wrongdoing” in her merely monadic practical reasoning. Conversely, for a genuine participant in the practice, the practice enters her practical reasoning in a fashion structurally parallel to the one in which another person appears at the opposite pole of her bipolar judgments. Or, again, this is my suspicion.

For Simmons on the other hand, practices enter our practical reasoning only as purely descriptive phenomena by reference to which we act on this or that moral principle, never in the manner in which Thompson conceives of the role of a practice for the genuine participant. This becomes particularly visible in Simmons’s take on what in *Moral Principles and Political Obligations* he calls “positional duties,” that is, the duties that define a particular position, role, or office, such as President, or citizen, or parent. Simmons there argues that “no positional duties establish anything concerning moral requirements” (1979, 17, emphasis in original). Simmons departs from the observation that for some institutional scheme to define a system of positional duties “it is not necessary that the scheme in question be useful or morally unobjectionable” (1979, 17). However, whether the scheme in question is morally unobjectionable surely makes a difference to the relation between these duties and our moral obligations. Moreover, the historical genesis of our role in it—for instance, whether we volunteered or were coerced into participating—also matters morally on Simmons’s view. It follows that

The existence of a positional duty (i.e. someone’s filling a position tied to certain duties) is a morally neutral fact. If a positional duty is binding on us, it is because there are grounds for a moral requirement to perform that positional duty which are independent of the position and the scheme.

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157 To put the point somewhat polemically, if—as Thompson says—the claim that there is no such thing as monadic moral obligation amounts to a sort of moral libertarianism, then Simmons’s position here might be described as a sort of practical solipsism.
that defines it. The existence of a positional duty, then, never establishes (by itself) a moral requirement. (1979, 21, emphasis in original)

Simmons’s position here is exemplary of what I take to be an extremely commonly held view of the relation between morality on the one hand and our actual institutions and practices on the other, the most significant of which arguably being the law. On this sort of view, our institutions and practices form part of the circumstances to which our moral principles and requirements apply, where these principles and requirements in turn are understandable independently of the circumstances to which they apply, at least in principle, although of course circumstances might make a causal difference as to people’s ability or likelihood to grasp and act on the applicable moral standards, which causal difference is in turn going to figure in the circumstances to which these moral standards themselves apply.

What I have tried to establish in this chapter is that Kant’s view of the relation between morality and the law is very different from the one just sketched. What I tried to establish in this Postscript is that the materials in *Life and Action* suggest that so too is Thompson’s view, which in turn speaks to my claim that the latter is in fact closer in spirit to the former than the letter of “What It Is to Wrong Someone?” seems to suggest.

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158 Another particularly clear statement of this sort of view can be found in G. A. Cohen’s *Rescuing Justice and Equality* (2008), in particular in Chapter 6 (“Rescuing Justice from the Facts”).
Conclusion

My dissertation advisor Tim Scanlon once related a story about a dinner party he attended at which the hostess at one point in the evening announced that she was going to go around the table and ask each attendee to describe their line of work in one sentence, starting with him. Tim’s answer, which he says took him as much by surprise as it did everyone else, was: “There are distinctions to be made, and it is worth making them well.”

This dissertation was an attempt at just that, making distinctions that struck me as needing to be made, well. I started by discussing the distinction between two conceptions of preemption, encompassing and determining preemption (Chapter 1), and two forms the relation between an act of address and its normative content might take, transmission and creation (Chapter 2). These two distinctions gave rise to four forms of interpersonal address: counsel, testimony, request, and command, the first and the last of which I argued capture the distinction between theoretical and practical authority (Chapter 3). I then proposed to understand the distinction between the two creative forms of address, request and command, in terms of Aristotle’s distinction between wish and choice, which in turn explains the justificatory asymmetry between them (Chapter 4). The justificatory asymmetry between request and command in turn provides for an account of the moral significance of the state understood as a system of public institutions, one that bears structural resemblance to the significance Kant attaches to what he calls a “rightful condition” and its defective counterpart, the state of nature (Chapter 5).

In developing my argument via the distinctions just mentioned, a number of other distinctions worth making, and making well, kept occurring to me. I want to conclude this dissertation by briefly
bringing three of them to the fore, not least to indicate where I might want to take my research from here. First, I suspect that the distinction between encompassing and determining preemption points to a deeper difference between two distinct forms of normativity. One way to frame the point is to note that, while Kantians and consequentialists both make reference to the idea of obligation, how they understand obligation differs fundamentally once we look underneath the shared surface vocabulary of necessity, categoricity, wrongness, and so on. For consequentialists, what we are obligated to do is grounded in the sum total of goodness and badness inherent in a given state of the world; or, more precisely, what we are obligated to do is a function of comparing the sum totals of goodness and badness inherent in the various states of the world with which our actions stand in an immediate or mediate causal relation. While different versions of consequentialism develop this basic picture in a variety of at times highly sophisticated ways, this seems to be the basic picture structuring the whole lot.

Moreover, it seems to me that the same picture persists in theories that understand themselves as specifically non-consequentialist. I am thinking in particular about philosophers according to whom normativity is structured in terms of what Selim Berker has called the “generalized weighing model of practical deliberation” (2007, 114), i.e. a picture according to which we are subject to a set of pro tanto reasons that combine in some fashion into a conclusion as to what we have all-things-considered reason to do.159 Many of these philosophers insist on the non-consequentialist character of their views, often on account of the fact that they do not claim that the relevant pro tanto reasons dictate any outcomes to be realized or that the relation between these reasons is not simply one of adding goods and subtracting bads or the like.

159 Berker in fact describes the generalized weighing model in terms of three layers, the bottom layer consisting in the non-normative facts grounding facts about the applicable pro tanto reasons.
What I want to suggest is that, these differences notwithstanding, there might be an underlying affinity between these sorts of views and consequentialism in how they view the very structure of the normative. They all understand the concept of obligation in terms of what I have called the “encompassing” relation here. What we are obligated to do is a function of the various pro tanto normative considerations that apply to us. However, this is not how obligation works on Kant’s picture, as the discussion of the fact of reason in §1.7.2 brought out. Rather, what we are obligated to do is not a function of some set of other normatively relevant considerations applying to us but rather is supposed to act as the latter’s “supreme limiting condition.” To put the point in other words, dignity does not consist in the sum of all prices for Kant. Spelling out these observations more clearly and systematically is one project I would like to undertake in the near future.

Second, I believe that the distinction between abstract and concrete normativity carries greater significance than has been noted so far. One of the threads running through this dissertation is my rejection of the view that morality constitutes one possible “subscript” among others that the relevant normative concepts—reasons, obligations, rights, etc.—might take on. One way to develop the dialectic is by way of the observation that morality as one of the supposed subscripts of normativity is radically different in kind from the others. When those who defend a “subscripted” picture of normativity speak of, say, legal or etiquette-related obligations, they are referring to some concrete legal system or system of etiquette, not to law or etiquette as abstract forms of practical thought or the like. The subscript “moral” on the other hand isn’t supposed to refer to some concrete “moral system” governing this or that society but instead to something “eternal and immutable” or, less bombastically, something about which “it is possible to discover the truth simply by thinking or reasoning about it,” as Scanlon puts it (1982, 104).

160 Darwall makes a similar point in “But It Would Be Wrong” (2010b).
I believe that this striking fact provides for a lever against the picture to which I am objecting. As I mention in Chapter 5, Thompson exploits the distinction between abstract and concrete normativity in his “What is it to Wrong Someone?” by way of developing his “puzzle about justice.” As I also argue there, however, his puzzle about Kant seems to rest on a misreading. I believe that a more promising line to take is to start with the idea that what Kant calls the “inconclusiveness” of the state of nature consists precisely in the fact that outside of a rightful condition morality has not been rendered concrete, or rather, that it cannot be rendered concrete in a manner consistent with itself, i.e. through an exercise of properly public practical reason. To develop this point properly and in its own right is a second line of inquiry I would like to pursue going forward.

Finally, I am interested in developing more fully the idea that the different forms of interpersonal address I distinguished give rise to different forms of morality as their normative felicity conditions. In Chapter 4, I suggested that command presupposes a system of public institutions for its felicity, whereas no such thing seems to be true of request. Similarly, Kant argues that relations of right are conclusive only in a “rightful condition,” whereas nothing of the sort seems to hold for ethics.\textsuperscript{161} It therefore seems worth investigating more thoroughly the different forms of morality to which the different forms of interpersonal address give rise on my picture. In particular, while I only considered normatively creative forms of address as structured by their own forms of morality in this dissertation, it seems worth investigating whether normatively transmissive forms of address give rise to sui generis forms of morality of their own. If so, then there might be a point of contact here between my account and the recent interest in the notion of “epistemic injustice” in moral philosophy and epistemology.\textsuperscript{162}

\textsuperscript{161} Although Kant does discuss the idea of an “ethical commonwealth” in \textit{Religion within the Boundaries of Mere Reason} (1998). For discussion see Kyla Ebels-Duggan’s “Moral Community: Escaping the Ethical State of Nature” (2009).

\textsuperscript{162} See here in particular Miranda Fricker’s \textit{Epistemic Injustice: Ethics and the Power of Knowing} (2007).
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