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Between Anarchy and Leviathan: A Return to Voluntarist Political Obligation

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy
in Political Science

by

Emily Rachel Hallock

2013

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ABSTRACT OF THE DISSERTATION

Between Anarchy and Leviathan: A Return to Voluntarist Political Obligation

by

Emily Rachel Hallock

Doctor of Philosophy in Political Science

University of California, Los Angeles, 2013

Professor Carole Pateman, Chair

No defense of the liberal-democratic state can do without political obligation, yet existing theories cannot provide a successful account of political obligation. Existing accounts of obligation cannot parry critiques from rival theories, nor refute philosophical anarchists' formidable attack on obligation. To move discussion of obligation forward, this dissertation offers an alternative solution to what George Klosko has called the 'voluntarist paradox' of liberal-democratic political obligation. While liberal ideas about the individual require that any obligation to obey be assumed through a voluntary act, individuals do not voluntarily assume obligations frequently enough to support legitimacy claims. In response to this paradox, most scholars deploy non-voluntary justifications for a general obligation to obey, while philosophical anarchists deny that such an obligation exists at all. In contrast, I argue that overcoming the voluntarist paradox requires a radically different view of the aims and scope of political obligation. While most theories of political obligation begin with a general requirement to obey

and look for its source, my account begins with voluntary action, and asks what requirements it can yield. I show that the conventional goal of political obligation – a general, comprehensive requirement to obey – generates the impasse between obligation’s proponents and philosophical anarchists, inhibits analysis of democratic self-government, and inaccurately depicts obedience and law. Instead, I define political obligation as a voluntarily-assumed ‘binding requirement to take political action,’ a broader category that also includes non-voluntary duties. Voluntarist obligation, I show, is incompatible with a general, comprehensive requirement to obey the law *because it is law*. Instead, much of the time, non-voluntary duty grounds requirements to obey the law, and voluntarist political obligation concerns the whole variety of political actions one can voluntarily undertake a requirement to perform. Political obligation is a voluntarist practice that expresses one’s freedom to create, shape, and revise the rules of the political game, and of social institutions more generally. A truly voluntarist theory of political obligation lets us understand and critique enduring yet often overlooked features of liberal-democratic politics because it goes beyond state-imposed requirements, and looks to the individual actions that generate those requirements. In liberal democracies, the voluntary acts of state agents develop, interpret, and enforce laws and policy, and individuals affect the state by voluntarily exercising their rights and taking political action. Because my account of political obligation connects voluntarily-assumed requirements to the conditions of political self-determination, it provides a stronger foundation for liberal democracy, and allows more accurate analysis of normative demands on political actors.

The dissertation of Emily Rachel Hallock is approved.

Joshua Dienstag

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2013

For Grandpa Bernie and Mom-Mom

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“To breed an animal *with the right to make promises* – is that not precisely the paradoxical task which nature has set for itself with regard to humankind? Is this not the real problem regarding man?” – Friedrich Nietzsche

“If the unexamined life is not worth living it must be equally true that unthinking allegiance to the state is not worth giving” – Keith Graham

Introduction

Why obey the law? Is there a moral duty to obey? On what moral principle could such a duty rest? Can a state be legitimate if there is no moral duty to obey its laws? These questions – the questions that theories of political obligation traditionally address – are a central, perennial theme of political theory.¹ For many contemporary political theorists, “the urgency of the question ‘Is there a duty to obey the law?’ derives from the fact that a No answer calls into question the very possibility of a legitimate state” (Edmundson 1999, 13). Thus, they maintain that liberal-democratic legitimacy requires political obligation: a universal moral requirement to obey the state.² However, scholarship on obligation is in chaos. No existing theory can parry critiques from rival theories or refute philosophical anarchists’ formidable attack on political obligation.

A growing number of scholars contend that theories of political obligation are ultimately undone by the belief that such obligations must be voluntarily assumed. Theories of political

¹ For example, scholars have claimed that political obligation is one of the “two most fundamental questions of political theory,” the other being the question of the moral right to rule (Sartorius 1999, 143); that “the nature and extent of one’s obligation to obey the law is one of those relatively rare philosophic questions which can never produce doubts about the importance of theory for practice” (Wasserstrom 1999, 17); and that “questions about political obligation and entitlement are key to understanding the motivations behind the stability of and relationships within political entities” (Wong 2010, 2).

² Nearly all scholars see political obligation solely as a matter of the individual’s requirement to obey. See, for example, Simmons 2001, 91; Beran 1987, 3 (which equates political obligation with a “justification of political obedience”); Wolff 1998, 39; Wellman 2005, 53; Sartorius 1999, 143; and Raz 1999, 174. Leslie Green points out that this definition of obligation is a “disputable descriptive proposition,” though not often disputed because it matches the most commonly accepted theoretical usage of the term, as well as what the state has in mind when it exercises authority (Green 1999, 309).

obligation have traditionally attempted to reconcile modern notions of individual freedom, which imply that political association should be a voluntarist scheme, with the inescapable need for political authority. The question of political obligation accompanied the liberal democratic state's emergence, and arose in the seventeenth century as the traditional belief in non-voluntary, non-contestable, divinely ordained political authority waned. New ideas about individual natural freedom and equality led many to ask *why* ostensibly free and equal individuals must nonetheless obey the law, and conclude that legitimate authority could only result through some prior free act of the governed. Thus, "at the birth of modern political theory in the seventeenth and eighteenth centuries, there was one clear orthodoxy: if there is a general obligation to obey the law, it exists because it was voluntarily undertaken" (Raz 1999, 174). Consequently, the contractarian conception of the state, supported by citizens' voluntarily-assumed political obligations, came to be the most influential approach to state legitimacy. In this view, legitimacy requires a defensible theory of political obligation: an account of general voluntary submission to the state.³

Voluntarism is central to modern, liberal, *and* democratic analyses of political bonds and normative political requirements. The classical social-contract theories of Hobbes and Locke rest on the voluntary acts that create and sustain the state. The primacy of individual liberty in liberal theories, too, requires that attempts to ground political authority wear a voluntarist face. Finally, at the most basic level, democracy is government of, by, and for the people. In a democracy, the individual's "obligation to submit to the laws stems not from the divine right of the monarch, nor from the hereditary authority of a noble class, but from the fact that he himself is the source of the laws which govern him" (Wolff 1998, 22). This fact is the "peculiar merit and moral claim of

³ In the literature, voluntarism varies from the view that one is morally bound to perform only those acts that one has voluntarily accepted, to a more limited position that takes account of mediating moral concerns that restrict the applicability of voluntarism. See Wellman 2005, 20-1.

a democratic state” (ibid). On this view, the laws and authority of democratic states are legitimate because democracies are (more or less) voluntary political associations, and democratic laws are created by the voluntary acts of citizens.⁴

Although no liberal or democratic theory of authority can do without an account of political obligation, existing theories cannot provide one. Defenders of the state cannot permit any doubt that obligations to obey bind all citizens because the liberal-democratic state’s legitimacy depends on such obligations.⁵ However, since Hume, theorists have known that liberal-democratic states are not voluntary associations: individuals do not choose to be subject to state power, nor could they opt out of the state if they wished. As scholars have shown, no existing principle of political obligation can both satisfy voluntarist standards and apply widely enough to support state legitimacy claims.⁶

Today theorists are increasingly convinced that a successful theory of political obligation “founded on liberal premises” is impossible (Klosko 1992, 1).⁷ Liberal obligation theories face an insoluble problem. Liberal ideas about the individual require that any obligation to obey be assumed through a voluntary act. Thus, liberal arguments for political obligation often rest on consent. However, as virtually all theorists acknowledge, very few individuals actually consent to government. Instead, “in most cases, the individual’s relationship to her government is not a

⁴ Rousseau is the paradigmatic example, though Shapiro 2011 makes a persuasive case for seeing Lockean legitimacy as a democratic account.

⁵ Thus, “in reality the need for authority takes precedence over freedom. As a result, almost all of the voluntarist theories of obligation accomplish what Rousseau is singled out and excoriated for, namely forcing citizens to be free” (Hirschmann 1992, 10).

⁶ A few critiques stand out from the rest: Pateman 1985; Raz 1999a; and Simmons 1979. See also Horton 2010, 32.

⁷ As Klosko puts it, although “questions of political obligation lie at the heart of normative political theory, it is now widely believed that they cannot be answered satisfactorily” (1992, 1). Examples of this position include Simmons 1979 and 2001; Green 1988; Pateman 1985; and Smith 1999.

voluntary undertaking” (145). While voluntarily-assumed political obligation is essential to liberal-democratic legitimacy, individuals do not voluntarily assume obligations in numbers sufficient to ground legitimacy claims. A strongly voluntarist view of obligation therefore cannot justify the liberal-democratic state’s coercive power, the goal of most defenses of political obligation.⁸ Thus, theories of political obligation must contend with this ‘voluntarist paradox,’ as a leading scholar of obligation has termed the insoluble tension between voluntarism and a generally-applicable theory of obligation (142-6).

Today the literature is split between, on the one side, the majority, who see no problem about a general political obligation and proffer a variety of non-voluntary justifications, and on the other side, the philosophical anarchists, who deny that any justification can be found for a general political obligation. The one constant across these positions is the way they define obligation: as a general requirement to obey the liberal-democratic state’s laws *because they are laws*. The consensus holds that a theory of political obligation must meet four criteria.⁹ First, it must be ‘general,’ (e.g. apply to all or nearly all members of a society). Second, it must be ‘comprehensive,’ meaning it must establish requirements to obey all just laws. Third, it must establish a ‘limited’ obligation, or one that may be overridden by other, sufficiently weighty moral claims. Finally, it must be ‘particular,’ or ground a requirement owed to one’s own state.

Since late-modern states are largely non-voluntary bodies, most theorists now believe that voluntarist political obligation is indeed indefensible, and many further conclude that the liberal-democratic state’s foundations are unstable at best, and entirely unsound at worst. Accordingly,

⁸ Pateman’s analysis of the connection between what she calls ‘self-assumed obligation’ and ‘abstract individualism’ shows the historical impact of a familiar problem in consent theory: the difficulty of demonstrating that individuals consent (or ‘voluntarily undertake’ political obligation, in Raz’s terms) in numbers sufficient to make claims about the legitimacy of political authority plausible.

⁹ See Pitkin 1965, Klosko 1992, and Simmons 2001. The next chapter offers a detailed critique of these criteria.

the single most compelling conclusion to be drawn from the recent normative literature on political authority is that virtually no government possesses it, not because no government is morally justified in exercising political power nor because we have no sufficient reason to comply with the rules governments impose, but because the conditions for citizens having an obligation to their government to comply with the laws are not satisfied and not likely to be satisfied (Buchanan 2004, 240).

Defenders of political obligation appeal either to non-voluntary principles incompatible with the concept of obligation itself, or to sufficiently widespread voluntary actions whose connection to the requirement of obedience is difficult to establish. In either case, the theoretical prospects of the general obligation to obey the state look grim. As a result, a number of liberal theorists outside the philosophical-anarchist camp have come to deny the existence of general political obligation (Green 1999, 301). Most theorists now hold that political voluntarism and liberal-democratic legitimacy are incompatible, and voluntary action threatens justice, legitimacy, and political cohesion.

In what follows, I shall argue that this conclusion is premature. Instead, I contend that the widely accepted goal of political obligation – a general, comprehensive requirement to obey the liberal-democratic state’s laws *because they are law* – is to blame for the current theoretical impasse. Scholarship on political obligation is deadlocked because such a requirement must either be entirely affirmed or entirely rejected. To defend such an obligation, theorists must weaken voluntarism beyond recognition and address only a single facet of the citizen-state relationship: the citizen’s requirement to obey the state, that is, the laws and commands made by the state. This view, which I term the ‘obedience theory of political obligation,’ inaccurately depicts law and obedience in practice, hides fruitful connections to other areas of political theory,

and inhibits analysis of normative requirements on agents in liberal-democratic states. While obeying the law is a central requirement of citizenship, for example, theories of obligation have had little impact on recent analysis of citizenship because they tell us nothing about *other* forms of political action that liberal-democratic citizens are obligated to take. Nor do they provide suitable criteria for evaluating state action. Further, the prevailing definition of political obligation masks a crucial distinction between the ‘vertical’ obligation citizens owe the state and ‘horizontal’ obligations that individuals owe one another.¹⁰ Although obedience theories aim to ground a general vertical obligation, as I will demonstrate, their arguments *cannot* establish vertical obligations. At best, existing principles of political obligation ground horizontal requirements that often involve much more or much less than simple obedience. Finally, to defend a general, comprehensive obligation to obey, theorists often turn to non-voluntary principles that violate the essentially voluntarist conceptual core of obligation and obscure voluntary action’s central role in contemporary states. As I argue in later chapters, this prevents theorists from successfully responding to philosophical anarchists, and from accurately analyzing normative requirements on political action. In short, it appears that analysis of political obligation is in dire need of a paradigm shift.

Thus, to move discussion of obligation forward, I offer an alternative solution to the ‘voluntarist paradox’ of obligation. Most theories of political obligation begin with a general requirement to obey the state and look for the source of such a requirement. I begin, however, with voluntary action, and ask what requirements it can yield. This approach considers a broader ethical question than obedience theories: it asks what we owe each other in political life in

¹⁰ Here I follow Pateman’s distinction between vertical and horizontal obligation; see 1985 8, 69-73, and 97. This distinction is taken up in later theories that see horizontal relationships as a solution to skeptical treatments of obligation to the state, such as Walker 1988.

consequence of our voluntary acts. I argue that theorists should give up on a *unitary* account of political bonds (i.e. an account grounded on a single entirely voluntary or entirely non-voluntary principle) in favor of disaggregating the qualitatively different types of bonds that together make up a robust account of political requirements. I shall claim that the general requirement to obey is not an appropriate object for voluntarist political obligation, *and* that obedience might sometimes be justified on non-voluntarist grounds. Thus, I defend a ‘semi-voluntary’ view of the liberal-democratic state, meaning that while liberal-democratic political membership is at base non-voluntary and imposes many non-voluntary requirements on the individual, it also allows significant opportunities for voluntary action.

Political obligation, I contend, should be seen as a voluntary type of what I call ‘binding requirements’ to take political action, a broader category that also includes non-voluntary duty. This definition of obligation accords with both everyday moral intuitions and philosophical claims that voluntarily undertaking responsibility to perform some action is sufficient to generate a moral requirement. Normative standards for individual action must reflect the fact that liberal-democratic states are a mixture of voluntary and non-voluntary institutions, relationships, and acts. Thus, on my view, both obligation and duty are essential components of a robust account of binding political requirements. Voluntarist obligation, I show, is incompatible with a general, comprehensive requirement to obey the law *because it is law*. Instead, much of the time, non-voluntary duty grounds requirements to obey the law, and voluntarist political obligation concerns the ability to take voluntary political action: to freely create our political ties and affect the institutions and rules that apply to us. Thus, a truly voluntarist theory of political obligation can address participation in the political decision-making process by ordinary individuals *and* state officials.

A handful of scholars have argued that the scope of political obligation extends beyond the general requirement to obey all laws.¹¹ Others have persuasively shown that a generally-applicable voluntarist account of the obligation to obey is impossible.¹² Finally, some contend that existing arguments for political obligation proceed in entirely horizontal terms that fail to establish a vertical obligation to the *state*.¹³ My approach to political obligation draws elements from these three critiques of obedience theory to make a *constructive* case for saving rather than rejecting the language of political obligation. I shall argue that the best way to understand political obligation is as a central component of a broader theory of political voluntarism and democracy.

Because my account of voluntarist political obligation accepts that important ethical claims in political life come from non-voluntary as well as voluntary sources, it can ground a successful answer to what Christopher Wellman calls the “central and most important question of political theory: why not be an anarchist?” (Wellman and Simmons 2005, 5). Philosophical anarchism’s basic normative principle – state illegitimacy – fundamentally opposes many of political theory’s traditional aims. After the popular political upheaval of the 1960s, a consensus emerged that “denying an obligation to obey [a just state’s] laws is a denial of the justice of the state” (Raz 1999, 159).¹⁴ For obligation’s proponents, “the choice [of whether to accept or reject

¹¹ See Parekh 1993; Horton 2010; Knowles 2010; and Pateman 1985. See also Stilz 2009, which employs a broader conception of political obligation. Stilz “defends loyal citizenship in a more restrained, everyday sense: obeying the law, paying one’s taxes, voting and participating politically, and showing a special concern for the equality and well-being of one’s compatriots...[and] argues that we have important political obligations, and that we should take them seriously” vii.

¹² See especially Simmons 1979 and 2001; Horton 2010; Hirschman 1992; Klosko 2005; and Pateman 1985.

¹³ In particular, see Simmons 2001 and Pateman 1985. Proponents of political obligation largely dismiss constructive critiques in this vein because they take them to be a wholesale rejection of political obligation, A representative case of this response is George Klosko 1992: 11.

¹⁴ Raz himself rejects this view.

political obligation] is between obedience and social chaos” (Wasserstrom 1999, 26). This greatly overstates the case.¹⁵ Philosophical anarchism fails overall, I shall argue, because it sees political obligation solely as a general, comprehensive requirement to obey, rather than recognizing voluntarily-assumed obligations to take other forms of political action.¹⁶ While philosophical anarchists are correct that a voluntarist defense of general, comprehensive obedience is impossible, they wrongly conclude from this fact that there are *no* defensible requirements to obey laws *because they are law* (rather than because an external moral principle requires us to act in ways that coincide with laws), and that existing states are therefore illegitimate. Rather than jeopardizing the possibility of social order, then, the philosophical anarchist’s radical skepticism counters the tendency to see the state as a natural, inescapable, and self-evidently legitimate entity.¹⁷ This cautious, skeptical stance toward state authority recalls the early-modern concern with individuality and autonomy. Thus, far from threatening the very foundations of liberal democracy, I submit that philosophical anarchism actually implies a constructive alternative approach to political voluntarism and obligation: a theory that assesses the wide variety of political requirements that individuals can and do voluntarily assume.

While voluntarily-assumed political obligations cannot explain the legitimacy of governments as a whole, or the general duty to obey the law, they are nonetheless vitally important in liberal democratic states. Voluntary action and voluntarily-assumed obligations are

¹⁵ Indeed, philosophical anarchists accept moral requirements to obey laws that are justified by an external moral principle.

¹⁶ The foremost proponent of philosophical anarchism, A. John Simmons, rejects state legitimacy on voluntarist grounds, but denies that political obligation has content beyond obedience, contrasting favorably the clarity of an obligation to obey with “vague, indeterminate associative obligations” whose content derives from specific political and institutional roles (Simmons 2001, 91). However, this clarity comes at the expense of an accurate account of liberal-democratic political requirements and action. Because philosophical anarchists see obedience as the sole object of political obligation, they *cannot* consider other voluntarily-assumed political responsibilities.

¹⁷ Sartwell makes a similar point about the purpose of anarchism in non-ideal theory; see especially 9-10.

a much more important part of American legal and political institutions, practices, and norms than existing theories recognize. Political voluntarism is a crucial issue in radically pluralistic liberal-democratic states, since such states cannot always fall back on widespread agreement to solve political problems. Where citizens actively and frequently contest basic political norms, evaluating the *choices* that yield authoritative resolutions to such conflicts is especially important. Analyzing voluntarily-assumed political obligation lets us explain crucial features of liberal-democratic life (including administrative discretion, social movements, and the choices of ordinary citizens), make better judgments about our political ‘oughts,’ and defend a unified, coherent evaluative standard for political action.

A properly circumscribed, voluntarist theory of political obligation emphasizes the bonds that individuals *create*: the requirements incurred by assuming political office or joining an activist group, and the voluntary decisions that generate law itself. I contend that political freedom is a matter of self-government, and therefore requires the power to shape our *own* political bonds. Voluntarily-assumed requirements to act are an essential part of collective political self-determination. In establishing these claims, my dissertation will develop and defend a theory of obligation that highlights more active components of liberal-democratic citizenship, and draws attention to the underappreciated voluntarist dimension of liberal-democratic states.

The Historical Roots of Obligation Revisited

The dominant approach to political obligation at present is a dramatic departure from obligation’s early-modern roots. Contemporary theorists have turned to non-voluntary arguments for general, comprehensive obedience because most people have not voluntarily undertaken a requirement to obey. The problem that occupied early-modern theorists, however, was not too

little voluntary political action, but too much. While scholars now see a strong commitment to voluntarism as a threat to a defensible *theory* of a general, comprehensive requirement to obey the state, their early-modern counterparts worried over widespread, active refusal to accept political authority that threatened, sometimes successfully, to destabilize society entirely. The specter of total political disintegration and social disorder is one that Western, industrial, late-modern liberal democracies do not currently face. I shall argue that the present approach to political obligation fundamentally misconstrues the political significance of both voluntarism and classical social contract theories.

In the 17th and 18th centuries, political obligation was a live question with enormous practical stakes. The English Civil War and Glorious Revolution both fundamentally altered the state and signaled a sea change in attitudes about authority. The traditional non-voluntary, non-contestable form of political authority lost its ability to maintain order. Yet as the early-modern contract theorists recognized, civil war was an unacceptable alternative. Unlike at present, though, these early-modern theorists also recognized that a non-voluntary theory of political authority could not address the underlying problem: a non-voluntary theory cannot explain why free and equal people, who consciously regard themselves as such, must nonetheless submit. Thus, they sought a justification for political authority that reflected powerful new ideas about the individual's natural freedom and equality. Their "preoccupation with the possibility of reconstructing society from the ground up, on the basis of consent" led early-modern political theorists to the contractarian conception of the state, grounded in individual voluntary action (Kahn 2006, 15).

Initially, then, voluntarist political obligation concerned the source and justification for the political authority that these theorists saw as the necessary antidote to the untenable state of

nature. For Hobbes and Locke, the answer to whether we should prefer *a* state to *no* state was obvious: of course life under a government is better than life in the state of nature. For them, the possibility that people might reject the state on voluntarist grounds was an indictment of traditional justifications for political authority, rather than political authority *as such*. In other words, Charles I of England met his untimely end because people rejected the way he ruled and justified that rule, not because people rejected the prospect of being ruled itself. The social contract, then, was the basis for an alternative form of rule.

Voluntarism plays a vital and complex role in classical contract theories. While consent plays a central role in Hobbesian, Lockean, and Rousseauvian accounts, none of them require that citizens expressly and explicitly consent to obey. For Hobbes, a commonwealth is “made by covenant of every man with every man, in such a manner **as if** every man should say to every man *I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up they right to him, and authorize all his actions in like manner*” (Hobbes 1994, XVII.13, 109, emphasis in bold added).¹⁸ Voluntary *action* is not actually necessary to generate this requirement to obey. The contractarian justification for political authority rests on a hypothetical voluntarist argument. In other words, the voluntarist paradox that preoccupies contemporary theorists is irrelevant to the classical contractarian argument for the state. On the classical-contractarian view, those who reject the liberal-democratic state because most of its citizens have not expressly, intentionally, and specifically

¹⁸ Thus, for Hobbes, contracts are “sometimes the consequence of words, sometimes the consequence of silence, sometimes the consequence of actions, sometimes the consequence of forbearing an action; and generally a sign by inference of any contract is whatsoever sufficiently argues the will of the contractor” (Hobbes 1994, XIV.14, 83).

assumed a requirement to obey are applying inappropriate criteria to judge political authority and what we owe it.¹⁹

However, voluntarism also plays another crucial yet underappreciated role in classical social contract theory. Though none now believe that states are the product of an actual contract, social contract theory has another ace up its sleeve: the idea that political authority must be founded and constituted by those subject to it. Early-modern theorists were preoccupied with ‘reconstructing society from the ground up’ because their societies needed reconstructing. Social-contract theory embodies an insight that these historical circumstances made quite concrete: that authority must be *constituted* by action. In grappling with these practical problems, the classical contract theorists invented a new idea of the political subject: one grounded on the importance of voluntary commitments (Kahn 2006). The contemporary liberal-democratic state, like the famous image of the Leviathan, is made up of the individuals within it. Without their activity on behalf of the state, the state would be wholly inert. Thus, as I shall argue, voluntarist political obligation is of the utmost importance in contemporary states, but not for the reasons that obligation scholars usually offer.

The current paradigm of political obligation cannot address the normative questions that demand attention in the 21st century. The moral requirement to obey authority is clearly a fundamental question. As the brief historical overview that I’ve given suggests, the driving force behind this question is deep concern for the practical consequences when legitimacy claims fail. However, in contemporary liberal democracies, obedience is the norm rather than the exception.

¹⁹ This is true even of Rousseau. While he criticizes Hobbesian/Lockean contract theory for grounding state legitimacy on an imagined collective act of contract that bears no resemblance to the actual origins of existing states, in his alternative social contract, political authority is legitimate insofar as its decisions and actions embody the general will. Individuals cannot reject the general will, nor are they required to actually assent to it. See Rousseau 2006, 30-6.

One might say that the project of obligating citizens has triumphed in industrial liberal democracies. The often-tenuous authority of 17th-century monarchs has been replaced by widespread submission to the state, and habits of obedience have put down reliable roots in modern liberal democracies. Empirical studies of political obligation have shown that people overwhelmingly believe they ought to obey the law, even at significant personal cost, unless a law is manifestly unjust (Klosko 2005; Tyler 1990). As all obedience theories of obligation restrict their argument to just laws, it appears that the goal they pursue has already been achieved in practice.

This achievement, however, comes at a price: there seems to be little of practical consequence left at stake in the question of whether we ought to obey law simply because it is law. Given that people reliably obey the modern liberal-democratic state, we need not fear that its authority will crumble without a moral requirement to unconditionally, universally, and automatically submit to it. Indeed, it seems that the practical stakes of obedience in the 21st century are exactly the opposite of the stakes in 17th-century England. Scholarship on citizen apathy and disengagement suggests the problem now is not disobedience but quiescence, a stance that the focus on obedience encourages. Political power and ‘voice’ is increasingly consolidated in fewer hands, which generates concerns about democratic equality (Verba et al 1995; Bartels 2008). To grapple with these challenges in all their complexity, we must consider a much broader range of political actions and moral requirements in political life. If a duty to support just institutions exists, obedience does not exhaust its requirements, nor will obedience bring just institutions into being where none exist.

The limits of state authority were a central concern of the early social-contract theorists. Indeed, the Lockean claim that a government’s legitimacy stems from tacit consent provides

grounds for *critiquing* state action that violates the social contract, though Locke himself does not use tacit consent to do this. For Locke, legitimate authority is that which has the sole rightful claim to judge, interpret, and enforce the natural laws. Tacit consent generates an obligation to obey authority insofar as it judges, interprets, and enforces natural laws. The scope of this obligation to obey implies that no obligation to obey laws that violate natural law exist. Legitimate authority must do what it is licensed to do (i.e. judge, interpret, and enforce natural laws) and no more: “where the body of the people, or any single man, is deprived of their right, or is *under the exercise of a power without right*, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment” (Locke 1980, 87, emphasis added). Lockean political obligation is thus at once the practical basis of government and the means of limiting its power. Somewhere in the past three-plus centuries, however, this critical, watchdog-like function of political obligation was lost.

In short, non-voluntarist arguments for a general, comprehensive requirement of obedience disregard the reason political obligation initially became a pressing issue: the rise of modern individualism and concomitant norms of political freedom, which drove popular demand for limited government. This silent and undefended departure from analytic *and* historical views of obligation indicates that the current view of obligation’s purpose is neither self-evident nor justified. Contemporary obligation theorists must rediscover a key insight of their early-modern antecedents: “that, in imagining a new, voluntary, and therefore contingent beginning of obligation, they were rewriting traditional accounts of obligation as a story that ‘could have been otherwise’” (Kahn 2006, 19). As I shall argue, the principles of individual natural freedom and equality that made political obligation a live question in the first place also require a commitment to central democratic ideals of *political* equality and control over government, and a democratic

conception of legitimate political authority. If individuals are naturally free and equal, legitimate political authority could only come from something like a democratic government.

Political Obligation Today

The most influential recent theory to explicitly contrast voluntary obligations with non-voluntary duties, that of John Rawls, grounds the requirement to obey political authority on duty rather than obligation. As an enormously influential work, *A Theory of Justice* reaffirmed both the relevance of political obligation to normative political theory, and the basic range of potential arguments for the requirement to obey the state. Unfortunately, subsequent work on political obligation has largely overlooked Rawls's distinction between voluntarily-assumed obligation and non-voluntarist, quasi-ontological natural duty. Recent responses to the voluntarist paradox of political obligation take one of two main forms. Most scholars deploy non-voluntary arguments for political obligation, chiefly hypothetical consent, fairness, natural duty, and positional duty/associative obligations.²⁰ By contrast, philosophical anarchists maintain that because voluntary action is the only acceptable source of political bonds, all existing states are illegitimate and no general obligation to obey them could exist.²¹ As a result, the question of whether and when individuals might be obligated is marginalized.

Rawls and the Voluntarist Paradox

²⁰ The argument from hypothetical consent holds that "a legitimate government, a true authority, one whose subjects are obligated to obey it," is "one to which [those subjects] ought to consent, quite apart from whether they have done so" (Pitkin 1965, 999). Hypothetical consent responds to the limitations of voluntarism by demonstrating a general standard for granting consent that applies independent of individual actions. It is intended to broaden the range of political obligation and compel obedience to pre-existing political relations and obligations. But to achieve this goal, the theory must preclude any possibility of validly denying or rescinding one's consent: individuals must obey future directives regardless of content, without ever actively assenting to that authority. Hypothetical consent effectively marginalizes individual choice, since one can be held to be obligated against the dictates of their own conscience. The appeal to hypothetical consent thus makes obligation itself superfluous.

²¹ See Simmons 2001 and 1979, introduction; Lyons 1981; Smith 1999; and Wolff 1998.

Rawls makes a firm distinction between obligation and natural duty, contrasting the voluntary assumption of obligations with the involuntary, quasi-ontological character of duties. All obligations are freely assumed and “arise from the principle of fairness” (Rawls 1999b, 301), under which “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” (96). Obligations, then, are the requirements to perform certain actions generated by voluntarily accepting the benefits of a fair arrangement. Rawls denies that universal *a priori* political obligation exists: “In the [case of obligation of ordinary citizens] it is not clear what is the requisite binding action or who has performed it. There is, I believe, no political obligation, strictly speaking, for citizens generally” (97-8). By contrast, natural duties apply “without regard for our voluntary acts [and] have no necessary connection with institutions or social practices” (98). The *a priori* requirement to support just schemes is a particular form of natural duty: the duty of justice (99).

Rawls ultimately concluded that since voluntarist obligation is too limited to yield coherent, reliable adherence to a just basic structure, it cannot be the primary basis of political ties. Instead, “the parties in the original position do best when they acknowledge the natural duty of justice... principles of obligation, while compatible with the [duty of justice], are not alternatives but rather have a complementary role” (296). Obligation, too weak to ground a cohesive and stable body politic, is supplanted in Rawls’s justification of his basic structure of society by non-voluntary natural duty. While Rawls argues that “there are several ways in which one may be bound to political institutions,” overall, he concludes that “the natural duty of justice is the more fundamental, since it binds citizens generally and requires no voluntary acts in order

to apply” (100). Unlike voluntarily-assumed obligations, this duty is grounded in hypothetical agreement to principles of justice in the original position. Thus, at base he relies on hypothetical consent to ensure obedience to just states.²² Rawlsian justice does not require a thoroughly voluntarist view of political association. His argument for obedient submission to just political schemes rests on the natural *duty* to support just political structures, rather than on voluntary obligations assumed when the basic structure of society is fair. Citizens in just societies have a moral imperative to “do their part” out of an involuntary, inescapable duty, rather than a voluntarily-assumed obligation. Political obligation is merely one component of his conception of justice, one that receives comparatively little attention in the vast literature on Rawls.

Rawls’s defense of justice as fairness illuminates three of the most troubling tendencies in contemporary obligation scholarship. First, contemporary theories do not acknowledge that politics involves *both* non-voluntary duties and voluntary obligations. While Rawls, like most moral philosophers and political theorists, maintains that voluntarism is what distinguishes obligation from duty, most theories of political obligation now turn to non-voluntarist principles to overcome the limited applicability of a voluntarist account. Non-voluntary arguments for a general, comprehensive requirement to obey do not recognize, and hence cannot address, the voluntarist dimension of political association. While duties are a crucial component of one’s political ‘oughts,’ a theory that focuses *entirely* on non-voluntary requirements will overlook the voluntary acts and obligations that pervade political life and shape liberal-democratic state action and law. Recent theories of obligation often ignore the obligation-duty distinction because they prioritize general obedience above accounting for the voluntarist dimension of the citizen-state

²² Rawls came under fire for this assumption, and such critiques often point to the extreme abstraction of the individual self in the original position or the futility of a consent concept that requires no actual act of consent. On the latter point, see Brudney 1991, 239, and Pateman 1985, chapters 4 and 5.

bond. Unlike Rawls, such theories are not explicit about this sacrifice of voluntarism, nor is this decision defended as a matter of justice. Instead, whether by using obligation and duty interchangeably, by offering natural duty-based defenses of political obligation, or by presenting an argument that is voluntarist in name only for a generally-applicable obligation to obey, they violate ‘obligation’s’ fundamental conceptual principles and slight the voluntarist dimension of liberal-democratic politics.

Second, because scholars bracket the question of voluntary obligation entirely in favor of a non-voluntary duty of obedience, they treat the laws, commands, and actions of liberal-democratic states as a given feature of society rather than the product of human activity. Rawls builds political cohesion on non-voluntary natural duty, a move that many subsequent theories also make. Such non-voluntary theories require that we accept *a priori* the obedience claims made by a liberal state that conforms to their view of justice. From this standpoint, the individual actions that generate, interpret, and enforce the state’s claims on its citizens are at best irrelevant, and at worst a source of exceptions to the general duty to obey, as when public officials exceed their legal authority or otherwise violate laws when discharging their official responsibilities. While Rawls refuses to conflate voluntary and non-voluntary political requirements, voluntary obligations are important in his account chiefly because they tie their bearers “even more strongly to a just scheme” (100). He maintains that “we have a natural duty to comply with the constitution, say, or with [just laws], whereas we have an obligation to carry out the duties of an office that we have succeeded in winning, or to follow the rules of associations or activities that we have joined” (302). However, this definition suggests another salient dimension of obligation: namely, that the way officeholders discharge their obligations (obligations that Rawls himself recognizes) shapes particular exercises of state authority, as well as what ordinary citizens owe

to the state and why. This line of reasoning is largely absent both in Rawls's analysis and subsequent Rawlsian theories.

Finally, most recent theories of political obligation mistakenly see political activity solely as a matter of command and compliance. Such theories miss the unique insight a voluntarist theory of political obligation offers to analysis of political engagement, binding political ties, and the individual's 'oughts' in liberal democratic states. Further, arguments that aim only to justify the state's power to coercively enforce law cannot examine too closely the possibility that disobedience would be justified in response to certain state actions.²³ These theories conceive of the state in abstract terms, without considering crucial aspects of state action, such as the interplay between voluntary and non-voluntary requirements, which make obedience requirements so difficult and voluntary political obligations so vitally important in practice. Theories of an obligation to obey law *qua* law exclude the variety of ways that individuals interact with, are acted upon by, and exercise political authority. By forswearing critical analysis of the actual state claiming obedience, those who defend general, comprehensive obedience leave themselves open to grim, and arguably decisive, challenges from philosophical anarchists (among others) to their claims about state authority and obedience.

The Limits of Existing Theories

At present, political obligation, long considered a central question of political theory, is in a bit of a jam. Contemporary theories of political obligation simply cannot surmount the voluntarist paradox. No existing principle can fully support a general, comprehensive requirement to obey the law *because it is law*, nor refute devastating criticisms from competing principles and philosophical anarchists. Theories that ground obligation in actual voluntary acts cannot establish

²³ Again, this is in contrast to Rawls, who held a careful and well-developed position on civil disobedience. See Rawls 1999a.

a generally-applicable obligation to obey, nor are such voluntarily-assumed obligations necessarily (or even primarily) an obligation to *obey*.²⁴ By contrast, non-voluntary arguments for political obligation, including arguments from hypothetical consent, fairness, and duty, fare better on generality, but because they also often require much more or much less than minimal obedience, they also fail to ground a requirement to obey the law *because it is law*.²⁵

Most importantly, the goal of political obligation – a requirement to obey all laws *because they are law* – obscures a distinction between the ‘vertical’ obligation citizens owe the state and ‘horizontal’ obligations connecting citizens, without which it is impossible to assess *where* obligations are owed, what they entail, and why one ought to fulfill them. Vertical political obligation is a requirement to obey laws backed by the state’s coercive power. Horizontal obligations, like the obligation to participate in an advocacy group’s activities that one member owes to her fellow members, differ in form and content from a vertical requirement to obey vehicle-registration laws (for example) *because they are laws* that an individual owes the state. However, obedience theories attend exclusively to the law’s claim on ordinary individuals

²⁴ Though consent was long the dominant liberal foundation of political obligation, most scholars now accept that individuals do not consent to government, either expressly or tacitly, in sufficient number to ground generally-applicable political obligation.

²⁵ As scholars have shown, the argument from fairness fails to meet one of the primary criteria for a theory of political obligation: it does not establish a comprehensive requirement to obey law *qua* law (Horton 2010; Klosko 2005). As I argue in the following chapter, fairness fails to establish a general, comprehensive requirement to obey because it often requires much more or less than minimal compliance, and generates horizontal rather than vertical requirements. Like fairness, duty-based arguments speak to broader questions of what we owe one another in politics, rather than why we ought to obey. Duty-based arguments include natural duty, positional duties or ‘role obligations,’ and associative obligations stemming from one’s membership in a society. While positional-duty and associative accounts do not support a fully general *or* comprehensive requirement to obey, critics of natural-duty accounts have shown that by itself, natural duty cannot establish an obligation to obey one’s *own* state, rather than *any* just state, and may even ground requirements to *disobey* unjust laws (Simmons 2001; Klosko 2005). While Stilz 2009 is a sophisticated response to this problem, I argue in the following chapter that her duty-based argument for particular obligations establishes, at best, horizontal duties of justice owed to one’s compatriots, rather than a vertical obligation to obey law *qua* law. Finally, though philosophical anarchism mounts a strong critique of existing theories, as I will show, it fails to deliver on its own commitment to voluntary political association.

rather than the obedience necessary in using state power, and thus cannot consider how the state actually creates and enforces its laws. The requirements involved in state action are not equivalent to horizontal claims on individuals. As I shall argue, the dominant arguments for political obligation cannot differentiate horizontal and vertical obligation, and consequently cannot connect the two. Although theorists define political obligation in vertical terms, their arguments establish, at best, horizontal requirements to obey. This slippage from vertical goals to horizontal arguments dooms existing theories, and undermines widespread assumptions in the obligation literature about the state and the type of defense it requires.

While I shall argue that the basic assumptions about law, obedience, and the state in the obligation literature indeed doom existing theories of political obligation, I will demonstrate that it is these assumptions, rather than political obligation *as such*, that are untenable. A theory that combines existing principles of political obligation thus cannot yield a general, comprehensive requirement to obey, because such a requirement is itself incoherent. If we are unwilling to give up on political obligation, we must find a way to move the debate forward. This is the central aim of my dissertation.

Political Obligation Beyond Anarchy and Leviathan

My alternative approach to political obligation rests on three core claims. First, I contend that the prevailing definition of obligation does not sufficiently capture the way obedience works in late-modern states. Second, I argue that political obligation is not equivalent to general, comprehensive obedience. Instead, political obligation should be seen as a voluntary subtype of ‘binding moral requirements’ in political life. Third, I maintain that a theory of political obligation must investigate obligations that emerge in horizontal as well as vertical bonds.

Contemporary scholars like John Simmons and Carole Pateman (among others) have persuasively shown that a strongly voluntarist theory of obligation cannot justify the liberal-democratic state's coercive power. However, as George Klosko's recent empirical study of attitudes about obedience shows, people do not care much that they have not consented to obey (Klosko 2005). Instead, the vast majority believes they ought to obey the law out of fairness to others. Given this, one might ask why we should care that fairness is not a voluntarist principle. I intend to answer this question.

My answer, briefly, is that if we ignore voluntarism, we ignore the democratic side of liberal democracy. Voluntarism's political salience lies in its unique connection to responsibility and freedom. This connection to responsibility is why normative theories of liberal-democratic politics require a well-developed account of voluntarism. Existing responses to the voluntarist paradox erase all traces of self-government from liberal-democratic law, legitimacy, and political action. As it currently stands, the choice is between non-voluntary theories that elide democratic self-governance, and strongly voluntarist denials of legitimacy. However, I shall demonstrate that the actual role of voluntary action in existing states supports an alternative approach: a theory of voluntarist political obligation that acknowledges non-voluntary binding requirements but confines itself to analyzing voluntarily-assumed binding requirements. Thus, the remainder of this project develops a theory of voluntarily-assumed obligations to take political action that draws on notions of moral agency to construct a reciprocal account of the individual-state bond.

While a voluntarist defense of universal obedience is both impossible and likely superfluous, that does not mean that voluntarily-assumed obligations to take other kinds of political action are unimportant. Scholars now regard voluntarist political obligation only as a threat to state legitimacy, not as a potential source of constructive insight in its own right.

However, state actions and laws are created and carried out by individual action. As any student of the legislative process or the bureaucracy knows, those engaged in *making*, *implementing*, and *enforcing* laws routinely make voluntary choices that shape legal requirements and public policy in their jurisdiction. State agents must obey existing laws when creating and defining legal requirements. Police officers, for example, must obey the Fourth Amendment by getting a search warrant, and judges must interpret both the standards for obedient behavior, and the legal limits of state power. In practice, then, voluntarism is not quite as paradoxical, nor laws and obedience quite so obvious in their meaning, as most theorists of obligation-as-obedience think. Further, I argue in the next chapter, given the discretionary authority that public officials possess, all existing obligation principles actually impose much larger ‘oughts’ than simple obedience.

If we take the fact that people obey as satisfactory evidence of a general, comprehensive requirement to obey the liberal-democratic state, we will overlook central problems in liberal democratic practice. In some cases, the relevant issue might not be ensuring that people should obey, but whether they should obey, how specific authoritative commands come to take the form they have, and who ought to shape these decisions. Non-voluntary theories of an obligation to obey, however, cannot say much about how liberal-democratic institutions work, nor the role of voluntary decisions and individual agency in state actions. By and large, people obviously *do* obey, and there is hardly anyone in the United States who has actually consented to obey all the laws. The sense of fairness might well be the reason people generally obey. However, the fact that people believe they should obey out of fairness does not tell us what a fair scheme of social coordination or cooperation *is*, nor how to create one, nor how to respond when a scheme is *unfair*.

A theory of voluntary political action in liberal-democratic states, however, *can* speak to these central questions of social cooperation, and ground a response to unfair or unjust practices and institutions. Voluntarist political obligation draws on the norms of interpersonal commitment and trust without which society would be impossible. It therefore allows us to understand the ethical issues involved in collective political action both within and outside the state. Political obligation concerns freedom as ‘the law one gives to oneself:’ our ability to voluntarily create morally meaningful binding political requirements and relationship *for ourselves*. Theories that focus exclusively on obedience cannot consider this capacity for self-government, nor evaluate which aspects of political life should be voluntary and explain why.

If we treat voluntarist political obligation as a wholly atomized, individualist issue, we will fundamentally misconstrue its real significance. My approach differs from associative theories of political obligation, which rest on the “ordinary idea” that obligations arise “from social practices rather than voluntary choices or from our common humanity” (Horton 2010, 148). This definition falsely opposes voluntarism and social practice. This project will argue that voluntarist obligation is *itself* a social practice, one that constructs lasting relationships and helps to constitute frameworks of social cooperation. By reviving voluntarism’s intersubjective dimension, I will show that fidelity to obligation’s voluntarist roots does not inevitably lead to anarchist conclusions about political authority, legitimacy, and liberal-democratic states.

The theory of political obligation I defend lets us analyze the individual actions that shape the background conditions for voluntary political action, and distinguish acceptable forms of voluntary action and association from unacceptable forms. It also helps to explain how individuals *and* vertical political institutions constitute horizontal associations, and investigate how associational activities shape the individual self as well as states. A normative theory of

responsible self-government must evaluate political *decisions* that have real world importance, and be able to say, in a principled way consistent with the rest of the analysis, what should *not* be up for democratic decision. If the capacity for voluntary political action and self-government is inherently valuable, as I shall argue, we must evaluate whether particular voluntary acts and democratic decisions contribute to or detract from others' self-governing capacities.

Outline of Dissertation

The following five chapters defend a theory of political obligation concerned with the variety of actions one can voluntarily undertake a requirement to perform, rather than a uniform *a priori* requirement of obedience.

The first step in reviving political obligation is to identify systematic features of the debate that limit scholarly attention to several familiar but fatally-flawed positions. The first chapter demonstrates that the dominant definition of political obligation – a general and comprehensive requirement to obey the law *because it is law* – seriously impairs scholarship on political obligation. I argue that a general, comprehensive requirement to obey law *because it is law* is inherently indefensible because ‘law as such’ is conceptually incoherent and empirically unsound. Because obedience theories of obligation do not distinguish obedience to existing laws from the obedience involved in *producing* laws, they cannot explain what gives laws their status as law. In addition, obedience theories do not recognize that laws come in various forms, which impose different types of requirements, claim obedience from specific individuals, and serve diverse normative and practical purposes. After developing an alternative, empirically-grounded account of law, I show that existing principles cannot ground general comprehensive obedience

even in combination, because at best, they establish horizontal rather than vertical political requirements, and often require much more or less than minimal compliance with law.

In the second chapter, I take up two specific aspects of voluntarism – the normative significance of voluntariness, and the conditions under which a given action can be called voluntary – to develop voluntarist standards for political obligation, and to illustrate the importance of considering voluntary political bonds. I defend a ‘semi-voluntary’ descriptive conception of the liberal-democratic state: states both constitute opportunities for voluntary *action* and are constituted by voluntary *acts* within the non-voluntary boundaries of the state’s authority to coerce. This conception of liberal democracy implies an alternative approach that sees political obligation as a specific, voluntary subtype of binding requirements to take political action, a broader category that also includes non-voluntary duties. An action is voluntary if and only if the actor had at least one other prudentially acceptable alternative, or a real ability to create such an alternative. Voluntarism leads to what is called a ‘content-independent’ conception of political obligation, in which an obligation’s validity is largely independent of the specific requirements it imposes. Thus, voluntarist obligation cannot impose a blanket requirement of obedience, but must stipulate only that individuals carry out the actions they voluntarily commit to perform. I then describe the features that distinguish political obligations from obligation in general. Political obligations, briefly, are those obligations voluntarily undertaken within relations of self-government or power, or those undertaken to affect existing political conditions, power structures, or opportunities for self-determining action. Voluntarist political obligation is therefore a matter of self-government and political freedom. Because my account of voluntarist political obligation recognizes that binding requirements in political life come from non-voluntary as well as voluntary sources, it yields a richer, more accurate account

of normative political requirements than obedience theories offer, and grounds a constructive response to philosophical anarchism.

The third chapter shows that philosophical anarchism ultimately fails because it rejects all non-voluntary political association, yet accepts the prevailing definition of obligation, which excludes other voluntarily-assumed political responsibilities. Thus, although the philosophical-anarchist critique reveals deep-seated problems in existing obligation theories, philosophical anarchists do not conclusively establish their core state-illegitimacy thesis, and cannot provide a useful critique of the state *or* an alternative voluntarist model of political association.

Philosophical anarchists assert that legitimacy requires a successful defense of general, comprehensive obedience, but do not convincingly address plausible competing views of legitimacy, such as the idea that legitimacy requires only conditional duties to obey morally-justified laws.²⁶ While philosophical anarchists maintain that such moral requirements merely happen to coincide with legal commands, their arguments do not prove that state legitimacy *requires* an independent requirement to obey laws.²⁷ Philosophical anarchism's most grievous error, however, is seeing obedience, rather than the capacity for voluntary action, as political obligation's defining feature. Philosophical anarchists cannot envision non-coercive modes of government, nor a truly voluntarist political association, because they recognize only one type of political power: exercises of coercive power over others. I shall argue, however, that philosophical anarchists' professed commitment to political voluntarism actually requires them to consider voluntarily-assumed political obligations beyond obedience. To refute philosophical anarchism, I argue, we must distinguish 'horizontal' obligations connecting citizens from the

²⁶ Edmundson 1998a, Lyons 1981, and Applbaum 2010 make versions of this claim.

²⁷ See Simmons 2001, chapter 5.

‘vertical’ obligation citizens owe the state, and consider the voluntary political obligations that emerge in horizontal relationships.

In the fourth chapter, I turn to the pitfalls of political voluntarism, and argue that voluntarist obligation grounds an evaluative standard for voluntary action. Voluntary action and association pose significant challenges to liberal-democratic government. Voluntary acts may be harmful to others, and voluntary associations may exclude individuals as well as draw them together. I then consider the mutually constitutive horizontal and vertical dimensions of liberal democracy. The vertical relations and institutions within liberal democratic states both establish the background conditions for vertical *and* horizontal voluntary political action, and are themselves constituted and shaped through the voluntary acts of ordinary individuals, public officials, and horizontal associations. Finally, I argue that judgments about *when* political voluntarism is appropriate must assess whether voluntarism would expand or contract opportunities for democratic self-governance, and apply this standard in three brief case studies.

The fifth chapter considers the practical politics of political obligation (i.e. the form of politics and government that accommodates voluntarily-assumed obligations and recognizes their practical role in self-governing collective action) and the boundaries of democratic decision. Democratic theorists are increasingly concerned about the gap between democratic ideals and liberal-democratic practice. I argue that a democratic politics of voluntarist obligation can address this ‘democratic gap’ more fully than the dominant deliberative theoretical paradigm. Drawing on an alternative, participatory model of democracy, I develop an account of democracy as action, and show that it supports constructive responses to democratic self-government’s central problems.

Finally, in a brief conclusion, I sketch the broader theoretical and normative implications of voluntarist political obligation. Analysis of voluntarist political obligation indicates that there are many more potential sites of active participation and voluntarily-assumed obligations in liberal-democratic politics than is apparent at first blush. The voluntarily-assumed political obligations that public officials *and* ordinary individuals undertake fundamentally shape our collective social and political context. To paint an accurate portrait of the liberal-democratic state and the individual's political oughts within it, we must recognize and evaluate these voluntary acts and commitments. Because my account of political obligation connects voluntarily-assumed requirements to act to the conditions of collective political self-determination, it provides the foundation for democratic self-government missing in existing accounts.

Chapter One

Political Obligation and the Law: An Internal Critique of the Obligation to Obey

This chapter demonstrates that the prevailing view of obedience and the type of justification it requires are inherently unsound and establish an unattainable goal. The shortcomings of the present approach to political obligation are well known: though each theory offers damning criticism of the alternatives, none can counter the critiques of their own positions. The reason for this, I argue, is a reductive, undifferentiated notion of obedience, which assumes that all requirements to obey are roughly uniform and thus does not reflect key practical features of liberal-democratic states and law. Existing theories see all obedience as equally morally weighty and justified on identical grounds. Thus, they must either embrace or reject obedience *as a whole*, via a unitary principle of political obligation.²⁸ But as a growing consensus has shown, it is likely impossible to ground general, comprehensive obedience on a single principle.²⁹ Further, as several scholars have argued, the single-minded focus on obedience is an “inadequate characterization of political obligation” (Horton 2010, 14).³⁰ Instead, political obligation concerns the ethical nature and broader normative implications of the citizen-state bond. Though they persuasively argue that obedience is only one of many possible political obligations, in this chapter I shall provide an internal critique of the ‘obedience theory’ of political obligation. I argue below that such theories are flawed even when taken on their own terms, owing to overly general, empirically-insensitive conceptions of obedience, law, and the state.

²⁸ Klosko 2005, which offers a ‘multiple principle theory of political obligation,’ appears to be a glaring exception to this claim, but as I shall argue, his arguments rest on a single foundation: a principle of necessity.

²⁹ The foremost arguments in this vein are Klosko 2005, Raz 1999, and Parekh 1993. What Horton calls ‘negative philosophical anarchists,’ who hold that all existing arguments for obligation fail but are open to considering new ones, make a version of this claim when they reject state legitimacy based on the failure of existing arguments.

³⁰ See also Knowles 2010; Parekh 1993; and Pateman 1985.

I shall argue that an undifferentiated requirement to obey all laws *because they are laws* is internally incoherent, since it cannot explain what makes a law *law*. The idea of law itself requires that we distinguish the obedience necessary to produce and enforce law from the obedience existing laws claim from ordinary individuals. Theories of a requirement to obey all laws *because they are laws* cannot consistently recognize the role that individuals and their obedience play in *generating* laws, and thus cannot offer an argument for vertical obligation that accounts for the unique features of contemporary states. To analyze and justify the requirements laws impose, we must recognize that laws vary according to their moral salience, the individuals they directly regulate, the meaning of compliance, and the reasons that require obedience.

I begin by arguing that the dominant definition of political obligation splits the literature into two diametrically opposed positions, separated by irreconcilable disagreement about the viability of obligation. I assess the best recent account of obligation, George Klosko's multiple-principle theory, and argue that its limits indicate inherent defects in the prevailing view of obedience. Next, I show that the undifferentiated conception of law and obedience does not reflect the way that liberal-democratic laws operate and claim obedience, and draw on H.L.A. Hart's concept of law to develop a more accurate account of law and obedience. I then claim that the justification for moral requirements to obey must match the specific types of law and obedience in question, and show that a combination of existing principles cannot support a requirement to obey as such because they tell us what we owe one another in a broader sense, rather than why we ought to obey. Finally, I sketch the implications of this analysis for political obligation.

Obedience to 'the' Law in Theories of Political Obligation

The predominant approach to political obligation at present is basically identical to “an influential mode of discourse on political obligation” that Bhikhu Parekh identified in a seminal article twenty years ago (Parekh 1993, 239). Then, as now, most theorists considered political obligation in essentially Hobbesian terms: as a matter of explaining why citizens must obey the political authority and its laws (236). Indeed, Parekh’s claim that “[t]here is hardly a political theorist writing on the subject today who does not think that political obligation is about obeying the civil authority” is just as true now, despite critiques that show undeniable problems with this view (237). As I will show, this view is both the source of an insurmountable impasse between political obligation’s proponents and opponents, and fatally flawed in itself. Though Klosko’s multiple-principle theory of political obligation is a marked improvement on the traditional single-principle approach to obligation, it retains inaccurate notions of law, the state, and the type of defense they require that ultimately render it unsuccessful. These problems, however, also suggest a more constructive approach to obligation: one that analyzes vital distinctions between laws that govern state action and laws that govern individual conduct.

Contemporary theories, Parekh noted, “display remarkably similar logical structures and philosophical ambitions” despite substantive divergence over the basis (and, in the philosophical anarchist’s case, the existence) of political obligation (239). The consensus is that a theory of political obligation “should provide strong moral reasons to obey the law” (Klosko 2005, 14). In such theories, obedience, and therefore political obligation, means the present and future compliance of citizens with *all* just laws and state commands, enforced by the state’s power to punish when necessary. Existing theories seek to show that a law’s mere existence is an independent reason to obey it: that we ought to obey laws *because they are laws*, rather than because of what they require (501). This view of obligation entails accepting the state’s claim to

legitimate authority, since laws are due compliance not out of regard for their content, but solely because a legitimate authority issues them.³¹ Arguments from fairness, consent, and duty “center upon *justifying obedience* to political authorities” (Klosko 1992, 10) rather than investigating other possible political obligations.³² Philosophical anarchists, too, accept this view, if only to support their denial of state legitimacy by rejecting any such obligation (Simmons 2001, 106). The literature is largely silent on obligations beyond obedience to law.

Theorists also agree on what a theory must do to succeed. First, a successful theory must be ‘general,’ meaning “able to establish the obligations of all or most members of society” (Klosko 2005, 10).³³ Second, it must be ‘comprehensive:’ it must “support whatever range of [state] functions is legitimate” and compel individual submission to government decisions regarding these functions (12). Third, political obligation is ‘limited,’ meaning it can be overridden by other moral considerations: “no respectable theory of political obligation ever claimed that a person is obligated no matter what to obey the laws of a legal system to which he or she is subject” (Perry 2006, 183). Most theorists see the requirement to obey as a *prima facie* (as opposed to absolute) obligation, but I shall conform to the more precise terminology in legal philosophy and describe limited obligations of this kind as *pro tanto* obligations, meaning ontologically real moral oughts that nonetheless may be outweighed by other moral

³¹ As Robert Paul Wolff explains, “obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*” (Wolff 1998, 9). See also Raz 1986.

³² See, for example, Beran 1987, Hirschmann 1992 3-10, Green 1999, and the essays in Edmundson ed. 1999.

³³ See also Simmons 1979, 55-6.

considerations.³⁴ Finally, a theory must meet the ‘particularity’ requirement: it must explain why individuals are bound to their own state, rather than any legitimate polity.

However, a handful of dissenting voices discredit this view of obligation by successfully showing that obedience is not one’s only political responsibility. They argue that “[p]olitical obligation is not necessarily reducible simply to an obligation to obey the law,” since positive duties, including a duty to oppose government injustice, exist “which are not enshrined in the law and, which if not observed, do not incur a legal penalty” (Horton 2010, 14). As Joseph Raz argues, a Rawlsian natural duty to uphold just institutions “involves more than a duty of obedience [since] one may be obligated to help fight opponents of the institution or help overcome obstacles to its successful operation in ways which one is not required by its laws to do” (Raz 1986, 66-7). These positive duties can actively conflict with requirements to obey. Similarly, Parekh asserts that obedience has little to do with political obligation, since politics concerns “the collective affairs of a polity and covers all activities designed to influence the way these affairs are managed, ranging from the setting up of civil authority to what decisions it should take” (Parekh 1993, 243-4).³⁵ As such, he argues, political obligation must be distinguished from civil obligation, which requires that citizens “respect and uphold the legitimately constituted civil authority,” and legal obligation, which requires citizens to obey the laws (239). Thus, far from being the citizen’s sole political obligation, obedience is not really a form of political action at all.³⁶ The dominant view of political obligation, Parekh contends,

³⁴ *Prima facie* is an epistemological term, while *pro tanto* is a metaphysical term: *prima facie* obligation is one that appears to be (and may indeed be) real, while a *pro tanto* obligation is metaphysically real but defeasible.

³⁵ For this reason, Pateman explicitly rejects the equation of obligation and obedience, arguing that because the problem of political obligation bears on important issues in democratic theory and practice, it should therefore be conceived in participatory terms. See Pateman 1985, 44 and 165.

³⁶ As I argue in the next chapter, voluntarily-assumed obligations do not necessarily require action: some may require *inaction*.

distorts every aspect of political life: authority, legitimacy, citizens' responsibilities, the individual-state relationship, and, as I show below, obedience itself.

While most obligation theorists argue that such critiques set the bar higher than any theory of obligation could meet (Klosko 1992, 11), I will show that general, comprehensive obedience is actually an inherently unyielding, internally incoherent goal that impedes scholarly progress on vital questions. Philosophical anarchists and defenders of obligation cannot resolve their dispute because general, comprehensive obedience must either be wholly affirmed or utterly denied.

Obedience theories deploy a one-size-fits-all model of obligation, in which individuals have equally stringent obligations to obey on grounds they presume apply equally well to differently-situated individuals.³⁷ This one-size-fits-all model continues to hold sway even though Simmons, Walzer, Raz, and others have successfully discredited the belief that a culturally neutral, universally valid theory of political obligation could be found, the assumption that obligation must rest on a single principle, and the idea that the state is the sole claimant of political obligation.³⁸ As yet a number of highly suspect but generally-accepted claims about political obligation remain largely unchallenged. First, most theorists believe that differently-situated individuals nonetheless have equally stringent obligations to obey. Second, though theorists divide residents of a state into citizens and non-citizens, they assume that non-citizens have the same obligation to obey as citizens, even though they do not possess all the rights of citizenship (Parekh 1993, 239). Finally, with the notable exception of Rawls, theorists deny that injustice against some individuals impacts the obligations of other members of the polity:

³⁷ This point is as true now as when Parekh made it in 1993: see 238-9.

³⁸ See Simmons 2001; Walzer 1998; and Raz 1986 and 1999.

several writers on political obligation argued that those who were denied the basic political rights of citizenship, treated as slaves or oppressed, were exempted from political obligation, but they insisted that that in no way diminished the obligation of the rest of the citizens to obey the law. In their view the latter could not say that since their state grossly ill-treated a *section* of them, it was structurally defective and had no claim on the allegiance of *any* of them” (ibid).

These claims persist because most scholars presuppose the liberal-democratic state’s legitimacy, and further assume that legitimate authority requires general, comprehensive obedience. These assumptions preclude a theory in which the content and stringency of political obligation varies across individuals.

One-size-fits-all theories of political obligation only consider the individual’s obligation to obey laws *because they are laws* and the state’s right to coerce those who disobey. Thus, I shall argue, they are mistaken about *why* and *how* obedience matters. In addition, the one-size-fits-all model has a final, fatal flaw: it cannot consistently pursue truly general, comprehensive obedience to law *qua* law *and* address the obedience involved in *creating* and implementing laws. Political theorists pursue a general, comprehensive, *pro tanto* requirement to obey a just state’s laws *simply because they are laws*, but as I argue below, they do not employ an adequate conception of law itself.

The Limitations of Obedience Theory

As George Klosko has argued, the traditional approach to justifying a one-size-fits-all requirement of obedience, which seeks a single, universally applicable principle that fulfills all four criteria of theoretical success, is “responsible for the currently widespread view that there is no satisfactory theory of political obligation” (Klosko 2005, 99). Owing to this belief, each

principle of obligation “is assessed as if it alone is to provide satisfactory answers to the full range of questions,” and when it “is found deficient in some respect, it [is] labeled unsatisfactory and rejected” (ibid). Internal critiques of consent, fairness, associative accounts/positional duty, and natural duty have shown that no single existing principle can meet all four criteria of theoretical success and fully support a general obligation to obey. Consent fails to establish a general obligation (Horton 2010; Klosko 2005; Pateman 1985; Simmons 2001). In contrast, fairness supports general but not comprehensive obligations (Horton 2010; Klosko 2005), and associative accounts struggle with both (Simmons 2001). Finally, duty-based theories cannot explain why we owe a general, fully comprehensive obligation to our *own* state, rather than any other just state (Simmons 2001; Klosko 2005, 76-86).³⁹ As a result of the dominant ‘divide and conquer’ approach to political obligation, a growing number of scholars are decidedly skeptical about defending political obligation at all.⁴⁰

Against the increasingly prevalent claim that a theory of political obligation is unnecessary or indefensible,⁴¹ Klosko offers “a public goods justification of the state” (Klosko 2005, 2). State-supplied public goods generate “obligations to support their production,” he argues, because they are necessary to live an acceptable life (244). Since “many different moral considerations can be relevant to questions of political obligation” (99), he defends a multiple-principle theory of obligation, which attempts to satisfy the generality and comprehensiveness requirements with a set of interlocking moral reasons to obey. Together, he argues, principles of

³⁹ See also Stilz 2009, the most sophisticated recent attempt to refute this critique of natural duty.

⁴⁰ See, for example, Buchanan 2004; Green 1999; Smith 1999; Raz 1999; and Simmons 2001.

⁴¹ The prime culprits Klosko identifies are Raz 1979 (for the claim that obligation is unnecessary) and Simmons 1979 and 2001 (for the claim that political obligation is impossible to defend). See also Applbaum 2010 and Edmundson 1998a.

fairness, natural duty, and respect for the common good compensate for one another's limits "in two ways[:] covering state services not addressed by other principles, and supporting the working of the other principles in regard to the same services" (120).

As Klosko recognizes, his multiple-principle theory necessarily departs from the dominant single-principle approach to obedience in two ways. First, unlike traditional theories of obligation, in a multiple principle theory "different laws are to be obeyed for different reasons" (248). I critique the validity of this claim below. Second and far more importantly, Klosko contends that "the distinction between laws that it is and is not acceptable to break is important and indicates the oversimplified inadequacy of standard political obligation questions, such as, 'Do you have a moral requirement to obey the law?'" (194). The standard view, he claims, is a poor fit with widely held moral intuitions about obedience. A multiple principle theory can investigate the limits of obedience more rigorously (and therefore meet the *pro tanto* requirement more effectively) than single-principle theories because it can "explain why certain laws are set aside, especially if they are generally viewed as not serving valid purposes" (249). Klosko contrasts speeding (which people deem an acceptable violation of law) and bank robbery (an unacceptable violation) to illustrate this point.

While this distinction is a useful first step, it is insufficient in itself. Distinguishing acceptable from unacceptable disobedience helps to evade the critique from philosophical anarchists, who recognize moral requirements to comply with *certain* laws but reject the general, comprehensive requirement of obedience at which political obligation traditionally aims. It also puts hard cases of marginal substantive weight, such as the famous 2 AM desert stop sign, in proper perspective.⁴² However, Klosko's view misses two crucial points. First, laws come in

⁴² For this example, see Smith 1999. The example asks whether one has a prima facie obligation to stop at a stop sign on an empty desert road, when no one will be harmed by one's failure to stop. Since there are no moral reasons

different forms that make different types of claims. The moral weight, purpose, audience, and behavior demanded by one law (for example, a law against murder) may differ categorically from those of another law (the rules of evidence in criminal procedure). Klosko distinguishes between laws we ought to obey and those we may acceptably disobey, but not laws demanding obedience and laws demanding some other behavior, or laws demanding obedience from some individuals but not others. To truly understand moral requirements to obey, however, we must consider such distinctions within the class of laws we ought to obey.

More importantly, laws are laws “in virtue of the means by which they were produced, rather than the character (moral or otherwise) of the ends at which they were aimed” (Green 2010, 174). The obedience involved in *implementing* laws is equally if not more important to a defense of law and legitimacy than the obedience valid laws claim.⁴³ Analysis of obedience must therefore address distinctions between laws demanding obedience from public officials and laws demanding obedience from ordinary individuals, and more importantly, laws governing the use of state power and laws governing individual conduct. However, a theory of truly general, comprehensive obedience cannot examine the obligations involved in using state power, nor ground the requirement to obey laws limiting state power that is essential to the rule of law in a liberal-democratic state.

Differentiating Obedience

to obey stop signs under such conditions, Smith argues that if a *prima facie* obligation to obey the law did in fact exist, it would at best be of trifling moral weight. While theorists normally allow that the moral weight of specific requirements to obey differs, this claim does not play a prominent role in the literature. As a result, skeptics can use morally trivial legal requirements like the 2AM stop sign to discredit the idea of a moral obligation to obey law.

⁴³ Regrettably, considerations of space preclude a full-fledged account of legitimacy within the present work.

This section presents a case study of the American legal system to show that the undifferentiated conception of law and obedience is empirically inaccurate. Although theories of political obligation often pursue a general, comprehensive requirement to obey the state and its laws, they do not investigate the various ways in which individuals are asked to obey the state, and the various types of laws that claim compliance. Such theories neglect the regularities and patterns present in state actions, the decision-making processes of the state, the demands individuals and states make of one another, and how they negotiate those demands.

Perhaps most importantly, existing obedience theories forget that state actions and laws are created and carried out by individual action.⁴⁴ Individual legislators, activists, lobbyists, and public officials take actions within the legislative processes that create statutory law. Further, laws inherently require interpretation: both of the meaning and standards for obedience, and of the limits laws impose on the state. Individuals incur requirements to obey while creating, interpreting, and enforcing laws. Against the tendency to view law's subjects as passive recipients, my analysis below shows that law's subjects are simultaneously its *authors*, bound to obey in creating and defining legal requirements. Judges make decisions about how existing legal precedent applies to specific cases and laws. Public officials and law enforcement agents decide how to implement and enforce statutes. *All* legal systems require "agents who construct the contexts and the practices of law" (Davies 2010, 162). Thus, a normative defense of liberal-democratic law and legitimacy must investigate the obligations involved in using state power,

⁴⁴ This insight draws heavily on Jeremy Waldron's claim that statutes "are *essentially* – not just accidentally – the product of large and polyphonous assemblies. And this feature should be made key to our understanding of how to deal with them – how to interpret them and how to integrate them into the broader body of the law" (Waldron 1999, 10). Waldron's analysis and my argument in this chapter differ slightly in emphasis: he focuses on legislatures which, though composed of individuals, also have a collective character, while here I focus on the political agency that individuals exercise within the legal system. I take up the matter of individuals within political associations more fully in chapter four.

and examine another set of requirements on state action: the obedience to procedural laws and constitutional limits on state power that is the *sine qua non* of limited government.

Arguments for a truly general requirement to obey all laws, however, cannot consistently address the various ways in which the law claims compliance, nor investigate the origins of law and authoritative commands. Such arguments erase normatively salient differences in laws governing private conduct, laws governing state activity, and laws stipulating the procedures by which individuals act on and within the state. Thus, they cannot speak to basic, enduring features of state action and liberal-democratic decision-making, nor the practical significance of obedience to law. Laws differ on three relevant points: applicability, behavior required for compliance, and grounds. I address the first two points in this section, and turn to the question of grounds in the next. To effectively defend requirements to obey and legitimacy, theorists must jettison the belief that the ordinary citizen's requirement to obey all laws is sufficient to establish the liberal-democratic state's legitimacy, and accept a dramatically different set of assumptions about the state and the type of defense it needs.

Law qua Law: Obedience, Interpretation, and Validity

The established conception of obedience misses a very important dimension of 'the law:' legal limits on state actions and actors. Many laws limit the state's power, and impose requirements to obey on state agents. A legal system has its own internal system of rules, which require obedience from its agents and dictate how attempts to affect specific laws must proceed. A general, comprehensive, undifferentiated requirement to comply with law is incompatible with the very concept of law. The notion of law involves more than one level of obedience. Obedience to the rules for *producing* law is what makes a law *law*, an insight H.L.A. Hart captures with his famous distinction (well known in legal theory and philosophical circles) between primary and

secondary legal rules. Primary stipulate “the actions that individuals must or must not do,” while secondary rules “specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined” (Hart 1997, 94). Legislative enactment and repeal of primary rules, Hart argues, is a process governed by rules of change, not one of orders backed by threats (62-78, 95). In other words, the legislative processes that produce statutory laws demand obedience from legislators. However, by definition a general requirement to obey law *as such* cannot distinguish the obedience necessary to generate new primary rules from obedience to existing primary rules.

Political theorists have not accounted for Hart’s convincing claim that secondary rules are essential to a functional legal system. Secondary ‘rules of recognition,’ or rules for the “conclusive identification” of primary rules (95), establish authoritative criteria for legal validity. These criteria let us determine whether a given law is indeed a rule of the legal system, “to be supported by the social pressure it exerts” (94). The “crucial” feature of a rule of recognition in a developed legal system “is the acknowledgement of reference” to some “general characteristic possessed by the primary rules” that makes them “*authoritative*, i.e. [a reference to] the *proper* way of disposing of doubts as the existence of the rule” (95). We might identify primary rules, Hart suggests, by “the fact of their having been enacted by a specific body, or their long customary practice, or their relation to judicial decisions” (ibid). Hart argues that a rule of recognition possesses

many elements distinctive of law. By providing an authoritative mark it introduces, although in embryonic form, the idea of a legal system: for the rules are now not just a discrete unconnected set but are, in a simple way, unified. Further, in the simple

operation of identifying a given rule as possessing the required feature of being an item on an authoritative list of rules we have the germ of the idea of legal validity (ibid). Secondary ‘rules of change’ stipulate how new primary rules must be introduced and old rules eliminated (ibid). Finally, secondary ‘rules of adjudication’ empower “individuals to make authoritative determinations” of whether a primary rule was broken in a particular case (96), and “define the procedure to be followed” in making those determinations (97).

Thus, individual state agents and the courts play a central role in defining legal requirements. In the United States, the *raison d’être* of judicial officials (for example) is to interpret the meaning of compliance: to *apply* the law as dictated by the Constitution. The Constitution, supported by common-law principles, is the fundamental set of binding *guidelines* for interpreting and applying specific laws. Interpretation is essential to the legal system’s operation because it is impossible to create a legal rule that speaks decisively and clearly to all possible future circumstances. Law involves “classifying particular cases as instances of general terms,” and in many cases “there are reasons for both asserting and denying” that the general rule applies (123). Thus, as Hart puts it, “[n]othing can eliminate this duality of a core of certainty and a penumbra of doubt” from particular laws (ibid).⁴⁵ State agents must themselves obey laws when determining a law’s meaning for their judgment to carry the force of law.

Further, laws and legal requirements come from a variety of sources. The obligation literature does not distinguish between common law, statutory law, constitutional law, and case law (the body of jurisprudence composed in the American system of existing rulings). The interaction between these different types of law yields the detailed rules of law that claim obedience. The common-law sources of law and requirements to obey are a basic but often

⁴⁵ This gives all legal rules what Hart calls their ‘open texture.’ The ‘uncertainty’ and ‘static quality’ of primary rules, as well as the complexity of modern legal systems, is in large part the cause. See 124-35.

overlooked dimension of obedience. Common-law principles like *stare decisis* and equity provide an authoritative guide to deciding specific cases, and thus claim obedience from judges.

Political theorists, however, do not address these features of law and legal systems when considering requirements to obey. Most “treat the question of whether there is ever a general obligation to obey the law as independent from... the nature of law” (Perry 2006, 186). As a result, they do not recognize that obedience to rules of recognition, change, and adjudication is essential to produce valid laws and legal decisions. In other words, the legislators who write laws, the judges who interpret laws, and the officials who implement laws are all constrained by a complex web of obedience requirements. It is impossible to explain how laws are enforced *as law* without recognizing the procedural laws that establish secondary legal rules. To make sense of a specifically *legal* right to enforce the law, we must distinguish the primary rule that was broken from the secondary rules that enable us to recognize and punish disobedient behavior as a violation of positive law. Because theories of general, comprehensive obedience cannot admit this distinction, they *cannot* ground the state’s power to coerce as a matter of lawful legitimate authority.

Applicability: Official vs. Private Obedience

An obligation to obey all laws forgets that not every law requires obedience from everyone. Different laws directly regulate differently-situated individuals. The requirement to obey only applies to those people that a law directly regulates. Laws regulating small businesses claim obedience only from those engaged in the activities they regulate; graduate teaching assistants are free of any need to follow such laws. The 2 AM desert stop sign only applies to people who drive. However, the prevailing view of political obligation aims at a uniform requirement to obey the law *simpliciter*, and is solely concerned with the requirement to obey in private life. Thus, it

misses a very important dimension of law: legal limits on state agents. Although some laws, like gun-control laws, directly regulate the ordinary activities of individuals (potential gun owners and sellers), many others, like the First Amendment of the Constitution, regulate the activity of state agents (legislators, judges, police officers, public school officials, and executive officials). The Establishment Clause of the First Amendment does not require my obedience in my capacity as a private citizen, though I have a strong interest in seeing legislators comply with it and judges uphold it. To produce law *qua* law (i.e. a vertical command that makes a valid obedience claim), state agents must obey secondary rules. A uniform, undifferentiated requirement to obey cannot analyze this link between official obedience and legal validity, nor do existing principles of obligation provide an adequate foundation for official obedience.

Existing theories do not account for a basic distinction between substantive and procedural laws, which regulate fundamentally different types of activity. Substantive laws govern individual behavior: they define criminal offenses for which the state may prosecute individuals, as well as the civil duties and responsibilities of individuals, including property rights, torts, contract provisions, and regulations on business activity. In the United States, substantive laws come in criminal, civil, and regulatory forms. Civil and criminal law claim govern conduct in nearly every area of daily life. Regulatory or administrative law sets out the rights and responsibilities of individuals in their capacity as government agents, delineating the spheres in which they are licensed or required to act. In contrast, procedural law stipulates how individuals must exercise state authority and enforce protected individual rights against the state. Procedural laws, such as the procedural rules of federal and state courts, sets rules for how government agents enforce the legal rights and duties laid down by substantive law, how individuals pursue legal remedies, and how new substantive laws can be made. In building

political obligation on an extremely limited understanding of obedience, theorists disregard the fundamental concerns that political obligation emerged to address: the need to justify and constrain authority over free and equal individuals.

A uniformly applicable requirement to obey all substantive laws cannot address vital features of American government. Existing theories of political obligation do not distinguish legal claims on individuals in their everyday lives from those on individuals acting in an official capacity (such as requirements that law enforcement agents follow procedure, or that legislators comply with campaign-finance laws and follow existing rules in proposing legislation). They are solely concerned with the ordinary individual's requirement to obey substantive laws: they hold that the state may justly enforce compliance behavior or impose punishment when an individual breaks the law. However, individuals may incur requirements to obey procedural laws if they claim rights and remedies via legal action, or occupy public office. Further, enforcing the law itself involves obedience: state agents must themselves obey substantive and procedural rules governing law enforcement. Obedience is thus a central aspect of the state's police power – its legal responsibility for maintaining public order. Indeed, the bulk of modern legislation is meant to guide government administration, not govern individuals' nonpolitical conduct (Krygier 2010, 133). In reality, then, many laws do not demand obedience from the general citizenry at all, but instead govern the use of state authority. But because the obligation literature only considers those laws that demand *general* obedience, it cannot investigate the obedience involved in the lawful use of political power.

An example will illustrate the multiple types of obedience involved in a seemingly straightforward law. Homicide is a crime in all 50 American states. All individuals within their jurisdiction must obey homicide laws. Existing theories only consider this individual dimension

of obedience: the only form of disobedience they aim to prevent is individual breaches of the criminal law. However, to produce valid homicide laws, legislators must obey procedural laws that establish secondary rules of recognition and change.

Further, many legal requirements are dormant until activated by an action of a state agent or a private citizen, or activated only when an individual breaks a law. A homicide induces the state to exercise its police power, and thereby precipitates legal claims on agents of the state's criminal justice system. These requirements reflect the network of procedural laws and secondary rules that make law intelligible and enforceable. Police officers must obey procedural rules grounded in the Fourth Amendment, relevant case law such as the *Miranda* case, and relevant statutes when investigating that crime. Police must also obey judicial orders, since most police searches require a search warrant issued by a judge. Further, investigators and prosecutors must comply with laws establishing jurisdiction. Only a designated agent of the government entity with jurisdiction over the crime – a prosecutor – may bring criminal legal action against a suspect. During the trial, the prosecutor must obey the rules of criminal procedure and evidence that apply in that trial venue. Prosecutors must meet the burden of proof to win the case, but the judge and jury are the ones actually required to obey this standard by applying it in their decision-making. Witnesses must obey the subpoena to appear, swear an oath to testify truthfully, and provide testimony. Jurors must obey the summons to jury duty, arrive at the appointed time, and serve as instructed. Judges must enforce the relevant procedural rules. The verdict demands compliance as well: from the defendant, who must either obey the court's sentence or obey the rules for appealing the verdict, and from government agents who execute that sentence. If the case goes to appeal, the appeals court may not act a fact-finding body, but can remand cases back to courts of original jurisdiction for further fact-finding.

Becoming a state agent (a police officer, prosecutor, or judge, in this example) itself demands obedience from the agent-to-be. Individuals must assume special legal responsibilities that apply to their official capacity and conduct. State Bar associations operate under the supervision of the state's highest court to regulate the licensing and conduct of lawyers, and stipulate legally binding professional ethical standards for judges and lawyers. State judges "are bound by the supremacy clause of the Constitution to apply federal law as the 'supreme law of the land' ...[and] also take an oath to enforce both the U.S. Constitution and the constitution of their own state. In this respect they serve two sovereigns" (Van Dervort 2000, 71).

As this example shows, the reigning view of obedience does not adequately capture the claims that laws actually make. The law claims obedience from differently situated people differently, and the obedience of the agents who make, interpret, and enforce law is necessary to the legal system's operation. Obligation theory focuses solely on citizens' obedience, but entire areas of the law, notably procedural and administrative law, require obedience from government agents *while engaged in the act of governing*. To lawfully exercise government power, government agents *must* obey such laws. The prevailing view forgets an essential feature of the liberal paradigm in which it operates: that state power and authority must be constrained by law, and exercised within lawful limits.

The reasons that individuals should obey when using governmental power are not the same reasons that ordinary people should obey substantive laws. Two features set the requirements on state agents apart from those incurred in other social positions. First, one must actively obey procedural laws to become a state agent. Second, state agents are uniquely licensed to exercise coercive power. Official obedience to law *as such* is necessary for a stable,

maximally impartial legal system and a state that respects the limits of its own authority.⁴⁶ Thus, obedience claims that address state agents rest on different grounds. The coercive power that state agents may exercise gives them normative reasons to comply with procedural rules and legal limits on their power above and beyond the reasons ordinary people ought to comply. The reasons that police should follow legal search procedure differ from the reasons that individuals must comply with such searches: the police officer's executive power creates additional normative *and* pragmatic reasons for compliance, which do not apply to ordinary individuals.

Defining 'Compliance'

Finally, while obedience theories of obligation presume that all laws clearly dictate a single way to comply, laws often allow individuals to choose *how* they will comply. Theories of political obligation often use the requirement to pay taxes as a specific example of the obedience they hope to ground. They depict this requirement in simple binary terms: either one pays taxes, or one does not. In practice, however, fulfilling this requirement is *not* simply a matter of whether one pays taxes, but *how* one navigates the enormously complex process. As anyone who has filed a tax return knows, paying taxes involves choices about exemptions, deductions, investment earnings, and whether a married couple files jointly or separately. These options mean that individuals can comply with tax law in substantially different ways.

Specific laws define 'compliance' differently: they can offer guidance or issue imperatives. For example, criminal laws issue imperatives, while sentencing guidelines and the enabling acts that create government agencies issue broad directives, which executive agents must translate into concrete policy.⁴⁷ Consider the National Aeronautics and Space Act of 1958,

⁴⁶ As such, "the idea of a rule of law demands the authorities' discipline on a much wider range of topics than mere obedience. Of subjects it demands obedience only" (Gans 1992, 6).

⁴⁷ On this role of public officials, see Yates Jr. 1981 and Warwick 1981.

which laid out eight objectives that together constituted American space policy and established NASA to carry that policy out. Per this law, “aeronautical and space activities of the United States shall be conducted so as to contribute materially” to at least one of the policy objectives stipulated in the Act (National Aeronautics and Space Act 1958, §102c). These objectives were quite broad: for example, the first four were

- (1) The expansion of human knowledge of phenomena in the atmosphere and space;
- (2) The improvement of the usefulness, performance, speed, safety, and efficiency of aeronautical and space vehicles;
- (3) The development and operation of vehicles capable of carrying instruments, equipment, supplies and living organisms through space;
- (4) The establishment of long-range studies of the potential benefits to be gained from, the opportunities for, and the problems involved in the utilization of aeronautical and space activities for peaceful and scientific purposes (§102c1-4).

To carry out this law, NASA officials had to choose both the actual programs by which the agency would pursue these objectives, and the procedures for implementing those substantive policy choices.

Further, the standards for obedient behavior vary greatly across different laws. The prevailing view captures the obedience claims made by *certain* types of laws (i.e. those that clearly prohibit or require a single specific action). Some laws, such as laws against homicide, dictate a single acceptable way of complying (e.g. not committing homicide). Homicide laws impose a clear negative requirement on individual action, and disobedience is easily identified. Driver-licensing laws stipulate equally clear positive requirements: to lawfully drive, one must apply for a permit, practice with a licensed driver, and pass a road test. Finally, some laws, like statutes of limitations, place constraints on pursuing legal remedies that cannot be disobeyed.

However, with many laws it is not so easy to determine what constitutes obedience, because they accept a range of actions that fulfill the requirement to comply. Some laws, like legal limits on individual campaign contributions, allow individuals substantial discretion over how they comply. Individuals may comply by donating any amount of money that does not exceed legal limits, or by not donating at all. Contract law allows similar leeway: it stipulates how individuals undertake, through private agreement, legally-binding, enforceable requirements to perform specific actions, how these requirements may be legally dissolved, and how the state may enforce them. Individuals have considerable freedom to create and modify the substantive terms of specific contracts. Parties to a contract also retain the power to modify or dissolve the contract entirely. To comply with contract law, individual parties must adhere to procedural requirements in generating and dissolving a contract, must contract to perform actions permitted by law, and must perform those actions unless the contract is altered or dissolved. Finally, binding court decisions and procedural laws frequently present more than one way to comply. As we saw in the homicide example, after the trial the defendant can either accept the verdict and sentence, or appeal it. Both actions equally satisfy the requirement to comply, provided the defendant follows legal procedure for appealing. Though the individual's power to decide *how* to obey is an ineluctable feature of a great many laws, the prevailing view of obedience cannot accommodate it. As a result, theories built on that view are incomplete.

The ability to choose *how* to obey is especially important when we recall that laws claim obedience from government agents as well as ordinary individuals. The obedience of state agents is the essence of constitutional government: government power is granted, directed, and limited by the fundamental law of the land. Many laws allow government agents to choose how they will obey. Prosecutors and defense attorneys enjoy substantial leeway in how they fulfill their

respective legal requirements when plea bargaining, for example. Prosecutors are not required to file criminal charges in every possible case: indeed, their most important discretionary power is *nolle prosequi*, which is “a formal entry on the record by the prosecuting officer declaring that the officer will not prosecute the case further” (Van Dervort 2000, 238). State agents also exercise their ability to choose how to obey when determining what laws require: for example, prosecutors decide which crime(s) to charge a suspect with (e.g. homicide or manslaughter). Most importantly, individual judges and jurors *must* determine what the law requires when applied to specific cases.

A general ‘requirement of compliance’ is empty because legal requirements, whether in statutory, constitutional, or case law form, are not self-evident objective truths, but the product of human judgment. Laws and legal requirements acquire their meaning through authoritative *interpretation* of law by public officials, who must also interpret their own position as agents of law. Judges, for example, must interpret the meaning of their legal requirement to uphold and enforce the Constitution to determine how they should conduct themselves. This presents something of a paradox. Though “the law’s assessment of compliance correctly does not turn merely upon whether one has complied by one’s own lights” (Shiffrin 2010, 1228), in practice judges determine the standards for fidelity to procedural and constitutional law in the courts. Judges flesh out legal requirements, including the requirements they themselves must meet in their official capacity, based on their interpretation of the specific laws they deem relevant. In applying the law, judges must decide which aspects of precedent are relevant, and “[w]here precedent does not immediately settle the matter, further thought, argument, and discourse may be required” (ibid). Specific requirements to obey, then, are the product of authoritative

interpretation of law by government agents who simultaneously interpret and enact the legal requirements that attach to their office.

The complexity of the American legal system introduces another dimension of obedience that is entirely absent from the prevailing view. The use of state power must conform to the constitutional hierarchy of the laws and courts, which is further complicated in the United States by federalism. Conflicts between specific laws are inevitable in a federal system, which has multiple sources of law and overlapping jurisdictions. A theory that asks only if obedience should be given or withheld cannot tell us *which* law we should obey when overlapping jurisdictions make competing claims. In practice, courts must decide which law prevails when different sources of law conflict. Legal principles for resolving these conflicts, such as federal and constitutional supremacy, demand compliance from lawmakers, law enforcement agents, and judges. The Supremacy Clause, the Constitution, and rules regarding jurisdiction claim an obedience that is fundamental in practice.⁴⁸ The overarching principle for deciding conflicts between laws – that the more fundamental law prevails – imposes important but generally unnoticed requirements to obey.⁴⁹ When the Supreme Court declares an act of Congress unconstitutional, it claims obedience from Congress and the executive branch, grounded in the federal Constitution's priority. Similarly, state prosecutors and judges must cede cases to federal courts when asked if both jurisdictions overlap.

While existing obedience theories assume that laws impose clear-cut requirements on individuals, the meaning of the Supremacy Clause, the Constitution, and jurisdictional rules in

⁴⁸ On this point, see Orren 2000.

⁴⁹ In the United States, the most fundamental law is the Constitution, followed by acts of Congress and treaties, federal common law and equity, state constitutional law, state statutory law, state common law and equity, and finally contracts.

particular cases is itself often disputed by reasonable people. Judgments about which law is superior are the product of a rule-governed *decision* (involving an interpretation of the order of superiority) by the appropriate judicial authority. Determining who has jurisdiction involves interpretation by the courts and negotiation between state agents in overlapping jurisdictions. State agents make the decisions that resolve these often-competing legal claims into a coherent set of requirements. In other words, legal requirements are the product of human judgment.

Though notions of federal and constitutional supremacy are fundamental to the American legal system, a general, comprehensive requirement to obey the laws *as such* cannot assess their unique role. It is not sufficient to claim that a requirement to obey all laws that claim one's obedience encompasses a requirement to comply with the court's judgment. This claim conflates a requirement that ordinary individuals comply with the court's judgment, and a requirement that judges obey rules for interpreting law. However, the judge's compliance with such rules bears on whether the court's claim on our obedience is valid.

More broadly, the individual acts that produce new statutes, set new precedent, and alter existing laws are not always compelled by a prior legal requirement. State agents and private citizens can choose to bring *or* forgo legal action. Someone must successfully bring a test case to the Supreme Court before the Court can declare a statute unconstitutional, but there is no legal requirement that all individuals with standing to sue actually file a suit. Individuals undertake a requirement to obey the procedural laws involved in pursuing legal action by freely choosing to file suit. Prosecutors are only required to obey jurisdictional, discovery, and criminal-procedure rules after choosing to prosecute a case. When jurisdictions overlap, federal courts do not exercise their right to assume the case, and no other legal requirement stipulates the jurisdiction

whose law should apply,⁵⁰ litigants and prosecutors may file their case in either jurisdiction. Their choice creates the requirement to comply with that court's procedural rules. This requirement allows substantial room to choose how to obey.

In short, the meaning of obedience is not fixed, as the conventional wisdom holds, but mutable, varying according to the specific law and the means chosen to comply with it. A theory that tells us why we should obey the claims of law as such *cannot* address the obedience necessary in generating, interpreting, and defining legal requirements because it sees the discretion laws permit as a subsidiary issue to the question of whether we should perform some compliant act at all. A general requirement to obey all laws as such cannot account for the individual's power to decide *how* to obey. Further, the legal claims on individuals in a constitutional government come from a number of different sources. Resolving these often-competing claims into a coherent set of requirements entails significant interpretation by authorized state agents, and many of these requirements still admit a great deal of latitude in the method of compliance. Many procedural laws require state agents to interpret the meaning of compliance itself. A general, comprehensive requirement to obey law *as such*, though, cannot admit that the meaning of obedience is always constructed by rule-bound interpretation, nor say how such interpretation impacts our requirements to obey.

Disaggregating Justification

As Klosko and others have shown, the assumption that a single principle can, and must, justify general, comprehensive obedience is untenable because laws merit obedience on a variety of grounds. Laws are created to serve a variety of purposes. The reasons that support a justified

⁵⁰ E.g. a choice-of-law clause in a contract.

requirement to obey one type of law may not apply to another: natural duty might ground a valid requirement to obey morally-justified laws, for example, but not procedural laws, which might be more productively justified on consequentialist grounds. There may be more than one morally-adequate procedural rule for a given situation, but we must all settle on and abide by the same rule if it is to effectively serve its purpose. Thus, a defense of obedience must not only address the grounds of specific obedience claims: it must also account for the fact that the stakes, function, and (most notably) the justification for procedural laws differ from substantive laws.

Existing theories, however, do not distinguish individual requirements to obey laws with morally-justified content (such as laws against murder) from purely formal procedural laws (such as those dictating how individuals register to vote, file civil suits, and apply for building permits), or from laws that promote public order by solving a coordination problem (such as laws dictating which side of the road we drive on). Instead, such theories have thoroughly documented the limitations of rival principles, which has discredited all extant attempts at a comprehensive single-principle theory of obligation, but has not successfully grounded general, comprehensive obedience or legitimacy.

In practice, laws claim compliance on a variety of grounds, and the justification for one obedience claim might not apply to another. While some laws, like laws against violent crimes, coincide with innate moral requirements, many important laws do not. The fact that killing another person is an unspeakable moral wrong might be the primary justification for obeying laws against homicide, for example, but it is irrelevant to whether we ought to obey the Federal Rules of Civil Procedure. Compliance may be instrumentally necessary, as with laws that solve large-scale coordination or cooperation problems.⁵¹ Compliance might be required by

⁵¹ For a sophisticated defense of the instrumentalist conception of law, see Green 2010. On his interpretation of the instrumentalist thesis, “law’s means are more important in identifying law as a social institution than are law’s ends.

considerations of justice, as with redistributive taxation. Justice might be able to ground a broader requirement to cooperate with “those practices and institutions without which a background condition of equal freedom between individuals would be impossible” (Stilz 2009, 34) though a moral requirement to critically reflect on those practices likely accompanies such a requirement to cooperate. Finally and perhaps most importantly in a liberal democracy, compliance might be required by the ideal of limited government, as with procedural law. Thus, attempts to defend a general, comprehensive requirement to obey with a single principle, such as fairness or duty, cannot succeed.

The preceding analysis also undermines the nearly universal assumption in the literature that requirements to obey have to be justified on consistently voluntarist or consistently non-voluntarist grounds. Compliance might be required by a prior voluntary act, as with contract laws and the common-law and procedural rules that judges are expected to follow after swearing an oath of office, but other forms of obedience, such as compliance with FDA food-safety regulations and laws against homicide, might be required on non-voluntary grounds. This point is crucial to reframing political obligation, and plays a major role in future chapters.

While it seems that Klosko deploys a variety of principles tailored to specific obedience requirements, his approach is not actually a multiple-principle theory at all, but rests on a single principle: necessity. Klosko’s argument turns on the necessity of state-provided public goods: “[t]he fact that individuals require state services in order to lead acceptable lives suggest that moral requirements to obey the state are grounded in benefits it provides... obligations to obey the law are bound up with our need for the law, or, more precisely, with our need for the services that are provided through the law” (Klosko 2005, 60). Klosko distinguishes the laws we must

Law *has* ends and law should serve *good* ends. Perhaps law should serve good ends as part of the nature of law. But what makes law special are the means by which it serves those ends” (Green 2010, 173).

obey and those we may disobey based on whether they serve a sufficiently important purpose. Since “political obligations are rooted in receipt of *essential* public goods (and other significant benefits) from the state,” he claims, laws that do not serve “legitimate [i.e. essential] purposes” impose no obligation to comply (250). The reason we owe support for public goods provision to the *state* and not some other association is because the state is the only entity capable of providing them (248). However, the principle of necessity can’t explain why we need to comply with state obedience claims *as the state decides to make them in particular cases*. Public officials and legislators have substantial discretion in determining the specific form that laws and policies take. The necessity argument falters in the face of this unavoidable contingency in the means by which states provide public goods. Klosko’s argument identifies specific requirements on individual action, but not *why* the state is allowed to set the terms of those requirements *unilaterally*, through contingent exercises of discretionary authority.

However, existing principles of political obligation cannot support an undifferentiated requirement to obey even in combination, because compliance as such is not the primary object of any of them. Consent, fairness, duty, and necessity often require either much more or much less than minimal compliance with the letter of the law. One may consent to requirements beyond obeying the law. Similarly, fairness does not require compliance *as such*: it requires that we comply *fairly*. It cannot ground requirements to comply with unfair laws or in unfair ways. Multi-millionaires who use tax-code loopholes and offshore tax shelters to minimize the amount they pay in taxes fulfill the simple requirement to comply with law, but cannot plausibly be said to comply *fairly*. Like fairness, duty-based arguments speak to broader questions of what we owe one another in politics, rather than why we ought to obey. This is most obviously true of a Rawlsian natural duty to support just institutions. The content of such a duty – the specific

actions that a duty to ‘support just schemes’ requires – is unclear.⁵² It is difficult to tell whether supporting just schemes entails obedience to their commands, active participation in those schemes, or the performance of deeds in the sphere of private interpersonal relations, such as instilling civic virtue in one’s children or encouraging others to contribute to the scheme.⁵³

Further, existing principles may require *disobedience* under certain circumstances. Consent, fairness, and natural duty generate horizontal obligations to exercise one’s “right to dissent, to engage in public protest, and even to perform acts of peaceful civil disobedience, all of which can be seen as attempts to persuade their fellow citizens that the laws are deficient as an interpretation of what equal freedom ideally requires” (Stilz 2009, 98). But admitting that the laws may be deficient (and that ordinary individuals can judge this deficiency) takes us out of the realm of a general, comprehensive requirement to obey laws *because they are laws*.

While an argument from positional duty may be able to explain why individuals who voluntarily assumed an office ought to obey in their official capacity, this is not equivalent to a general, comprehensive requirement to obey. Positional duty arguments only apply to individuals who inhabit pertinent social roles, and associative obligations only bind those who participate in relevant social activities. Associative obligations “are not owed to everyone: they are special obligations owed to other members of a particular group or association” to which one belongs (Horton 2010, 148). To the extent that the argument from positional duty succeeds, it indicates that a one-size-fits-all view of obedience is untenable. But an argument from positional duty is not sufficient to show why obedience matters, nor to ground a disaggregated defense of obedience.

⁵² Simmons also makes this point, though he differs on the specifics. See Wellman and Simmons 2005, 157-8.

⁵³ This point is equally pertinent to consent- and fairness-based theories of obligation.

Further, positional duties and associative obligations may require actions other than obedience. Many officeholder obligations extend beyond minimal compliance, and require interpretation of the law or the use of discretionary authority. The primary positional duty of a judge, for example, is to come to some reasonable decision about the meaning of law in specific cases. The judge's positional duty does not specify what counts as a reasonable decision: this issue is subsidiary to the judge's positional duty to come to such a decision. However, the reasonableness of a decision is *not* subsidiary to whether we ought to comply with it. Judges fulfill their official duties by making judgments about the meaning of laws, the parameters of reasonable interpretation, the scope of their authority, and the state's powers to act. Because judges, legislators, bureaucrats, and law-enforcement agents give shape to ordinary individuals' legal requirements by fulfilling their own positional duties, the way they discharge those duties matters. By fulfilling their positional duties properly, state agents not only determine what laws require, but create a reason that we must comply with those requirements. If we allow that arguments from positional duty may explain *some* requirements to obey (though not others), we must concede the larger point that 'obedience' must be disaggregated to successfully explain when and why we ought to obey.

The reasons to distinguish between laws that impose moral requirements to obey and those that do not – to keep state power within acceptable limits, and prevent misuse of the state's coercive power – also support disobedience when necessary to avoid perpetuating injustice. Considering *why* we ought to comply with particular laws indicates *whether* we ought to comply. If the purpose of specific obedience claims determines whether compliance is morally required, then, as Klosko points out, it is not morally required to comply with laws that do not serve

morally-required purposes. Indeed, if a law or state policy undermines one of these purposes, this fact may impose a moral imperative to actively resist it or seek its repeal.

Implications for Political Obligation

The foregoing analysis yields three conclusions that fundamentally challenge the prevailing approach to obedience. First, existing principles cannot ground a vertical requirement of general, comprehensive obedience owed *to the state* rather than a horizontal requirement owed to one's fellow citizens, which precludes them from sustaining a comprehensive vertical requirement to obey even in combination. An obligation to the state cannot be said to represent a horizontal obligation to one's fellow citizens, because vertical obligations are uniquely backed by the state's coercive power. A state may coerce its citizens in ways that it prohibits ordinary individuals from using. Ordinary citizens cannot force others to discharge a horizontal obligation by imprisoning or threatening violence against them: the state punishes such behavior. Ordinary citizens may use persuasion or social sanction (shame, ostracism, etc.), but if these fail, they must use legal avenues to force others to discharge horizontal obligations. The leap from horizontal to vertical obligation requires a closer look at how the state differs from the individuals within it.

For the purposes of this discussion, I will bracket the question of whether existing principles yield obligations in the technical sense (i.e. voluntarily-assumed binding requirements) and focus instead on the distinction between vertical and horizontal requirements. My present claim is that existing principles ground horizontal rather than vertical requirements, *not* that they fail to ground a voluntarist vertical obligation to obey because they are non-voluntary principles (though the latter is also true). This indicates the need for a distinction between horizontal

obligations and the non-voluntary, unchosen horizontal bonds without which no society could exist, a point that I discuss in subsequent chapters. As I will now show, consent, fairness, and natural duty do not generate requirements owed specifically to the state; they generate moral requirements vis-à-vis other people, independent of coercive authority structures. These moral requirements are horizontal: they stipulate what we owe to other individuals, not what we owe to the state. As such, they are not necessarily requirements to *obey*, since we may owe others much more or much less than laws require.

The horizontal requirements that stem from individual consent acts differ from a vertical requirement of general and comprehensive obedience owed to the state. Consent is grounded in our ability to make morally meaningful commitments to other people, which we must then perform. Contractual obligations, for example, rest on voluntary, reciprocal moral commitments between the parties to the contract. Consent between persons generates valid *horizontal* obligations between persons, which stipulate the mutual requirements each party assumes. Such acts of consent do not automatically establish a general, comprehensive vertical requirement of obedience. The question of *why* the state should claim the power to enforce consent remains unanswered. Although most would agree that the state must protect active consent in interpersonal relations, in itself this protection is not sufficient to create a general, comprehensive, vertical requirement of obedience. Further, while certain consent acts, such as the oath one swears before testifying in court or voluntarily assuming an office, may be said to generate a specific vertical requirement to obey, consenting to obey *one* law does not generate a requirement to obey *all* laws. The principle of consent only requires that we obey those laws and discharge those official obligations to which we have consented.

Moral requirements to obey grounded in fairness, such as a requirement to contribute one's fair share to public goods by paying taxes, rest on similarly horizontal grounds. We must fulfill such requirements out of fairness to others, who are also expected to contribute. The requirement to pay taxes is a horizontal moral requirement owed to fellow taxpayers to abide by the same tax laws, not a vertical requirement to obey the agency that collects and distributes tax revenue. A principle of fairness cannot derive a vertical requirement to obey the state from this horizontal requirement without further argument. One might argue that fairness does provide vertical grounds for this requirement: that obedience is the properly fair response that individuals owe the state for protecting the rule of law that enables the scheme to proceed. Indeed, Klosko's defense of fairness hinges on his claim that individuals owe obedience to the state because the state supplies benefits vital to acceptable lives. However, as I argued above, this is an argument from state necessity rather than fairness. Further, the requirements generated by fairness in that situation are entirely horizontal: fairness demands that we contribute to the scheme *fairly*, in a way that mirrors the contributions of others, i.e. by paying a fair share relative to our own situations. I return to this issue in the chapter on philosophical anarchism with a discussion of reciprocity norms and social order.

What matters from the standpoint of fairness is the content of our action – the *way* we comply with the law – rather than the formal fact of compliance. Obeying the authority that coordinates cooperative schemes is not the only possible way to satisfy the moral imperative of fair cooperation, nor is it necessarily the best one. Even if one claimed that we owe obligation both to our fellow citizens and their authorized agents, the principle of fairness does not explain how this authorization occurs. It is unclear, for instance, why one would be obligated to obey agents authorized exclusively by other citizens. After the initial foundation of a legal system, the

cooperation of one's fellow citizens confers the benefits of the rule of law. Thus, we might see the founding generation of a polity as obligated to obey the state, but subsequent generations owe this benefit, and thus the obligation, to mutual compliance among citizens.⁵⁴ Even this reading is problematic. It is not clear that even the founding generation owes an obligation to the *state* rather than to the individuals who devised it.

Duty-based accounts struggle to establish a requirement to obey one's own state because the claims of natural duty apply universally by virtue of our humanity. In the most sophisticated recent natural duty account of political obligation, Anna Stilz contends that territorial, residential, and citizenship obligations are all "grounded on the belief that the existence of separate states makes some moral difference to what we ought to do" (Stilz 2009, 6). The natural duty of justice is "a duty to a) cooperate in the state's coercive imposition of a unitary scheme of rights and duties, by obeying the law and paying taxes; and b) to do our part to see that the scheme we impose is a just one, by forming a shared intention to participate in the democratic process that defines these rights" (198). Stilz's natural duty principle is thus able to permit disobedience, and ground requirements to disobey. However, this principle rests on horizontal grounds: as a duty of *justice*, it recognizes requirements to obey based on whether they treat one's fellow citizens *justly*, and whether obedience promotes just outcomes. Obedience claims are valid only when they meet an essentially horizontal criterion of justice.

Consequentialist principles, such as the principle of state necessity that supports all of Klosko's subsidiary principles, fare better than consent, fairness, and natural duty in providing a specifically vertical justification of obedience claims, but face their own challenges. As we have seen, horizontal moral requirements are the primary justification for many laws, rather than

⁵⁴ Claims of this type have themselves come under theoretical attack. As critiques of contract theory stretching back to Rousseau have shown, the notion of an initial movement out of nature into civil society is a fiction.

necessity. Further, the necessity of particular state functions, such as the rule of law and public order, does not in itself establish a justification for general and comprehensive obedience: it only justifies *necessary* obedience. To require compliance in state functions beyond the strictly necessary, we must look beyond a principle of necessity.

Second, the preceding analysis shows that the conventional belief that the requirement to obey must be general and comprehensive is untenable. In other words, I take a slightly different view of the deeper problem than Klosko. While Klosko is correct that a single principle cannot satisfy all of the criteria for a successful theory of obligation, the limits of existing principles preclude any attempt to defend general, comprehensive obedience simply by combining them. Thus, I submit that the persistent failure to meet accepted theoretical standards for political obligation has a more fundamental source: the standards of theoretical success themselves. While existing theories of obligation explicitly reject a requirement to obey unjust laws, they cannot explain when and why disobedience is justified without retreating from fully general, comprehensive obedience. A requirement to obey *just* laws, rather than *all* laws, must appeal to a principle of justice to distinguish just from unjust laws. This raises larger questions about what counts as just and who authoritatively determines standards of justice, which cannot be answered purely in terms of legality. Allowing individuals any power to determine which laws are unjust, as some theories do, is incompatible with a general, comprehensive requirement to obey law *because it is law*, for which individuals must, by definition, subordinate their judgment to the authoritative judgment of the state. Recognizing extralegal standards of justice dilutes such a requirement, since it undermines the conclusiveness of authoritative commands.

Unlike the prevailing approach, a differentiated conception of law lets us analyze the reasons that override requirements to obey and thus defend principled (rather than ad hoc) limits

on obedience requirements and state power. To be sure, the principle of fairness can be used to critique unfair laws and forms of compliance, just as natural duty can ground critique of unjust laws. Fairness and natural duty likely require individuals to *disobey* and perhaps even actively oppose laws that permit or promote race- or gender-based discrimination, for example. Existing principles of obligation may well indicate how we ought to comply when the law presents multiple options. They may also have a role to play in a broader account of what we owe to the state that tells us not only that we ought to comply, but how we ought to comply, and why certain forms of compliance are superior and others are inadequate. But to the extent that existing principles of political obligation allow critical reflection on the quality of specific laws and legal requirements, they are at odds with the purported goal of general, comprehensive obedience.

This raises the final, ineradicable problem with the prevailing view of political obligation. A requirement to obey law *as such* cannot rest on reasons that do not apply to law *as such*: to every single type of law. An argument for a truly general, comprehensive, vertical requirement to obey cannot consistently acknowledge that different laws merit compliance for different reasons *and* defend a requirement to obey law *because it is law*, since an argument for truly general, comprehensive, vertical obedience must refer only to universal features of law (i.e. the fact that laws claim obedience, or the way law is produced). However, the distinction between obedience to secondary (or procedural) rules necessary to produce law, and the obedience that primary (substantive) rules demand is an essential, universal feature of ‘law as such.’ This distinction is the defining feature of law. It allows us to distinguish laws from decrees and arbitrary exercises of power, and explain why we may disobey improperly produced laws. Thus, to explain what makes law *law*, we must (at a minimum) recognize this distinction. Laws come from state agents whose choices also define their own requirements to obey. An undifferentiated, all-or-nothing

requirement to obey, though, cannot recognize that the obedience necessary to generate new laws differs qualitatively from obedience to existing substantive laws. Thus, a general, undifferentiated requirement to obey all laws is both indefensible and conceptually incoherent.

A requirement to comply with all laws *as they require* is indefensible not only because we want to be able to reject unjust legal requirements, but because the reasons to obey substantive laws *as they require* differ from reasons to obey procedural laws *as they require*. Reasons for the former may include general moral principles, the value of authoritative solutions to coordination and cooperation problems, or the pragmatic point that compliance with primary rules is necessary for social order and stability. Requirements of the latter type, however, stem from the concept of law, and rest on additional, uniquely political grounds: namely, that limited government and the rule of law require this form of obedience. The reason we ought to obey secondary/procedural rules is both normative (because such obedience is part of legitimately exercising political power) and a practical necessity without which ‘law as such’ would not exist. Understanding law *qua* law requires a differentiated account of the claims law makes.

Conclusion

If we take seriously the common claim that political obligation is a central question of political theory, the inertia of contemporary obligation theory is unacceptable. In this chapter, I argued that the persistent stagnation of obligation theory stems from an empirically unsatisfactory, undifferentiated conception of obedience. Practical analysis of obedience and law provides a strong case against two conventional criteria for a theory of political obligation: generality and comprehensiveness. Because the dominant conception of obedience bears little resemblance to the practical operation of law and authority in late-modern liberal states, theories built around it

cannot address vital aspects of law and the claims it makes on individuals. Such theories fail to perceive a meaningful difference between horizontal and vertical bonds. These problems decisively undermine existing theories of political obligation and call for a new approach to the question.

Though theorists cannot hope to defend a general, comprehensive requirement to obey with a single principle, a multi-principle theory violates the generality requirement. My analysis does not preclude a disaggregated defense of requirements to obey. Such a defense must account for the normative consequences of obeying law, which necessarily shape and constrain requirements to obey. Obedience imposes a moral requirement to reflect on the justifiability of laws because the state's authority "is not a once and for all endowment or the inherent property of an office; it is based on and sustained by the constant acknowledgement and acceptance of its subjects" (Parekh 1993, 240). Thus, "[t]o obey a law is to empower the government, to increase its ability to execute its will" (241).

Though a differentiated conception of obedience may well be defensible, it is *not* the proper object of political obligation. We must radically revise the goal of political obligation theory. The critics of obedience theories have credibly shown that "there are good reasons to move away from an understanding of political obligation as exhausted by a narrow duty to obey the law" (Horton 2010, 164). I will sketch an alternative account of political obligation, grounded on the unique ethical and practical importance of voluntarily-assumed binding political requirements in liberal-democratic politics, in future chapters. In contrast to the goal of justifying obedience, I will argue that a theory of political obligation must address both horizontal and vertical obligations, and further, that analysis of vertical obligation must consider whether and how the state might be obligated, and what those obligations would entail.

“There has been a time when the element of spontaneity and individuality was in excess, and the social principle had a hard struggle with it. The difficulty then was, to induce men of strong bodies or minds to pay obedience to any rules which required them to control their impulses...But society has now fairly got the better of individuality; and the danger which threatens human nature is not the excess, but the deficiency, of personal impulses and preferences. Things are vastly changed, since the passions of those who were strong by station or by personal endowment were in a state of habitual rebellion against laws and ordinances, and required to be rigorously chained up to enable the persons within their reach to enjoy any particle of security.” – J.S. Mill, *On Liberty*

Chapter Two

Voluntarism, Responsibility, and Freedom

In this chapter, I defend two theses that support an alternative response to the ‘voluntarist paradox’ of political obligation. First, I argue that political obligation should be seen as one specific, voluntary type of what I call ‘binding requirements’ in political life, a broader category that also includes non-voluntary duty. Unlike existing theories, which hold that the citizen-state bond must either be entirely voluntary or entirely non-voluntary, I defend a semi-voluntary conception of the state: the underlying citizen-state relationship is non-voluntary, but many of the actions individuals take within that relationship are voluntary.⁵⁵ Below I develop a typology of binding requirements to act, and define an obligation as a requirement undertaken through some prior voluntary act to perform (or refrain from performing) some action. An obligation is a claim that one ought to act in a particular way for reasons that do not derive directly from the intrinsic moral quality of that action, but rather derive from the moral significance of voluntary action.

Second, I argue that a general, comprehensive requirement to obey cannot be the object of political *obligation* because it is conceptually incompatible with obligation’s defining feature:

⁵⁵ As I discuss below at pp86-87, this point draws on Joseph Raz’s notion of semi-voluntary obligations.

voluntarism. For most theorists, political obligation is a matter of justifying restriction of individual freedom. By contrast, I argue that a stringently voluntarist conception of political obligation concerns the variety of activities one can voluntarily undertake a requirement to perform, rather than a uniform *a priori* requirement of obedience. This definition rests on the way obligations are generated, and leaves the *content* (e.g. the specific action required) of political obligation open. Two features distinguish political obligations from obligation in general. First, obligations that create and sustain self-governing relations (whether in social, economic, familial, or overtly political spheres) are political obligations. Second, obligations assumed to affect structural, institutional, or social distributions of benefits, burdens, wealth, power, or opportunities for voluntary action are political obligations.

A revised account of political obligation would allow us to critically examine the state, construct a more precise theory of individual-state relations, and respond to the “general skepticism about the claims that have traditionally been made on behalf of state authority” (Stilz 2009, 29). As a result of the philosophical anarchist attack on political obligation, most theorists now believe that a voluntarist defense of legitimate authority is impossible. However, I will show that this apparently damning conclusion actually indicates a solution to obligation’s theoretical stasis: a theory of political obligation that is truly voluntarist, yet recognizes that in contemporary states, most requirements to obey, however justifiable, do not represent *obligation* as such nor stem from voluntary acts.

I begin by arguing that political voluntarism concerns the capacity for responsibility. I claim that a properly constrained voluntarist theory of political obligation can overcome the stalemate between proponents of obligation and philosophical anarchists. Next, I defend what I term ‘active voluntarism,’ which requires both the ability to make intentional choices, and the

provision of sufficient viable options. The third section proposes a ‘semi-voluntary’ conception of the liberal-democratic state. The fourth develops a typology of binding requirements to act. In the fifth and sixth, I address the relationship between voluntarist obligation and responsibility, and show that voluntarism and a general, comprehensive requirement of obedience are incompatible. In the seventh, I outline the distinguishing features of political obligations: relations involving political freedom and efforts to exercise it. Here I also discuss the difference between political obligation as such and obligations incurred in voluntarily assuming political office. The penultimate section considers the scope of political obligation. Finally, I discuss the benefits of this approach to political obligation: its critical but ultimately constructive attitude toward the state; its wider theoretical appeal; and its greater precision as a normative standard.

Voluntarism and Responsibility

A central concern of political theory is the tension between individual freedom and the demands of collective political action. Many attempts to reconcile the two rest on the notion that individuals are responsible for the consequences of their voluntary actions. Voluntarism lets us hold people responsible for a specific type of action: “a necessary condition for holding people responsible for their choices is that those choices be voluntary in the sense that they are not made because there is no acceptable alternative” (Olsaretti 2008, 112).⁵⁶

Because the capacity for voluntary action allows individuals to voluntarily commit right *and* wrong acts, it is a crucial *sufficient* condition for moral responsibility, though not a necessary one. Moral responsibility reflects an externally valid moral assessment of an agent’s

⁵⁶ This position is shared by a number of theorists who nonetheless diverge in their conception of responsibility. See, for example, Colburn 2008; Lenman 2006, 22; and Perkins 1972. On this “freedom-relevant condition” on responsibility, see Fischer and Ravizza 1993, 7-10.

actions in the past, or a judgment that some future action is morally required.⁵⁷ The two dominant notions of responsibility in the literature correspond to these two types of judgment (Young 2011, 39-40). The first of these, retroactive responsibility, focuses on blame-responsibility, which “involves crediting or debiting an agent with producing an outcome in a way that exhibits a moral fault or virtue” (Stilz 2011, 194-5) and renders the actor liable to punishment or to ‘reactive attitudes’ of blame, shame, and praise. By contrast, the second, prospective conception focuses on task-responsibility, which “assign[s] duties to people to repair a particular situation, even when they did not cause the outcome... in virtue of their voluntary membership” in the relevant association (Stilz 2011, 195). When we can choose how we fulfill task-responsibilities, they afford opportunities for voluntary action. What makes someone morally culpable is the fact that they *could have chosen* to do the right thing, but instead consciously chose to commit a wrong.⁵⁸

This view of moral responsibility grounds many important standards for legal responsibility, as well as prevalent intuitions about political responsibility. Voluntariness is a decisive feature of key standards for criminal, civil, and contractual responsibility.⁵⁹ Intent, for

⁵⁷ The literature on responsibility draws a basic distinction between moral and causal responsibility, which attaches to the “primary causal agent(s) of an event or state of affairs” by virtue of their causal role (Wolf 1993, 165).

⁵⁸ Scholars agree on this point, though they differ on what culpability entails. On some views, moral responsibility is distinct from social blameworthiness and practices of blaming. See Smiley 1992, 5. Others see a strong relationship between moral responsibility and moral praise and blame. See Skorupski 2010, 162-6. Skorupski contends that one can be causally blameworthy for an act without being morally blameworthy, and vice versa (163). Extenuating circumstances (for example, acting under duress, or prioritizing a more weighty moral claim at the expense of a lesser) can mitigate moral responsibility (163). Skorupski’s point here reflects a widely-held view that judgments of responsibility are not absolute, but are instead sensitive to both countervailing moral demands and the intent with which one acts.

⁵⁹ Some legal principles, like duress, self-defense, and consent, stipulate voluntarist criteria for incurring liability. The law also stipulates who is able to consent – in other words, who is able to voluntarily assume legal liability – with statutory-rape laws, standards for diminished responsibility, and contractual responsibility. Certain tax law violations accept mistakes of law as a defense against legal liability, owing to the complexity of the US tax code: the lack of willful intent to break the law here mitigates responsibility for one’s misdeed.

example, is what distinguishes murder, voluntary manslaughter, and involuntary manslaughter, and acting under duress mitigates responsibility for a number of crimes. The liberal-democratic conception of political freedom and the state that emerged from this thoroughly modern view of individual responsibility also explains why theorists traditionally sought a voluntary basis for political obligation. On the classical liberal view of legitimate authority, the individual's will must be implicated in state decisions in order to hold that individual responsible for the consequences of state acts. Contemporary versions of this position maintain that actual voluntary action is too stringent a standard for political responsibility. Instead, theorists have moved to hypothetical justifications, according to which states are morally entitled to pass on responsibility for their actions to individual members "when a justification for the state's rule could be offered to the member that he has reasons to accept" (Stilz 2011, 199).⁶⁰

Political Responsibility: A Weberian View

The previous chapter claimed that law itself is inherently a product of authoritative, interpretive decisions about the meaning of existing secondary legal rules. Similarly, in a liberal-democratic state, voluntary choices taken against the background of existing legal rules, institutions, and political constraints determine the content of public policy and government action. Thus, the public officials who shape public policy are more directly responsible for state action than the ordinary citizens whose habits of obedience enable the state to govern effectively. Politics poses distinct ethical challenges because it involves authoritative decisions in the face of conflicting, often irreconcilable moral claims. Inevitably, some claims – some claimants – end up on the losing side of such decisions. This aspect of liberal-democratic politics suggests that "perhaps the most essential courage in the public service is the courage to decide. For if it is true that all

⁶⁰ Hypothetical consent theories of political obligation, as well as David Estlund's account of democratic authority, fall into this category.

policies have bittersweet consequences, decisions invariably produce hurt” (Bailey 1965, 296). The central ethical challenge of political life is to find some way of acting responsibly in such situations. Here, a brief look at Weber will cogently illustrate the ethical singularity of politics, and the importance of voluntarism in thinking about political responsibility. While Weber effectively describes the ethical problem politics poses, his account of official ethics is incomplete because it confines political responsibility largely to leaders.

Politics, for Weber, is the struggle to control the authoritative decision-making procedures of the state, and political responsibility addresses how leaders ought to act in pursuing and exercising this control. As Weber knew well, in political life, “the achievement of ‘good’ ends is in many cases tied to the necessity of employing morally suspect or at least morally dangerous means... one must reckon with the possibility or even likelihood of evil side-effects” (Weber 1994, 360). Since the morally-right action on an individual level is no guarantee of morally-acceptable political outcomes, “[a]nyone wishing to practice politics of any kind... has to be conscious of these ethical paradoxes and of his responsibility for what may become of *himself* under pressure from them” (365).

Weber’s analysis of political responsibility focuses largely on the leaders who set party platforms and legislative agendas. Weber sees the modern political party as “the offspring of democracy, of mass suffrage, of the need for...mass organization, the development of the strictest discipline and of the highest degree of unity in the leadership” (338). With the advent of modern parties, “[f]ull-time’ politicians” – party leaders and “officials with a fixed salary” – supplant members of parliament as true agenda-setters (ibid). Within parties, Weber points out, “power lies in the hands of those who do the work *continuously* within the organization, or with those persons on whom the running of the organization depends:” party bosses, who control

resources necessary for party operations and keep rank-and-file party members in line through the promise of future resource allocations (338-9). Party leaders can “keep the members of parliament in check, and can even impose their will on them to a considerable extent” (339).

However, in the post-New Deal world, the growth of the independent bureaucracy and the complexity of government present two problems that a theory focused entirely on leaders cannot address. First, in large states with increasingly complex policy problems, party leaders cannot possibly master everything they need to know in developing their party’s platform. For this reason, political parties employ advisors with expertise in crucial policy areas (energy, foreign policy, education) to develop specific positions on political issues, pollsters to test how the electorate will respond, and lawyers to guide them through the complex legal regulations relevant to party operation. They *must* delegate some decision-making power, and thus some measure of responsibility, to these experts. A comprehensive analysis of political responsibility ought to take this feature of representative democracy into account.

Second, public officials play a vital role in translating broad statutory language into concrete government action. Weber argues that the calling (*Beruf*) of the official differs dramatically from that of the politician. The official “should not engage in politics but should ‘administer,’ and above all he should do it *impartially*... Thus, he should not do the very thing which politicians, both the leaders and their following, always and necessarily must do, which is to *fight*” (330). For Weber, officials are meant, above all, to obey:

When, despite the arguments advanced by an official, his superior insists on the execution of an instruction which the official regards as mistaken, the official’s honour consists in being able to carry out that instruction, on the *responsibility* of the man issuing it, conscientiously and precisely in the same way as if it corresponded to his own

convictions. Without this supremely ethical discipline and self-denial the whole apparatus would disintegrate (330-1).

To be fair, Weber's subject is political parties and party organization, not governance, and he wrote before the New Deal vastly expanded the scope of federal action and made domestic policy a huge part of government. In contemporary liberal-democratic states, however, "public policy is increasingly made by administrators, at the stages of both policy formulation and implementation" (Yates 1981, 33). Empirical studies have shown that "far from being cogs in an administrative machine, public officials exercise vast discretion in formulating and implementing public policies" (Warwick 1981, 93).⁶¹ Obedience to one's superiors does not capture what officials must do. This discretionary power means that public officials also exercise some control over the authoritative use of state power. Thus, questions of responsible political action apply to officials as well as leaders.

A top-down, wholly vertical concept of political action, in which leaders command, subordinates mechanistically implement those commands, and the masses obey, does not express what takes place in existing states. To address questions of political responsibility in contemporary political life, "we must lay to rest the notion that power is a fixed quantum entrusted to those at the top of a bureaucracy and dispensed in small parcels to those below. Power is created, destroyed, and applied at all levels of a public agency" (Warwick 1981, 125).

The Weberian view of political responsibility emphasizes the coercive capacity that always underwrites state action at the expense of recognizing state action's constructive dimension. Political associations, Weber claims, are distinct from other types of association because they alone involve the rightful use of physical force. It is this "specific means of

⁶¹ Yates 1982 is a classic analysis of the bureaucrat's role in public policy. For more recent assessments, see Krane 2007, Sheppard 2009, and Box 2007.

legitimate violence per se in the hands of human associations is what gives all the ethical problems of politics their particular character” (Weber 1994, 364). He famously defines the state as “that human community that (successfully) claims the monopoly of legitimate physical violence within a certain territory” (310-11). Politics, in Weber’s view, “means striving for a share of power or for influence on the distribution of power, whether it be between states or between the groups of people contained within a single state” (311). ‘Power’ here refers to the power to dominate others: to have others obey one’s commands. For Weber, then, politics is essentially coercive, and political responsibility is the responsibility for how we use coercive force, rather than for all the actions we take in political life. While the ability to coerce non-cooperators is always at least latently present when the state coordinates collective action, politics also proceeds by non-coercive means. As I argue below, horizontal cooperative political activity, as well as the state’s constructive influence over the conditions of economic and social cooperation and interaction, are vital elements of liberal democratic politics.

In a liberal democracy, we must consider the ordinary citizen’s political responsibilities, and investigate how they can and do exercise political power through voluntary action. A theory of political responsibility must address requirements to take care of existing situations resulting from prior voluntary acts (blame-responsibility), and opportunities for responsible action going forward (task-responsibility). Contemporary theorists who apply Weberian notions of responsibility to public officials do not fully recognize the democratic implications of attributing political responsibility to those who struggle for or exercise political power. Those who struggle for the ability to exercise state authority or governmental power at *all* levels incur more or less vertical responsibilities, but power – constructive power as well as power-over – is also exercised in horizontal, non-state associations. Horizontal social cooperation generates

horizontal responsibilities to those with whom one cooperates. To update Weber's analysis of political responsibility for liberal democracy, I argue, we must examine how the people – as ordinary citizens, activists, legislators, and officeholders – actually engage in democratic self-governance.

Beyond the Paradox of Voluntarist Political Obligation

Voluntarism plays a central but paradoxical role in widely-held notions of political responsibility. Voluntary action capable of grounding a general obligation to obey simply does not happen in liberal-democratic states, which has led many scholars to conclude that voluntarist political obligation is indefensible. While it may well be impossible to defend a generally-applicable voluntarist justification for obedient submission to the state, this is not the decisive blow to legitimate authority that philosophical anarchists believe it is. All this fact precludes, as Rawls recognized, is a voluntarist defense of a general, comprehensive requirement to obey (Rawls 1999, 97-8).⁶² Though the general *obligation* to obey might be indefensible, this says nothing about the existence of political obligations to perform some other type of action. I submit that philosophical anarchism itself suggests an excellent starting point for a successful theory of political obligation: a return to strict voluntarism. On my account, political obligation concerns a specific type of responsibility: responsibility for voluntary acts in the political sphere. Voluntary action is an unavoidable feature of liberal-democratic politics and government. A theory of political obligation that explores the requirements to take political action that can be voluntarily

⁶² A properly circumscribed theory of political obligation does not preclude a non-voluntary defense of some requirements to obey. Nor does it preclude a defense of *certain* requirements to obey on voluntary grounds: an individual who seeks some sort of benefit or aid from the state (such as a researcher who applies for NSF funding) may incur a valid requirement to comply with the procedures and laws governing that benefit (to comply with IRB standards) by virtue of voluntarily pursuing that benefit.

assumed, rather than pursuing a non-voluntary defense of general obedience, can therefore contribute to a more accurate account of the liberal-democratic state.

In short, I propose that we recast political obligation as a theory of those binding requirements to take (or refrain from taking) a specific political action that ordinary people *and* state agents voluntarily assume. Surprisingly, both of these components are relatively uncharted waters in the literature. Existing theories of political ethics cannot explain how individuals and states interact and mutually affect one another because they do not distinguish the present inevitability of being part of *a* state from the voluntary actions one takes *within* states. Most individual-level theories either consider how individuals should act within the framework their state establishes, or the internal stance they should adopt: postmodern and pluralist theories orient individuals toward openness, liberal theories toward tolerance, and so forth. Similarly, most state-level analyses either assess how state action shapes individuals, or how it contributes to justice in the aggregate. In contrast, analyzing binding requirements on political agents allows us to investigate the voluntary *and* non-voluntary origins of political responsibilities and apply this more precise notion of responsibility to both individuals and states.

Liberal-democratic states offer far more opportunity for voluntary political action than both obligation's defenders and philosophical anarchists recognize. As I argued in the previous chapter, the interpretive choices of judges largely determine what constitutes obedience to the laws, a fact that existing theories miss. Legislators, other officials, lobbyists, and concerned citizens make voluntary choices within the non-voluntary boundaries established by existing law about which issues to tackle and which solutions to pursue. These voluntary acts are essential in producing the laws of a liberal democracy, just as the choices of the bureaucrats who implement legislative directives and the individuals empowered to enforce law are essential to lawful

governance. Voluntary political action poses distinctive ethical issues, which my approach is designed to address. A strongly voluntarist conception of obligation, I will show, can speak to central ethical issues of liberal democratic life that theories focused solely on obedience cannot, such as the ethics of bureaucratic action, the discretionary powers that many officeholders possess, the responsibilities of individuals empowered within state decision-making processes, and participation in collective democratic self-governance. A requirement to obey just laws is not sufficient to make normative judgments about individual uses of political power, including the power to disobey. Such judgments require that we engage with the voluntarist dimension of state action, and consider both the ways that state agents and ordinary citizens act as the architects of state action, and the ways that ordinary individuals engage in self-government.

Analysis of voluntarist obligation is equally if not more important to a theory of political ethics than a defense of requirements to obey just laws, since “[b]eing a moral agent does not merely involve compliance with a set of legal directives” (Shiffrin 2010, 1223-4). A thorough investigation of moral agency in political life must take both the voluntarist critique of existing obligation theories and the implications of political voluntarism much more seriously. Fulfilling one’s voluntarily-assumed commitments is an integral feature of moral personhood: the ability to voluntarily undertake obligations makes responsibility a morally weighty consequence of individual action.⁶³ Non-voluntary defenses of political obligation, however, ignore the distinction between ‘obligation-centered’ [i.e. voluntarist] and ‘duty-centered’ [i.e. non-voluntarist] accounts (Simmons 2001, 10). Arguments against a voluntarist view of political obligation point out that many important interpersonal bonds have non-voluntary origins (Hirschmann 1992; Horton 2010). While true, this is no reason to ignore voluntarism entirely.

⁶³ See, for example, Brewer 2003; Frey 2010; Hardimon 1994; Perkins 1972; and Pink 2004.

The ethical dilemmas that political actors, decision-makers, and public officials face “nearly always arise in the context of a web of conflicting obligations created by the nature of the political system itself” (Fleishman 1981, 54). Legislators, for example, have obligations from their campaign promises to their constituents and the groups that helped them get elected, all of whom may want and need different things. Legislators also undertake obligations to their co-partisans in the legislature, who are themselves obligated to work for potentially conflicting constituent interests, as well as obligations to other legislators with competing agendas to trade votes on a pair of bills. Further, non-voluntary moral principles also make claims on the legislator, which may conflict with effectively discharging their voluntary obligations: it may not be practically feasible to be entirely honest and transparent about the means by which legislators strike deals with the opposition, or the strategic acts by which they circumvent it. A general requirement of obedience does not say much about how one ought to behave in such situations. Just as one’s prior voluntary acts do not explain the non-voluntary moral requirement to obey laws against homicide, a non-voluntary duty of general, comprehensive obedience says little about the responsibilities of legislators who must decide how to allocate a finite quantity of government funds. Because political life does not always present clear-cut, morally unambiguous choices, we need a well-developed normative framework for assessing voluntary action.

A Definition of Active Voluntarism

I now turn to the task of delineating voluntarist standards for political obligation. As Iris Young convincingly contends, at present “we lack good conceptual tools for thinking about individual responsibility in relation to structural social processes” (Young 2011, 27). The standards of what I call ‘active voluntarism,’ which include institutional and social-structural factors in judgments

about voluntariness, are meant to fill this gap. Here, voluntariness reflects real opportunities to take one of a number of possible actions, and takes our ability to formulate, modify, and act on convictions as a necessary component of voluntary action. This active view stands in sharp contrast to a common position, which I term the ‘volitional view,’ that defines voluntary action as “what we do motivated by a will or pro attitude towards doing it, such as a decision or intention” (Pink 2004, 161). On the volitional view, “[a]n action is voluntary when what the agent does is controlled by his will; or, when what he wants straightforwardly determines what he does; or, when his desires issue in action” (Mackie 1977, 175). Volitional voluntariness solely reflects an autochthonic desire to act: existing conditions that shape and constrain that desire are irrelevant.⁶⁴ Purely volitional standards cannot support arguments regarding *which* aspects of political life *ought* to be voluntary, because they do not evaluate the alternatives from which one must choose. Active voluntarism is more suitable for analyzing political bonds in liberal-democratic states because it considers how institutions and social structures shape the context within which individuals act.

A theory of political ethics in liberal-democratic states must assess the influence of institutions on individual acts. Political and social institutions, practices, and norms affect what individuals do by shaping individuals’ values, habits, and opportunities. In liberal theories, this ability of political institutions to coax and compel cooperative behavior from self-interested individuals is at once the prerequisite of social stability, and the source of deep reservations

⁶⁴ Hobbes provides perhaps the most extreme version of this view. In a famous passage, he writes that “In *deliberation*, the last appetite, or aversion, immediately adhering to the action, or to the omission thereof, is that which we call the WILL; the act, (not the faculty,) of *willing*.... [the will is not] a *rational appetite*...for if it were, then could there be no voluntary act against reason. For a *voluntary act* is that, which proceedeth from the *will*, and no other. But if instead of a rational appetite, we shall say an appetite resulting from a precedent deliberation, then the definition is the same that I have given here. Will therefore *is the last appetite in deliberating*. And though we say in common discourse, a man had a will once to do a thing, that nevertheless he forbore to do; yet that is properly but an inclination, which makes no action voluntary; because the action depends not of it, but of the last inclination, or appetite” (Hobbes 1994, 33-4).

about state authority. The best way of addressing these reservations, I submit, is to analyze how institutions and practices affect individuals' capacities to act. Structural impediments to voluntary action play an important role in constraining individuals' ability to choose how to live. To evaluate individual behavior *and* state actions, we need voluntarist standards that consider the quality of decision contexts and prospects for affecting existing opportunity sets. Active voluntarism allows us to see how one's choices shape one's life, *and* how those choices are shaped by institutional and structural factors, *and* how voluntary action by the people within an institution shapes that larger context.

On the active voluntarist view I defend, "a choice is voluntary if and only if *it is not made because there is no acceptable alternative to it*" (Olsaretti 1998, 71). An act is non-voluntary *only* when all alternatives are *prudentially* unacceptable: acceptability does not admit moral considerations.⁶⁵ Choosing to 'do the right thing' when all other options are morally unacceptable, but at least one is prudentially acceptable, is voluntary. This allows us to attribute moral blame to people for choosing morally unacceptable but prudentially attractive options. Deeming such choices voluntary encourages theorists to confront both the structural causes and the ways that others' actions put an individual in that position in the first place. Further, decision contexts in which the only morally-right option is prudentially costly are a fixture of political life. Virginia legislators voting on stricter cigarette advertising regulations or a higher state tax on tobacco face the possibility of losing campaign contributions from the tobacco industry if they vote for that legislation out of moral considerations. On their face, decision contexts that force individuals to choose among prudentially acceptable but morally *unacceptable* options seem to

⁶⁵ On this, see Colburn 2008. Colburn suggests "that we bite the bullet and accept that [an individual] *does* act voluntarily when one of the alternatives is *morally* unacceptable. I argued above that saying someone acts non-voluntarily renders him ineligible for praise or blame. But if praise is deserved anywhere, it is in situations... where one resists an attractive but morally unacceptable option" (110).

threaten the individual's capacity for responsible self-determining action. This suggests that theories of political voluntarism ought to investigate structural change aimed at reducing prudential costs.

Background structures are a vital component of political life because they establish opportunities for political action. Active voluntarism recognizes that social structures “appear as objective, given, and constraining...[and] do not constrain in the form of the direct coercion of some individuals over others; they constrain more indirectly and cumulatively as blocking possibilities” (Young 2011, 55). On an active conception of voluntariness, lack of alternative options forces an individual to take some action (Olsaretti 1998, 54): if I am unable to afford basic necessities (food, shelter, etc) without taking a second job, I am forced to take that job. For a decision context to be voluntary when none of the existing options are acceptable, one must actually be able to create and perform an acceptable alternative. It must be *objectively possible to create real opportunities for [subjectively] acceptable action*. For example, if the candidates running for town supervisor are prudentially unacceptable to me (perhaps because they all want to stop funding public services I rely upon), I must be able either to stand for office myself, or get someone acceptable on the ballot. This requirement captures what really rides on voluntarism: the ability to reshape decision contexts themselves.

Overall, active voluntarism investigates how the actions of *state* agents shape decision contexts, allocates responsibility to individuals for *voluntary* acts, and supports normative critique of non-voluntary contexts (i.e. situations in which there is only one prudentially acceptable option). Active voluntarism lets us “evaluate our actions from two different irreducible points of view: the interactional and the institutional” (Young 2011, 73). It emphasizes individual responsibility for voluntary acts that affect structural social practices, and

simultaneously recognizes that structural processes constitute decision contexts and opportunity sets. Because the active view considers how background social structures shape individual opportunities, it supports a prospective approach to responsibility that describes how individuals ought to act on and within those structures in the future.

The Semi-Voluntary State

Liberal-democratic states are a combination of voluntary and non-voluntary ties and decision contexts. As such, I contend, liberal-democratic states are ‘semi-voluntary,’ a term I adapt from Joseph Raz’s discussion of political obligation. For Raz, semi-voluntary obligations, like those we owe to friends and family, “arise from the developing relations between people” rather than consent or a promise, and “are part of what makes the relationship into the kind of relationship it is” (Raz 1999, 173). Such obligations, he claims, suggest that there may be “one kind of obligation to obey which arises out of a sense of identifying with or belonging to the community” but is not *obligatory*, strictly speaking (ibid).⁶⁶ Raz highlights the non-voluntary, affective identification with one’s community without which a community could not be said to exist, and a state could not function. To this, I add a portrait of the state institutions that shape one’s affective political ties in practice, which recognizes the individual’s part in molding those institutions. Thus I use the term ‘semi-voluntary’ differently than Raz. By ‘semi-voluntary’ state, I mean that while political membership is non-voluntary and imposes non-voluntary requirements on the individual, it also allows significant opportunities for voluntary action.

⁶⁶ “An obligation to obey which is part of a duty of loyalty to the community is a semi-voluntary obligation, because one has no moral duty to identify with this community” (and thus, no general duty to obey), but nonetheless *feels* one ought to obey out of “an attitude of belonging which has intrinsic value, if addressed to an appropriate object” (Raz 1999, 174).

My account of political obligation locates the affective precondition of political community in terms of the broader non-voluntary horizontal relations that constitute society itself. Society-wide horizontal relations, grounded in something like the classical laws of nature (i.e. the non-voluntary duty to seek peace, or a non-voluntary principle of reciprocity) are the antecedent foundation of all specific interpersonal relationships, including relations of political obligation. The non-voluntary horizontal relations that constitute society itself are the precondition of both voluntary bonds, like friendships and voluntary associations, and non-voluntary relations, like parent-child bonds. Just as an obligation is intelligible to the interested parties because people recognize a deeper non-voluntary duty of *promise-keeping*, the interpersonal bonds that individuals voluntarily create rely on broader horizontal relations, categorized by basic norms of mutual aid and forbearance, without which no society or state would be possible. The state relies on these society-wide relations even as it formalizes them in a non-voluntary system of law backed by the power to punish rule-breakers.

The *state's* non-voluntary dimension is unique because it, and it alone, is backed by a monopoly on the legitimate use of coercive force, as Weber recognized. Ordinarily, one becomes subject to the state non-voluntarily, whether by birth or the brute fact that almost anywhere one could go will fall within a state's borders. Even if one chooses to become a member of another state, that choice is subject to that state's approval. When we join a state (by birth or by emigration), we join a preexisting set of institutions that we had no role in designing.

Nevertheless, we cannot maintain that liberal-democratic states are *entirely* non-voluntary because that view ignores the political agency that individuals actually have *within* them. Opportunities for voluntary action are built into liberal-democratic state institutions themselves. These opportunities shape and are shaped by the non-voluntary aspects of the liberal-democratic

state. As *liberal* states, they offer individuals political rights and liberties, which individuals may choose to exercise in any lawful way, or decline to exercise at all. As *democracies*, their legitimacy rests on ideals of collective self-government and popular sovereignty: in other words, on the idea that the people help to choose the path that government takes. A wholly non-voluntary conception of the state erases the voluntarist dimensions of lawmaking, government administration, and adjudication, as well as the role of ordinary people in shaping state action. Voluntary choices, associative decision-making structures, and actual non-state voluntary associations play a central, unavoidable, but all-too-often ignored role in producing state action. State actions and laws – non-voluntary *practical* constraints on individuals – reflect contingent voluntary choices and commitments enabled and constrained not only by existing laws, but the horizontal relations that constitute society itself and are prior to any system of law.

Although this is undoubtedly an idealized depiction of liberal democracy, the practical failings of liberal-democratic states only bolster my claim that such states are semi-voluntary associations. American electoral politics and the legislative process, for example, are a far cry from ‘government of, by, and for the people.’ The two-party system, supported by the media’s customary inattention to third parties and exclusion of third-party candidates from presidential debates (among other things), exercises considerable control over our options in the polling booth, and special interests have significant power over the legislative process. The undue influence that well-funded lobbies can exert over legislators often results in state action that benefits the few at the cost of the many, as with relaxed environmental regulations on industrial activity. But because legislators depend on large campaign contributions from special interests much more than small contributions from a much larger number of constituents, they have strong disincentives to limit lobbyists’ disproportionate political power. Unless we see such failings for

what they are – the result of voluntary, often self-interested *choices* enabled by state institutions – we cannot address them. By recognizing the voluntarist dimension of such problems, though, we can devise “a republican remedy for the diseases most incident to republican government” (albeit one very different from the one Madison had in mind), rather than seeing such problems as a *prima facie* case against the state itself (Hamilton et al 1999, 79).

In semi-voluntary states, state action is the product of voluntary choices made within the non-voluntary boundaries established by existing statutory and case law. Though laws prohibit certain actions, there is still a vast sphere of opportunities for voluntary political action. Existing laws impose non-voluntary requirements that nonetheless allow individuals plenty of leeway to choose *how* they will comply. The United States Constitution, for example, does not tell legislators what statutes they *must* pass, it tells them what they *may* (and may *not*) do in enacting statutory law. Within those boundaries, they may pass whatever legislation they like. Laws also license and protect a broad range of voluntary political bonds and activities open to ordinary individuals. Officeholders make decisions about legal norms and resource allocation that affect the background conditions of political action. Decisions about government funding and tax breaks for social services and community organizations (including youth centers, educational outreach programs, public advocacy groups, and local libraries), for example, influence ordinary individuals’ political activity because such state-supported programs provide social infrastructure and opportunities to learn skills that are vital for effective political action. To understand state *and* individual political action, we must recognize that vertical state structures both shape and are shaped by horizontal associations within that state.

In contrast to the dominant Weberian conception of the state, in my view the state holds a monopoly on the ability to *empower* individuals to exercise authority as well as the power-to-

coerce. This view recognizes the constructive dimension of political authority and state action: the ability to vest its agents with lawful authority to act in its name, to coordinate half a million people working to put a human being on the lunar surface, to create public universities and charge specific individuals with running them, to fund public-health research, and so on. On the abstract level, the state is a set of widely accepted norms and habits pertaining to the authoritative exercise of political power, which establish the capacity to act with authority. The state is (and is often used as) a useful shorthand for the practical sources of respect for law; the thing that punishes; the entity that ought to take care of society's problems (and thus often a way of denying one's own individual responsibility for collective action or structural injustice); the main threat to 'liberty;' the means of coordinating cooperative/collective action for many political scientists; and so on. The state's monopoly on authority gives it the capacity to promote public goods, not just punish public harms. In practice, this capacity only exists where people actually carry out political decisions in the state's name. In this concrete sense, the state does not exist beyond the people who make it up: who act in its name or accept (passively or actively) its claims to legitimacy.

Obligation Within a Typology of Binding Requirements

This section situates obligation within a typology of binding requirements to act in political life (see Figure 1). Scholars commonly contend that obligations and duties are binding subtypes of 'ought:' they impose binding requirements to perform some deed that one ought, morally, to fulfill.⁶⁷ Binding requirements are "standards that do not merely advise or recommend our

⁶⁷ See, for example, Simmons 1979, Steinberger 2002, and Zimmerman 1996. 'Ought' reflects an all-things-considered judgment that some action should be taken: that it would be morally right on the balance of reasons to do that thing.

conformity, but demand it” (Pink 2004, 160).⁶⁸ Binding requirements provide a compelling reason to perform some action that is not derived from the quality of the act itself, and *must* be fulfilled, which distinguishes them from non-binding, ideal ‘oughts’ like ‘little children ought not to suffer’ (Zimmerman 1996).⁶⁹ In contemporary political life, binding requirements on the individual come in many different types. To make normative claims about responsibility, theories of democratic participation, legitimacy, authority, and citizenship must employ a properly-differentiated understanding of voluntary and non-voluntary requirements on action.

The first step of my typology of binding requirements is the distinction between binding and non-binding oughts. The next step is a further division of binding requirements according to whether they reflect prudential or moral considerations. Prudential requirements can be either immediate or non-immediate. Immediate prudential requirements, or necessities, are those things one must do to meet basic human needs, and are thus non-voluntary. Non-immediate prudential requirements are those things we must do in order to advance voluntarily-undertaken goals.

Obligation is only one form of voluntarist binding requirement: non-immediate prudential requirements (such as requirements to file one’s dissertation in accord with university rules) are also created by voluntary decisions (the decision to pursue a PhD). The capacity for voluntary action lets us take morally-significant action *and* formulate and pursue meaningful personal goals. It therefore serves an instrumental purpose in addition to a moral one:

⁶⁸ While Pink terms such standards ‘moral obligations,’ a major goal of the present argument is to refine our vocabulary for discussing political ‘oughts’ by defending a more narrowly focused conception of obligation.

⁶⁹ As such, binding requirements are also distinct from what one ought to do ‘all things considered,’ though the presence of a binding requirement impacts what one ought to do all things considered. On this point, see Hare 1982 and Sreenivasan 2010.

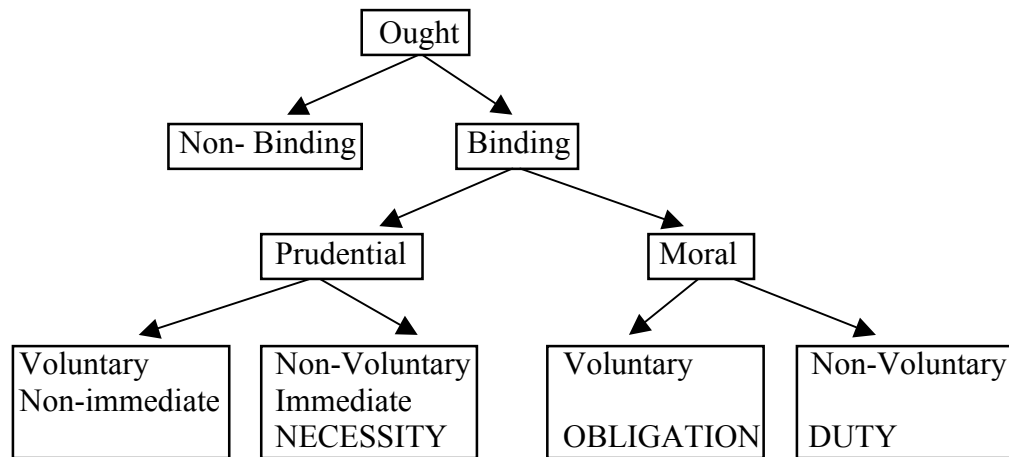


Figure 1 – Typology of Ought

the ways lives are shaped and molded in order to live out these conceptions of what one wants to do with one’s life do not take a particularly moral turn either. Yet any account of morality that ignores or trivializes these projects and goals of lives seems to leave out items that seem crucial to understanding those lives. And that is the central plight of modern moral philosophy, if Williams is to be believed: modern moral philosophy seizes upon some such notion as obligation (or utility) and then flattens out our lives as it views those lives through this notion it has seized upon as important (Frey 2010, 316).

On a widely accepted view, “one must be able to make voluntary choices if one is to live an autonomous life” (Colburn 2008, 102). Within the Millian strand of liberalism, for example, human flourishing requires this ability to chart the course of one’s own life: one can only develop into a full individual by determining for oneself how to live and which goals to pursue. By voluntarily undertaking a personal goal, an individual assumes a binding prudential requirement to act in ways that advance that goal. Because this requirement is prudential, the individual may choose to release herself from it (by giving up the goal) without moral hazard, provided she commits no moral wrongs in the process. Actions that advance personal goals are

required because one judges that goal to be sufficiently important to one's well-being, rather than because morality requires such actions. These requirements are a non-moral, non-obligation form of voluntary binding requirements on action.

Since binding *moral* requirements, on the other hand, are “irreducibly second-personal in the sense that they conceptually involve addressable (and so second-personal) authoritative demands” (Darwall 2010, 146),⁷⁰ they exist within and help to constitute interpersonal *relationships*. Binding moral requirements reflect legitimate demands that we make on others and ourselves as moral agents. Interpersonal relationships give context to our moral claims. Thus, an account of binding moral requirements in political life must identify salient patterns within political relationships. The capacity for democratic self-governance rests on our ability and willingness to make ourselves accountable to others: our mutual trust in norms of reciprocal reliance, aid, and forbearance is a central precondition of social stability.

Binding Moral Requirements: Obligation and Duty

Interpersonal relationships and the binding moral requirements within them may be voluntary or non-voluntary. Obligations are voluntarily-assumed binding moral requirements; duties, non-voluntary binding moral requirements. More specifically, obligations are voluntary requirements the ‘binding force’ of which is moral, rather than prudential. The belief that voluntary commitment is morally weighty grounds the binding force of obligation, whereas duties bind because they require intrinsically moral ends.

⁷⁰ A.I. Melden draws a connection specifically between promissory obligation and moral agency that is nonetheless instructive for ‘bindingness’ more generally: “When I promise I signify that my moral status is involved in the question of my acting in the manner described by my promise utterance – I place my moral credit, so to speak, on the line. The question, then, of my performing the action is thus identified with the question of my moral integrity. Hence the obligation of promises-I can be indifferent to my promise only by being indifferent to my own moral status” (Melden 1956, 65).

Duties themselves come in two forms: general or natural duties, which apply non-voluntarily to all moral agents by virtue of universal moral principles, and positional duties, which are binding moral requirements tied to a particular social position or role, such as parenthood.⁷¹ Positional duties are those requirements captured by the phrase ‘my station and its duties,’ and the concept of occupying a position itself logically entails their binding force. In other words, one must fulfill the demands imposed by one’s station because that is what occupying a station properly means, not because each particular demand imposes a subsidiary duty. The content of particular demands helps to determine whether one ought (on the balance of reasons) to fulfill them. The standard view of positional duties distinguishes roles that the individual has voluntarily chosen from roles with non-voluntary origins, such as the requirements of children vis-à-vis their parents.⁷² This distinction will become salient in later discussion of the requirements of political officeholders, but for the present it is sufficient to note that positional duties are binding because holding a position entails fulfilling that position’s tasks, rather than solely because of the moral quality of the tasks themselves.

The connection between voluntarism and responsibility makes obligation a unique type of binding moral requirement. Indeed, “[i]n pressing the obligation/duty distinction, theorists argue that claims generated by voluntary actions are sharply different both in form and substance from those not so generated” (Steinberger 2002, 451). Duties inherently promote morally worthy ends, and speak to one’s moral *character*: discharging one’s duties is an act of moral goodness.

⁷¹ Positional duties are similar to Hardimon’s influential notion of a ‘role obligation,’ which is “a moral requirement, which attaches to an institutional role, whose content is fixed by the function of the role, and whose normative force flows from the role” (Hardimon 1994, 334).

⁷² Hardimon notes that positional duties (or ‘role obligations,’ as he terms them) come in both contractual and non-contractual forms (337).

By contrast, obligations and the capacity for voluntary action express and protect one's moral *significance*, because they concern the ability to make decisions in the moral realm.

Because obligations arise from particular uses of the morally significant capacity for voluntary action, they are a 'content-independent' binding requirement, meaning that the moral reason for obligation's binding quality is independent from the action a specific obligation requires. The 'obligatoriness' of obligations comes from a moral principle (often, the principle of promising) requiring that individuals fulfill those commitments they have voluntarily undertaken.⁷³ Duties, however, are content-dependent, because the normative force of a duty comes from its content. In the case of positional duties, that content is the notion that occupying a position means carrying out the functions associated with that position. The content of duties is intrinsically value-laden, while the act of *fulfilling* one's obligations, not their content, expresses a different aspect of one's moral quality: fidelity to one's chosen commitments. An individual who fulfills a voluntarily-assumed obligation to attend weekly planning meetings for a campaign to preserve Hudson River wetlands shows that she is dependable and trustworthy. One who fulfills an obligation to attend weekly meetings of an anti-immigration activist group also shows that she is dependable and trustworthy, even though one could strongly object to her chosen commitment. This reflects a central liberal-democratic belief: that the ability to choose one's political commitments is itself valuable.

Voluntarist Obligation and Responsibility

⁷³ It is commonly contended that promising is the paradigmatic form of voluntary interpersonal commitments. See Melden 1956. Often, this is because "promises and contracts have a relatively uncontroversial normative force: we are bound to their terms by our voluntary agreement," and therefore "[i]f we could convincingly interpret other modes of undertaking commitments as implicit promises, this would lend similar clarity to their normative force" (Brewer 2003, 555). Brewer goes on to argue that promising cannot encompass the full range of interpersonal commitments. Most political theorists reject attempts to model political obligation on promising, a point made most trenchantly by philosophical anarchists. See also Pateman 1985 and Pitkin 1965 and 1966.

On my account, obligation's defining and distinctive feature is voluntarism. Obligations are the binding requirements to take future action created by the prior voluntary acts of individuals. Obligations are *pro tanto* rather than absolute moral requirements: they are real moral requirements but may be superseded by competing moral imperatives.⁷⁴ Moral reasons for and against acting as an obligation requires indicate whether the agent *ought* to discharge that obligation, all things considered. Thus, voluntarily assuming an obligation is necessary, but not sufficient, to create the moral requirement to act as the obligation demands. Obligation is content-independent: the voluntary actions that create particular obligations determine their content. The only limit on the content of specific obligations is that they must not violate sufficiently weighty non-voluntary moral requirements. Beyond that, the content of specific obligations is limited only by what people can voluntarily agree to do and expect. You could, for example, undertake a valid obligation to babysit a neighbor's child on Saturday night, or to play Luke Skywalker in an outdoor adaptation of *Star Wars* performed entirely on roller skates, if someone is willing to entrust you with their child or stage such an outlandish production.

Obligations connect our capacity for voluntary action with a necessary precondition of social cooperation: the ability to defend categorical requirements on individual action. Obligations attach a moral imperative to particular kinds of voluntary action. The existence of an obligation is an independent reason to act as that obligation requires.⁷⁵ Obligations are among the normative consequences of voluntary action: the standard view in political theory defines obligations as "moral requirements generated by the performance of a voluntary act" (Honoré

⁷⁴ On how this distinction functions in arguments for the obligation to obey, see Wasserstrom 19-24. See also p35n34 above.

⁷⁵ Here I follow Skorupski 2010, 166.

1981, 47). Obligations require individuals to take responsibility for the consequences of their voluntary actions.

Acknowledging the importance of voluntary obligations means seeing *oneself*, in addition to external circumstances, as a partial source of one's oughts. This allows for a more robust conception of political agency, since

What one ought to do depends in part on oneself, and this not only because the behavior, needs, tastes, and desires of the agent count just as much as those of any other person, but because the agent has the power intentionally to shape the form of his moral world, to obligate himself to follow certain goals, or to create bonds and alliances with certain people and not others (Raz 1977, 228).

Political obligation, then, is a tool for connecting voluntary action and political responsibility. In chapter four, I argue that a voluntarist account of political obligation can therefore ground an evaluative standard for political action.

Voluntarily-assumed political obligations are an essential part of cooperative political action and self-government. In other words, political obligations do not simply and inevitably limit freedom: instead, they are part and parcel of *exercising* political freedom. To understand the ethical issues involved in collective political action outside the state, we must analyze political obligation. Like the state and society itself, cooperative voluntary political action rests on social norms and mutual expectations. Obligations create, arise in, and sustain lasting interpersonal relationships, including the political relationships that make cooperative action possible. Obligations constitute interpersonal bonds by generating reliable, mutual expectations about clearly defined, voluntarily-assumed responsibilities. This works because the parties understand

the moral weight of voluntary commitments. Political obligations thus balance the need for social trust against individual freedom in cooperative political action.

Individual Obligation and Collective Responsibility

Since states often *act* as moral persons, Anna Stilz points out, “attributing collective responsibility to the state makes a difference for what its agents should do on its behalf” (Stilz 2011, 196). Stilz seeks to “connect the conditions for distributing state responsibility to the conditions for political obligation” (ibid). However, I argue, collective responsibility differs significantly from political obligation because responsibility is broader than obligation: it is the source of obligation’s binding force, but also encompasses non-voluntary moral requirements on action that political obligation cannot address.

Obligation and responsibility differ on two crucial points. First, responsibility, unlike obligation, can either refer to a precise requirement on the agent, or more diffuse guidelines for an indeterminately defined undertaking. Second, unlike obligation, responsibility can be either voluntary or non-voluntary. One *can* voluntarily undertake task-responsibilities, but voluntary action is not necessary to create a valid responsibility, nor are such responsibilities necessarily owed to specific individuals. There are many valid non-voluntary responsibilities, and some binding requirements on individual action in political life may come from collective responsibilities. The requirement to pay taxes might, for instance, be grounded in a collective responsibility to provide certain public goods. My point is simply that these individual requirements are *not* obligations. This does not mean they are irrelevant to analysis of political voluntarism. On the contrary, such analysis must take stock of how non-voluntary requirements generated by collectives impact individuals’ opportunities for voluntary political action. It must

also consider how voluntary decisions within the collective decision-making process, like those of legislators passing new versions of tax laws, create non-voluntary requirements.

Although Stilz recognizes that “the state as an institution is produced by the collective acts of its members, including their obedience to law, payment of taxes, and voting,” hers is a theory of collective *responsibility* distributed among and discharged by individuals, *not* a theory of collective *obligation*, which would require that individuals actually voluntarily assume a share of responsibility for state actions. On her account, the individual responsibility to discharge a share of the burden for state actions comes from the quality of state procedures, institutions, and actions, rather than personal acts. Stilz defends a ‘democratic authorization principle’, which claims “that citizens of democratic legal states have good reason to affirm their membership – even when they do nothing to express that affirmation – and that this fact suffices to justify distributing the burdens of political liability to them” (198). This principle is a hypothetical (i.e. non-voluntary) basis for collective responsibility: “the will of the individual citizen is implicated in the acts of her state even though she did not consent to membership and even though she may disagree with the state’s policies” (197). Thus it cannot ground collective *obligations*, which must be voluntarily assumed by the corporate entity that is said to hold them. It is impossible to identify *collective* obligations generated and held by a corporate agent independent of the individuals within the collective. This undermines the fiction of the state as a moral person, but does not preclude analysis of collective *responsibilities* in democratic legal states.

Though Stilz defends a necessary ability of large liberal democracies – the ability to compel collective action in support of state decisions – an ideal theory of collective responsibility cannot address a number of thorny issues in liberal-democratic governance. Stilz states that her argument applies only to democratic legal states, which must “credibly interpret”

one's basic rights (198), "grant a sphere of private freedom to its citizens" (202), treat each person as a moral equal, and require that citizens "be authors of the law they are asked to obey" (203). In practice, however, states do not satisfy these conditions once and for all, but continually negotiate the relationship between particular state actions and these foundational ideals.

Democratic legal states are not a black box from which decisions issue: the complex process that generates state actions needs much more explaining. Voluntary action – whether by the activist, the legislator, or the bureaucrat – is an essential part of liberal democracy, and we must recognize its role within the limits established by constitutional principles, the rule of law, and justice.

Collective obligations and responsibilities, I contend, are nothing more than the obligations and responsibilities of individuals *in their capacity within an organization* (whether a state, a non-state voluntary association, a government agency, or a business organization). In reality there is no separate corporate actor who can be punished for its irresponsibility or compelled to take task-responsibility for the consequences of actions taken in its name. Because there is no actual unitary collective agent capable of discharging obligations, the burden of discharging 'collective obligations' must fall on the individuals who populate that organization.

A complete account of political requirements involves obligation *and* responsibility. The obligations of individuals within a collective are not *sufficient* to describe how that collective should discharge the responsibilities its actions create. This is both because non-voluntarist moral principles also make demands on the collective, and because injustice can emerge structurally, without involving or violating any individual obligations. Individuals acting out of pure self-interest may bring about a negative collective outcome without any intention of doing so. Structural injustice is a particular form of this more general challenge to collective action: it

emerges “when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them” (Young 2011, 52). Gross disparities in the American educational system are one example of structural injustice. The student in a wealthy suburban school enjoys systematic advantages over students in underfunded inner-city schools, but it is difficult to trace the responsibility for this structural inequity to particular blameworthy actions by particular individuals who must act within existing educational institutions. Parents of school-age children violate no obligations by choosing to move to the suburbs if they can afford to do so, nor by remaining in poorer school districts if they cannot afford to move. In other words, obligation is simply not an appropriate metric to locate the responsibility for addressing educational inequality. I will return to the issue of structural injustice in greater detail in chapter four.

We must consider the obligations of individuals specifically in their capacity within a corporate body, however, because such analysis allows us to scrutinize how those bodies function and the collective actions they take. Because the notion of responsibility can ground requirements to address the consequences of structural processes, it can complement the perspective obligation offers on the scope, direction, and limits of collective action. My analysis of binding requirements on state agents below demonstrates how this type of responsibility relates to individual political obligations and voluntary political action.

Voluntarist political obligation is essential to a theory of responsible self-governance because it explains both *how* people take cooperative political action freely, and *why* they should do so responsibly. Obligation, which rests on responsibility for one’s voluntary actions, draws on

the norms of interpersonal commitment and trust without which society would be impossible, as well as the fundamental moral intuition that individuals are responsible for their actions.

Voluntary political action affects both substantive political decisions *and* the structure of decision-making processes. Both substantive and structural outcomes then shape the background conditions for future voluntary action. Political obligation highlights one's responsibility for one's own voluntary political acts, including their effects on future prospects for voluntary action. Thus, it emphasizes a forward-looking form of responsibility, rather than a retrospective approach concerned only with assigning praise and blame for prior actions. Voluntarily-assumed political obligations give these abstract responsibilities and oughts concrete shape: they assign specific tasks that particular individuals must perform. The moral imperative to fulfill one's voluntarily-assumed obligations is fulfilled by one's actions within this intersubjective structure.

Voluntarism Versus Obedience

I contend that general, comprehensive, undifferentiated obedience cannot be the object of voluntarist political obligation because it is incompatible with voluntarism. My conception of obligation hews closely to the standard view of obligation as “(a) grounded on a specific voluntary action or performance; (b) owed to a particular person; (c) having a determinate content” which “entails submitting to the authority of the state” (Klosko 1998, 54).⁷⁶ In my account, however, determinacy means that obligations have specific content established by the individual act that created that obligation. Voluntarism, which holds that individual acts are the source of requirements shaped by those acts, precludes the claim that political obligation has *any* a priori content.

⁷⁶ Klosko, like many theorists, models obligation on promising. There are, however, important disjunctures between the two, which I discuss below in chapter three at pp130-132.

Voluntary action creates unique moral requirements, and this uniqueness, I argue, is a decisive reason to separate the question of political obligation from the question of a general duty to obey. In contrast to the obedience view, under a truly voluntarist conception of obligation, the means of fulfilling a specific obligation is determined by the parties when creating that obligation.⁷⁷ Because obligations are created through voluntary action, it is impossible to prescribe in advance a single action by which all possible political obligations would be fulfilled. No one can predict all future possibilities for voluntary acts. In other words, the scope of obligation is determined by voluntary *acts* rather than an *a priori* principle, such as ‘the content of political obligation is a general, comprehensive requirement to obey,’ that stipulates the content of all possible obligations. To be consistent, a voluntarist theory of political obligation must be content-independent. A voluntarist theory of political obligation cannot impose a blanket requirement of obedience, but must stipulate only that individuals carry out the actions they voluntarily commit to perform. Political obligations are voluntarily-assumed, specific responsibilities to take political action (a term I treat at greater length below): those binding political requirements that individuals voluntarily create. The ability to take voluntary political action is an ability to affect the institutions and rules that apply to us.

Unlike the obedience view of political obligation, the content-independence of voluntarist political obligation is defensible. Most scholars agree that “political obligations are not only moral requirements to obey the law but requirements to obey the law for the content-independent reason *that it is the law*” (Klosko 2011, 499). A content-independent requirement of obedience is

⁷⁷ Moral philosophers often stress the specificity of the action that a particular obligation requires: “It is not quite right to say, for instance, that someone who promised to return a book has an obligation specifically to mail it, even when mailing it happens to be the only way of returning it. ‘Obligation’ seems to be tied fairly closely to the description under which an act is required, and mailing was not part of the deal. Instead, we may say that the agent here has an obligation that *requires* her to mail the book back to its owner” (Greenspan 2010, 186). This is a central component of promissory obligation, for example. Supererogatory action is sufficient, but not necessary, to fulfill an obligation. On this, see Horgan and Timmons 2010.

a moral reason *to obey* that is independent of the moral merits of the specific law or command one is asked to obey. This view is responsible for pervasive skepticism about political obligation, since it has hitherto proven impossible to establish a theory of content-independent obedience (498-500). Voluntarist content-independence, however, means that there is a moral requirement to fulfill *all* properly assumed obligations that is independent of the specific content of *particular obligations*. The binding force of obligation comes from the morally significant act of voluntarily undertaking an obligation. Content-independent obligation is much broader than content-independent obedience: it is a moral requirement to carry out all voluntarily-assumed obligations regardless of content, unless overridden by weightier moral considerations.

A Content-Independent, Relational Theory of Political Obligation

While a few scholars have claimed that political obligation must consider a wider range of political activities than obedience, they generally pair this claim with a non-voluntary account of political obligation, understood as “those [open-ended] ethical responsibilities that we have by virtue of being members of a polity” (Horton 2010, 164).⁷⁸ Bhikhu Parekh contends that political obligations “are derived from one's membership of a polity and related to the conduct of its collective affairs and the preservation and enrichment of the quality of its collective life” (Parekh 1993, 243). He argues that citizens have political obligations that go beyond obedience: most importantly, to critically consider how government uses the authority their acquiescence generates. These obligations are a consequence of moral agency itself:

Citizens are above all moral agents, that is, persons *capable of choice* and autonomy and *responsible for the consequences of their actions*. They cannot therefore obey the civil authority uncritically and as a matter of blind faith or routine. They have an obligation to

⁷⁸ The exception to this trend is Pateman, who rests her critique of liberal obligation theory on the self-assumed nature of obligation.

judge its laws and to satisfy themselves that they are not required to do outrageous and immoral deeds (240, italics mine).

His view of moral agency, like the one I defend, stresses the agent's responsibility for voluntary action. However, his positive theory of obligation is *not* an account of what individuals ought to do because of prior voluntary acts. Voluntarily-assumed obligation is an importantly distinct political requirement in need of its own explanation.

The liberal commitment to individual liberty, which made a voluntarist account of political authority necessary in the first place, requires that liberal theorists attend to voluntarily-generated political requirements. Individual political freedom is largely absent in non-obedience, non-voluntary accounts of political obligation. The ability to create morally-weighty relationships and freely shape the content and terms of our own obligations is essential to true moral agency. Pursuing goals affects how one will approach other decisions, because such goals shape how one perceives and evaluates opportunities to act. Although pursuing individual goals makes unbridled voluntary action impossible, the ability to pursue such goals actually reflects a deeper sense in which we voluntarily chart the course of our own lives. The political significance of voluntarism rests on this dimension of voluntariness. In the political realm, we shape our lives through voluntary action within the institutions, practices, laws, and rights of our polity. This public sphere and the opportunities it affords for voluntary political action are themselves constituted and enabled by individual action.⁷⁹ Public outcry that forces a small-town Board of Trustees to open Board meetings to on-the-record public comment is just one example of how individual action shapes the public sphere.

⁷⁹ Here I draw from Waldron's reading of Arendt, which uses her remarks on foundation and constitution to argue against "her more romantic interpreters" who emphasize the agonistic/heroic side of Arendtian action (1999, 76-7).

Recent critiques of obedience-centric political obligation cannot explain how individuals and political institutions shape one another because they adopt a fully non-voluntary view of political association. On John Horton's associative account, "political obligation does not derive from a voluntary decision to form or join a polity," because "[p]olitical association is for most people in an important sense non-voluntary" (Horton 2010, 146). Membership generates obligations that concern the overall goals of one's polity and the institutions and practices that advance them (188). Political communities are meant to determine the content of political obligation themselves. To make sense of the community's ability to do this, though, we must distinguish the non-voluntary features of political association (ascriptions of *membership* and affective identification with one's community) from the opportunities for voluntary action that exist within the democratic, legitimate polities capable of generating obligations. An individual born in the United States does not voluntarily become a citizen, and requirements that citizens pay taxes are equally non-voluntary, but non-voluntary membership also offers that individual options for voluntary action. She may choose to join the Tea Party and attend demonstrations against taxation in an effort to get tax laws changed, engage in activism that attempts to change how tax dollars are spent, put her money in a Cayman Islands tax shelter, and so on. The point is that there is generally a range of voluntary actions possible within non-voluntary limits. If we ignore voluntary action within liberal-democratic political and legal institutions, we ignore their democratic side.

A properly differentiated account of binding requirements can ground normative claims about what political agents ought to do more effectively than other alternatives to obedience theory. Both Parekh and Horton argue that citizens have obligations to their own polity because their identities, rights claims, and abilities to take morally significant action are constituted by

their collective history and shared normative background. For Parekh, citizens’ “sense of belonging to a shared community forms an ontological basis of – or at least an ontological background to – their mutual moral claims” (Parekh 1993, 242). However, this sense of belonging does not explain how these mutual moral claims come to ground binding requirements on the claimees. Neither the constitutive function of membership nor Parekh’s general claims about moral agency explain how diffuse obligations (to be critical, to protest injustice etc.) come to impose specific requirements on particular individuals. To justify such requirements and show how specific claims come to have binding force over particular individuals, we must first explain the imperative quality of different types of binding requirements.

The Distinguishing Features of *Political* Obligations

While voluntarism yields a content-independent theory of political obligation, this does not preclude substantive conclusions about political obligation. A theory of voluntarily-assumed political obligation must emerge from and speak to political practice. Although we cannot list all possible political obligations, we can identify enduring problems and empirical regularities in political life. To guide political action and constructively critique existing political arrangements, obligation theories must adopt an institutional perspective, because “the promotion of justice requires collective action, and that requires organization” (Young 2011, 69). In particular, we must attend to voluntary political bonds in liberal-democratic institutions and structures.

Horizontal and vertical political ties are two distinct types of relationship, which are shaped by state and societal institutions and operate within a distinct structural context. Theories of political obligation must distinguish between these two types of political ties, and analyze their origins, effects, and practical significance in liberal-democratic states. Further, obligation

theories must also analyze horizontal associations, like political parties, unions, and consumer cooperatives, which connect civil society and the associative relations in markets and states. Political obligations may establish binding horizontal requirements aimed at affecting state institutions, binding horizontal requirements that do not concern the state, and binding requirements on state agents in their official capacity, vis-à-vis one another or ordinary citizens.

Unlike the non-voluntary claims made by universal moral principles or certain types of law, individuals do not universally have political obligations. Indeed, many (perhaps most) ordinary individuals have non-voluntary political duties rather than voluntarily-assumed obligations. Politically-active individuals are a minority of the population, even when one employs a far more minimal conception of political participation than the present argument does. In the United States, for example, nearly half of eligible voters do not vote in presidential elections, and turnout declines precipitately from that unimpressive figure in midterm and local elections.⁸⁰ For those who take no political action at all, there can be no political obligation.

Though many individual have no voluntarily-assumed political obligations, *some* have obligations which are very important both as an expression of their political agency, and as the source of many specific non-voluntary political requirements. Public officials are the most obvious category of people that incur obligations in political life. As a group, sworn public officials likely incur political obligations more frequently than ordinary citizens, and in a form that is traditionally accepted as political. The obligations that officials voluntarily undertake are a crucial part of explaining the non-voluntary claims that governments make on everyone subject to their authority. These non-voluntary claims do not emerge *ex nihilo*; rather, they are produced by contingent voluntary choices and actions taken to satisfy voluntarily-

⁸⁰ In the 2013 Los Angeles mayoral election, for example, the turnout rate was a dismal 16 percent of registered voters (Almendrala 2013).

assumed obligations. Voluntary action and voluntarily-assumed obligations establish the content of many authoritative state decisions and commands. Voluntary decisions in political life often “affect the lives and well-being of all other citizens who live, or who will live in the future, in the jurisdiction in which [one] chooses to act politically, and frequently beyond” (55). A piece of legislation, for example, may reflect input from bureaucrats, who make decisions about what they think legislators ought to address and voice them to legislators (often quite effectively), lobbyists paid to advance a particular interest, ordinary citizens, who may petition their representative or organize to mobilize public opinion, legislative staff, who often draft bills, and legislators themselves, who decide how to vote based on a number of considerations.

Political obligations may be much rarer among the general citizenry than among public officials, but nonetheless, they are not nearly as rare as traditional accounts of obligation might assume. To recognize the political obligations that ordinary individuals undertake, though, we must broaden our conception of ‘political’ and recognize that the concept of ‘political’ action contains different registers that speak to different circumstances and differently-situated individuals. Political power also emerges within horizontal relationships outside of formal political structures and institutions. A robust theory of responsible political action must account for such horizontal power, and assess its role in government and state action. Horizontal political obligations, such as those owed by members of an activist group or non-state political association to their fellow members, represent a significant and frequently ignored dimension of political life in late-modern liberal democracies. Horizontal political ties may occupy a good deal more of the time and energy that ordinary individuals devote to politics than the often-habitual obedience with which most theories of political obligation are exclusively concerned, and require a broader understanding of political action and responsibility than such theories are prepared to

entertain. In order to move beyond existing unsuccessful arguments for obligation, the aims and terms of obligation must be reconceived, and theorists must pose challenging questions to state authority that current theories avoid.

Form: Relations of Freedom and Political Obligation

The relationships in which *political* obligation emerges – voluntary relations of or bearing on political freedom – differentiate it from other forms of obligation, as well as from political duty.⁸¹ Political obligation, properly speaking, concerns the voluntary acts and concomitant binding requirements that constitute self-governing entities. Political freedom, on this view, involves both the power to determine first-order questions of the structural and relational framework one inhabits, and the power to make second-order substantive choices about one's particular political projects and actions. Institutions that preserve these self-determining capacities by establishing “a field of action in which these choices will make a difference” (Perkins 1972, 120) help to make one free in a meaningful sense.

Political obligation is the essential conceptual link between individual and collective political self-determination on the one hand, and binding requirements to take political action on the other. Unlike natural duties, for example, which are not owed to anyone in particular, or requirements of self-interest, political obligations are owed to specific people rather than oneself, and emerge out of cooperative political action. Obligations are the building blocks of voluntary association: horizontal obligations between members create and sustain voluntary associations.

⁸¹ Voluntarist political obligation stands in sharp contrast to the Kantian view of state obligations, according to which we transfer some individual imperfect duties to the state, which it is then required to fulfill with the cooperation of its citizens. Kant's position might be a useful way of analyzing the coordination purposes served by the state. But it is *not* a sound claim about political *obligation*. Because political obligation focuses on voluntarily-assumed relationships and requirements, it diverges in the end from the Kantian view, which sees no reason to differentiate obligation from duty.

Political obligations may set up, attempt to alter, or occur within the state's institutional framework, but they also emerge in what theorists typically consider the private sphere. Political obligations exist within economic, familial, and social institutions as well as formal state institutions, because "social relationships are politicized" whenever "individuals *must* decide and act in the face of conflict – even if the 'decision' is a subconscious acceptance of subordination" (Warren 2001, 62). Such 'social' relations are not only crucibles for political opinion and agenda formation, they also teach individuals a particular way of relating to authority, and often replicate and reinforce existing power relations that support authoritative distributions of social goods. Corporations, social clubs, and families are all governed to some extent, and many ordinary people that do not engage in traditionally 'political' activities nonetheless undertake political obligations in self-governing horizontal and 'private' associations. Individuals who join the board of their local 'friends of the public library' organization, for example, thereby incur political obligations: to attend board meetings and participate in making decisions about library fundraisers and community outreach, and to fulfill their agreed-upon responsibilities in that organization's activities.

Content: Political Obligations Affect Structural Opportunity Sets

For voluntarist political obligation to be an expression of freedom, individuals' actual choices must establish the content of particular obligations. This rules out *a priori* claims about the content of political obligation as such. However, I contend that we may identify obligations that concern structural, institutional, or societal distributions of goods as political (rather than purely moral) obligations. One such category of political obligations is those obligations undertaken in attempts to alter opportunity sets within one's polity.

The content-independence of political obligation reflects key practical features of political life. Members of a grassroots political movement, judges, police, and legislators have all undertaken political obligations of one type or another. Members must do those things they specifically agree to do to further the group's ends; judges must interpret legal rules and standards in light of precedent and the facts of specific cases; police must enforce the laws and protect the public; and legislators must make laws and try to advance their campaign agenda. However, there is more than one way to adequately discharge each of these obligations. An obligation to participate in setting an advocacy group's agenda is met whether one suggests one activity or its opposite. A requirement to interpret the law can be met by providing any plausible interpretation, and as cursory acquaintance with constitutional law shows, it is impossible to conclusively defend standards for interpretation. Given the staggering number of laws on the books, law enforcement agents must prioritize which laws should be proactively enforced and which should not, and decide how much attention particular cases receive. This is a problem if they decide based on invidious distinctions: if, for example, they treat the uptown cokehead lightly but throw the book at the downtown crackhead, or assiduously investigate violent crimes involving white victims but give only cursory attention to identical cases involving black victims. Finally, the obligations of legislative office do not stipulate where legislators must focus their lawmaking energy, nor dictate one uniquely correct legislative solution to their chosen problems. Overall, then, many political obligations are consistent with allowing individuals to decide how they will respond to particular opportunity sets.

Voluntarily-Assumed Obligations and Obligations of Office

Finally, a political obligation to take (or refrain from taking) some action differs in two respects from the obligations that attach to a voluntarily-assumed office. First, the former are generally

more specific than official obligations: I may incur an obligation to spend a day in Sacramento lobbying for a piece of environmental legislation, but state judges undertake an obligation to uphold the federal Constitution when it conflicts with their state's constitution. Second, while anyone in any social position may undertake a political obligation, when one voluntarily assumes an office, one is empowered as well as obligated to act in particular ways.

In the broadest sense, an office is any social position or role with a particular purpose, special responsibilities, and privileges. The central attribute of office "is jurisdiction, referring to position, authority, duty, and... right," or the privileges that attach to a particular office (Orren 2000, 877). Offices exist in non-state social and economic institutions (such as a local Chamber of Commerce, a consumer-advocacy group, or my fifth-grade book club) as well as formal governmental structures. Since I have argued that institutions and relationships outside formal governmental institutions may themselves be political, I shall refer to "the formal positions from which governance is conducted in diverse settings" (874) as 'public' rather than 'political' office.⁸² Public officials "are the individuals in whom all the powers of the state are allocated, divided among many roles, in each of which the role is both empowered and limited" by existing law, legal/professional norms, and broader cultural expectations, "but within which the official has the sole discretion to act or not to act" (Sheppard 2009, 4).

Unlike an ordinary political obligation (a requirement to take some sort of political action stemming from a prior voluntary act), official obligations are essentially positional duties that one incurs by voluntarily assuming an office. While individuals establish the content of their particular political obligations in undertaking them, the content of official obligations is largely determined by the office, which always exists in some form prior to the official who occupies it.

⁸² Here I depart from Orren, who contrasts office *as such* with non-office or "mere citizenship" (874).

Individuals thus undertake a given set of institutionally-defined responsibilities when they take office. In the case of an entirely new public office, like that of NASA Administrator in 1958, its responsibilities and rights are sketched in the enabling act that created that agency (the National Air and Space Act of 1958) or expanded the jurisdiction of an existing agency. The first Administrator filled in many of the details not covered by the enabling act and set precedents for the use of his office's discretionary authority, but the basic framework of his official obligations predated his ascension to office.

In addition, public officials are perhaps the only group who can be said to have a voluntarily-assumed, more or less comprehensive obligation to obey the law, though it stems from their oath of office rather than an inherent property of law, and they must frequently determine what obeying means *for them* in their official capacity, as well as for others. Here I take a cue from Rawls, who claims that officeholders are perhaps the only ones to whom a categorical claim about political obligation applies (Rawls 1999, 302).⁸³ Most public officials must swear an oath of office or otherwise affirm their loyalty and fidelity to the law (Burrell 1997). When assuming office, all elected or appointed federal officials besides the President must swear the following oath: "that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter" as a prerequisite of assuming office (5 U.S.C §3331, 2011).

Swearing an oath of office generates obligations that differ from other types of obligations that officeholders may incur, such the obligation one legislator owes another when

⁸³ See *A Theory of Justice* chapter 6.

engaging in a logroll to deliver the promised vote on a particular bill. In other words, officeholders may assume both types of political obligation: the broader obligations of voluntarily-assumed office, which generally involve fidelity to law, particular responsibilities, and official functions, *and* obligations to take or refrain from some particular action which is not otherwise specified by their broader official obligations. This is because “there is an inevitable discretion governing the acts of office that is not explained by the rule of law alone” (Sheppard 2009, 22). Every office involves discretionary authority. While public officials “have powers that are circumscribed so that they can only be used toward certain ends at certain times and in certain ways,” within these boundaries officials must exercise their own discretion (*ibid*).

Because laws often sustain competing plausible interpretations, and frequently present more than one way to comply, officials *must* make substantive choices when carrying out their sworn responsibilities. These choices shape law’s authoritative meaning as well as the practical course that government action takes. An Environmental Protection Agency official who drafts legislation governing car emissions is not required by her oath of office to select the particular requirements she writes into that legislation, but perhaps she includes them because she agreed to follow the recommendations of an EPA car-emissions sub-committee – in other words, because she assumed a *particular* political obligation. If the bill passes, her discretionary choices will have shaped the official responsibilities of those who must then write and enforce emissions regulations pursuant to that statute.

The particular obligations that officials assume are subsidiary to their broader obligations of office. For public officials, the broader obligations of office are one moral imperative that may supersede particular *pro tanto* political obligations. Public officials may not undertake particular political obligations that transgress their oaths of office. Thus, the constraints on public officials

are more stringent than those on ordinary people, since they have voluntarily assumed an overarching obligation of fidelity to the rule of law.

The Scope of Voluntarist Political Obligation

On my account, the purpose of studying political obligation is to discover how we might shape our political world through voluntary actions and relationships. As a diverse array of scholars suggest, obligations create, sustain, and emerge within *relationships*.⁸⁴ Voluntarist obligation sees the interpersonal bonds that constitute human life from a unique angle:

Self-assumed obligation presupposes a very different idea of freedom, a social conception in which freedom inheres in a certain form of sociopolitical relations (relations that include “oughts”). The idea of ‘obligation’ enables individuals to do more than take these relations as given; it allows them both to reinforce interdependencies where appropriate and to create new bonds (Pateman et al, 1992, 182).

In taking political action, one implicitly or explicitly assumes “a range of obligations to institutions, other individuals (who may or may not be politically active) other candidates, other officeholders, and a variety of interest groups, some yet to be born” (Fleishman 1981, 54). One’s political obligations also emerge in other forms of lasting interpersonal relationships, including those within a community or neighborhood, a family, and a workplace. Thus, a theory of political obligation must analyze voluntary political relationships as well as one-off voluntarily assumed requirements.

The voluntarist perspective helps us address the sources of problematic political arrangements and outcomes, and supports normative claims on individual political agents. A

⁸⁴ See, for example, Pettit 2010; Pateman et al 1992; Zimmerman 1996; Wong 2010; and Horton 2010.

theory of political obligation helps us to identify, investigate, and critique the ways that state actions influence opportunities for individual self-determination. This perspective allows us to ask which aspects of political institutions, structures, and decision contexts *individuals* should be able to affect, and how they might do so.

The approach to political obligation built on active voluntarism considers how individual decisions produce state actions, *and* how state actions shape prospects for future voluntary action. Obedience theories of political obligation cannot shed light on the way that states shape and are shaped by individual voluntary acts, because they bracket other forms of political action entirely and take state commands as autochthonic entities. As I argued in the previous chapter, this view overlooks both the obedience of state agents, a necessary precondition of successful limited government, and the *agency* that state agents exercise. A voluntarist theory of political obligation, however, can trace particular state actions to their origin: the voluntary acts of its officeholders and decision-makers. A truly voluntarist theory of political obligation takes the actual choices individuals make in private *and* official capacities seriously, which reminds us not to treat state actions as though they emerge *ex nihilo*. Such a theory can ground constructive critique of the state actions that establish the background conditions for voluntary political action.

The Normative Limits of Political Voluntarism

Theorists must determine whether voluntarism is appropriate in a given situation by weighing the likely effects of allowing voluntary action. Obligation is applicable only in those political domains in which voluntary action is both possible and normatively desirable. Obligations are not morally binding when non-voluntary moral requirements (such as the requirement to refrain

from killing others) outweigh the value of free action on that particular matter.⁸⁵ In some cases, unfettered voluntary action works against our basic moral ideals. Though voluntariness derives its moral significance from its connection to primary values like agency, responsibility, autonomy, and freedom, robust voluntarism and these values can conflict. As the example of Odysseus tied to the mast suggests, when voluntary action impedes a fundamental moral interest, the latter must prevail.⁸⁶ Odysseus knows that his durable interest requires ignoring the Sirens, but he is still unable to *voluntarily* resist them. By voluntarily limiting his capacity for voluntary movement, Odysseus advances his higher-order goals and thereby exercises autonomy.⁸⁷ The lesson here is that “since voluntariness acts at the level of second-order as well as first-order preferences, autonomy may sometimes be *increased* through our inability to make (first-order) voluntary choices” (Olsaretti 1998, 73).⁸⁸ In short, voluntarism is not always a desirable or appropriate mode of activity, and voluntarist standards are not universally applicable.

Voluntarism is an appropriate mode of political decision-making, though, when there is no clear moral winner among the possible courses of action, as is often the case in politics. Moral principles do not always indicate a single correct answer to political problems. The moral equality of persons (for example) does not tell us how to decide when solving a coordination

⁸⁵ Moral philosophers often stress obligation’s limited applicability within the larger context of moral and social requirements, an insight some accounts of political obligation incorporate. For example, Klosko claims that “Political obligations are specific moral requirements that exist in a context of, and interact with, other moral requirements, which circumscribe their force. This too prevents political obligations from requiring objectionable conduct. If a given political obligation requires that an individual perform morally unacceptable acts, this will ordinarily be overridden by prohibitions against such conduct and so will not be binding” (1998, 66).

⁸⁶ I draw this example from Olsaretti 1998, 73.

⁸⁷ And as Joseph Raz points out, even “autonomy is valuable only if exercised in pursuit of the good” (1986, 380). More precisely, then, I take Olsaretti’s point to show that voluntarism and the autonomous pursuit of *worthy* goals can conflict, and that the pursuit of sufficiently worthy goals may require temporary voluntary suspension of one’s ability to make voluntary choices that conflict with that goal.

⁸⁸ In the fourth and fifth chapters, I will assess the limits on sacrifices of first-order voluntariness.

problem by choosing among morally-indifferent options (as the state does when establishing the rules of the road), or who ought to bear the burdens of social cooperation in practice.

Analyzing the limits of political voluntarism, as a theory of voluntarist political obligation must, is itself a vitally important task. Tracing the limits and implications of voluntarism in late-modern states provides a position from which existing institutions, decision-making procedures, and policies may be critiqued. If the focus of obligation shifted from examining when individuals may be rightfully compelled to obey, state authority could be subjected to much more critical attention than it currently finds comfortable. In some cases, the relevant issue might not be ensuring obedience, but whether the state ought to demand that obedience in that particular form at all, how specific uses of political authority come to take the form they have, and who ought to shape the exercise of political authority.

The Advantages of *Voluntarist* Obligation

A theory of political obligation that upholds the distinction between voluntary and non-voluntary binding requirements offers three main advantages. First, a suitably constrained theory of voluntarist political obligation supports a critical stance toward existing state institutions, but does not require anarchist conclusions. Second, it is able to identify different types of political requirements because it acknowledges the limits of voluntarism. Third, because it is meant to guide *both* individual political conduct and state action whenever voluntarism is appropriate, it appeals to a broader theoretical audience than theories of a general requirement to obey.

Taking voluntarism seriously does not inevitably lead to the anarchist's rejection of legitimate authority. Analysis of voluntarism supports constructive critique of existing structures and institutional arrangements. As William Edmundson points out, "we may consistently adopt

an attitude of ‘conscientious watchfulness’ toward the just state without contesting its legitimacy” (Edmundson 1998a, 56).⁸⁹

Political skepticism simply denies that there is an automatic moral obligation to obey the law. It does not deny that one may have a moral obligation to obey the law. Why is the idea of a conditional obligation to obey the law not sufficient? Why must we be asked to suppose that our moral obligations may routinely require us to be instruments of injustice? We should have more respect for morality than that implies. It would then yield precisely enough respect for law to serve any reasonable purpose (Lyons 1981, 77).

Philosophical anarchists, however, claim that because modern states are not entirely voluntary associations, they cannot possess legitimate authority. They thus suppose that consenting to existing authorities is the sole form voluntary political action can take. However, this claim fundamentally misconstrues political voluntarism, which ought instead to focus on the requirements to act that individuals can voluntarily create for themselves. In the next chapter, I argue that this approach to political obligation blunts the force of philosophical anarchism.

In addition, maintaining the distinction between obligation and duty preserves a more precise language for differentiating between various political requirements and discussing their origins. The nature and limits of voluntary political ties in liberal-democratic states are qualitatively different from non-voluntary ties. Analysis of the former cannot be subsumed within the non-voluntary requirements of citizens vis-à-vis the state. The approach I have laid out highlights the often-overlooked voluntary dimension of practical political life that an entirely

⁸⁹ I agree with the general claim, but dispute Edmundson’s argument – that we have a general duty not to interfere with enforcement of administrative prerogatives, rather than a general duty of obedience, and the former is sufficient to support legitimacy claims – for why this is so. A general requirement of obedience only matters when 1) the laws are not silent and 2) a command has been issued, which is presumably when administrative prerogative would most likely need to be exercised in the first place. In practice, then, Edmundson’s duty of non-interference seems to collapse into a general requirement of obedience.

non-voluntary account cannot illuminate. While voluntarist obligation is only one of several significant types of binding requirement, distinguishing obligations from non-voluntary requirements allows more accurate analysis of normative demands on political action.

The importance my argument places on voluntary bonds does not mean that non-voluntary bonds are politically irrelevant; on the contrary, ethically weighty political ties and relationships come in both voluntary and non-voluntary forms. The questions that individuals confront in political life involve voluntary and non-voluntary interactions with the state, voluntary political relationships outside the state, and non-voluntary moral requirements that both affect and are affected by the political institutions and legal system of their state. Individuals must decide whether to obey unjust laws, engage in civil disobedience, or uncivilly disobey. They must decide which, if any, avenue to take in pursuing their political goals: should they exercise their First Amendment rights alone? Join or create an activist group? Run for political office or become involved in a political party? Take a job with an NGO or a community-advocacy organization? Particular binding requirements in political life do not exist in a vacuum, but shape how we conceive of our own set of requirements and balance the unavoidable conflicts that arise among them. A theory of political voluntarism must consider how non-voluntary arrangements, in addition to individual voluntary acts, affect opportunities for voluntary action. The final two chapters will discuss these issues in concrete terms.

Finally, the question that content-independent voluntarist obligation addresses – what do our voluntary actions require us to do? – is one of the fundamental questions of normative political theory. Currently, theories of political obligation address when and why a general requirement to obey the law applies, a fairly narrow question. By contrast, the approach to political obligation I propose asks what individuals and states may be required to do by virtue of

prior voluntary acts. Such requirements rely on a prospective notion of responsibility for one's voluntary actions, a notion that also runs through questions of democratic practice, citizenship, social and international justice, and the scope of the liberal-democratic state. Inquiry into these questions cannot bracket issues around political voluntarism, such as the effect of structures on individual voluntariness, as easily as they often bracket the general requirement of obedience. The substantive conclusions regarding political obligation that later chapters offer bear directly on all of these topics.

Conclusion

Politics, as a realm categorized by the necessity of taking actions with far-reaching effects, places profound responsibility on all those who consider themselves neither beasts nor gods. A voluntarist theory of political obligation reflects the “fundamental assumption of moral philosophy:” that individuals “are responsible for their actions” (Wolff 1998, 12). The conclusions of a strongly voluntarist account of political obligation contradict the predominant view of the purpose of obligation theory. Most theories of political obligation aim at general and universal applicability, but the impossibility of locating a widely applicable, yet voluntary basis for political obligation means that voluntarist obligation must pursue different goals.

Political obligation cannot focus solely on a general, comprehensive requirement to obey the state because obligation is an inherently voluntarist concept. Unlike existing alternatives to obligation-as-obedience, my account classifies binding requirements to take political action according to normatively-significant distinctions. A voluntarist theory of political obligation cannot seek to define in advance the full range of possible actions that political obligation might require. Instead, actual voluntary acts determine the content of particular political obligations.

My analysis suggests that voluntarist political obligation is meant to be a normative standard for individual political conduct as well as state action. The limits and implications of voluntarism in late-modern states give political obligation its critical direction.

The preceding analysis shows that we can distinguish obligation and duty without claiming that voluntary requirements are all that matter. Most normative standards for political action hold that moral requirements on the political agent must either be voluntarist or non-voluntarist, which limits their ability to speak to the issues that arise in 21st-century liberal democracies. On the view I defend, however, obligation is one unique and important voluntary type of binding requirements: it is not the only source of binding political requirements. A defensible theory of voluntarist political obligation cannot and should not seek to justify non-voluntary bonds.

Voluntarily-assumed obligation is a distinctive type of political requirement in need of careful theoretical examination. The dominant theories of political obligation treat the liberal-democratic state and its laws as a fixed, given feature of the late-modern world rather than the product of contingent, voluntary choices and obligations. A theory of voluntarily-assumed obligations in political life, however, highlights the voluntarist dimension of state action, as well as the horizontal political ties and voluntary associations that are often the primary avenue of political action for ordinary citizens. To advance the issues of political freedom and responsibility with which political obligation is chiefly concerned, theories of political obligation must address the relationships that individuals voluntarily create, a point future chapters will substantiate. Before this, however, a critique of philosophical anarchism will show that a properly bounded notion of voluntarism can advance the debate over political obligation.

“Mere distance from fact is no argument against an ethical maxim or a mystical hope” – Joseph Schumpeter

“Do you not by this action you are attempting intend to destroy us, the laws, and indeed the whole city, as far as you are concerned? Or do you think it possible for a city not to be destroyed if the verdicts of its courts have no force but are nullified and set at naught by private individuals?” – Socrates, to Crito

Chapter Three

Meeting the Challenge of Philosophical Anarchism

Philosophical anarchism, defended most notably in recent years by A. John Simmons, holds that “all existing states are illegitimate” (Simmons 2001, 103), which “remove[s] any strong moral presumption in favor of obedience to, compliance with, or support for our own or other existing states” (104).⁹⁰ To the extent that they succeed in establishing this claim, philosophical anarchists call into question the belief that political authority, coercion, and general political obligation can be justified, and reveal fundamental weaknesses in existing accounts of legitimacy. In short, the philosophical anarchist’s attack on the “*ipso facto* morally binding” quality of state commands “places even more heavily upon our shoulders the central task of political philosophy: the search for the legitimate state” (Reiman 1972, xvi).

Since most theorists see either the state’s right to coercively enforce its commands or the citizen’s duty to obey as a necessary component of legitimacy, the challenge raised by the philosophical anarchist is grave indeed. For philosophical anarchists as well as many proponents of a general obligation to obey, state legitimacy is “the logical correlate of the obligation of citizens to obey the law and to in other ways support the state, that is, to the obligation that is usually referred to as political obligation” (Simmons 2001, 106). This ‘correlativity thesis’ bears

⁹⁰ Others commonly classified under the heading of philosophical anarchism include Smith, Green 1988, Wolff, and Raz 1979.

directly on what some see as “the fundamental problem confronting political philosophy today[:] that of explaining how the state can be legitimate if there is no general duty to obey its laws” (Edmundson 1998b, 7). Unlike those who defend state legitimacy by upholding a general obligation to obey, philosophical anarchists reject the state’s right to command and coercively enforce its commands, as well as the possibility of a general obligation to obey. Philosophical anarchists argue that valid political obligation can only be generated through truly voluntary individual action, an impossibility in large, impersonal late-modern states that differ in crucial respects from the ideal of a voluntary ‘cooperative scheme.’ Since a voluntary theory of general political obligation is impossible and a non-voluntary theory is unacceptable, philosophical anarchists conclude that states are illegitimate.

Scholars cannot decisively refute philosophical anarchism as long as they assume that political obligation solely concerns a general, comprehensive requirement of obedience. Because general, comprehensive obedience must either be entirely affirmed or wholly rejected, obedience theories of political obligation must entirely reject philosophical anarchism. Responses to philosophical anarchism generally argue either that states allow some opportunities for relevant obligation-generating voluntary action, or that voluntarism is an inappropriate standard for political association.⁹¹ As of yet, neither line of argument has successfully overcome philosophical anarchism’s most troubling claims about political obligation and legitimacy. Philosophical anarchists convincingly show that a voluntarist account of a general, comprehensive obligation to obey is impossible in late-modern liberal democracies. Further, the anarchist critique exposes the lack of critical distance with which most theories of political

⁹¹ On the first, see Raz 1979, Klosko 1992, and Rawls 1999, which, though it precedes Simmons, is instructive for its argument that general voluntary obligation is impossible but officeholders, for example, can voluntarily assume obligations. On the second, see Gans 1992, Klosko 2005 and 2011, Horton 2010, and Brewer, among many others.

obligation view state authority. The philosophical-anarchist critique of political obligation requires a better response than existing obligation theories can provide, even though philosophical anarchism is not itself a satisfactory alternative. By insisting on a completely general and comprehensive theory of political obligation, I argue, theorists will *discredit*, not save, the state.

Below I argue that decoupling political obligation from the general requirement to obey both facilitates a constructive response to philosophical anarchism, and lets us identify philosophical anarchism's fundamental failing: its incoherent treatment of political voluntarism. While philosophical anarchists rightly draw attention to voluntary action, their failure to consider voluntarily-assumed obligations beyond obedience is inexcusably inconsistent with the commitment to voluntarism that motivates their critique of existing obligation theories.

I begin with a short summary of the core tenets of philosophical anarchism.⁹² Because Simmons offers the strongest and most complete version of philosophical anarchism, much of my argument in this chapter is directed against him. In the second section, I argue that although anarchists offer a sound critique of the political obligation literature, philosophical anarchism fails because it rejects all non-voluntary political bonds, but conceptualizes legitimacy, political obligation, the state, and politics itself solely as a non-voluntary intrusion into free association. However, all institutions and social systems possess and exercise some form of coercive power, whether directly, as in criminal law enforcement, or more diffusely, as in the operation of social rules and norms. Following that, I show that because philosophical anarchists maintain that a general, comprehensive requirement to obey is the only possible political obligation, they adopt a

⁹² Because few discussions of philosophical anarchism systematically elucidate the defining characteristics of the philosophical-anarchist position, my explication below relies heavily on Simmons, who provides perhaps the best guide to the contours of contemporary philosophical anarchism.

totalizing position on political authority that precludes both a useful critique of the state *and* a successful alternative account of political association. Finally, I argue that the distinction between ‘horizontal’ obligations connecting citizens and the ‘vertical’ obligation citizens owe the state is necessary to refute philosophical anarchism.⁹³

A Brief Overview of Philosophical Anarchism

An entirely voluntarist ideal of politics inspires philosophical-anarchist critiques of state legitimacy. In place of a formal state with legitimate coercive authority, the philosophical anarchist’s version of social life “is a vision of autonomous, non-coercive, productive interaction among equals, liberated from and without need for distinctively political institutions, such as formal legal systems or government or the state” (Simmons 2001, 102). Philosophical anarchists reject political naturalism: the view that political membership and obligation are the natural and proper condition of individuals born within the borders of a state. Instead, they argue that voluntary acts are the only acceptable source of political obligation.

Though philosophical and political anarchists agree that existing states are illegitimate, they come to different conclusions about the “practical force” of this claim. While *political* anarchists take “the illegitimacy of states to entail a strong moral imperative to oppose or eliminate states,” *philosophical* anarchists maintain that state illegitimacy eliminates the moral presumption in much political theory favoring obedience, compliance, and support for the state (104). Philosophical anarchists “do not *necessarily* conclude... that the state must be abolished or even that it should be actively resisted,” instead holding that “whether one should support a state depends largely upon what a state does” (Horton 2010, 111). Simmons further distinguishes

⁹³ On this distinction, see Pateman 1985, 8, 69-73, and 97, and Walzer 1971.

a priori philosophical anarchism, which “maintains that all possible states are morally illegitimate” from *a posteriori* philosophical anarchism, which maintains that although all *existing* states are illegitimate, “[n]othing in the definition of the state precludes its legitimacy” (2001, 105). *A posteriori* anarchism is by far the more common position, with Robert Paul Wolff’s *In Defense of Anarchism* the best-known exception.

In short, philosophical anarchism is essentially a radical skepticism about legitimate state authority, unlike classical political anarchism, which presents a sociopolitical theory of voluntary cooperative ties between individuals in a non-state setting and therefore discusses positive alternatives to the state.⁹⁴ Political anarchists believe that the “state is destructive of those natural social bonds that arise uncoercively through cooperation, mutual respect or affect,” and that “it is these bonds that genuinely hold society together and not the laws, threats, and institutionalized violence of the state” (Horton 2010, 109). Political anarchists like Kropotkin compare the coercive nature of law with political organization via spontaneously cooperative custom: while “[t]he state is institutionalized coercion, ‘government’ is a natural process of social coordination” (119). Thus, political anarchists give considerable attention to how such voluntary government might work. Modern states, they contend, are parasitic on widespread, voluntary practices of mutual aid and forbearance without which no society is possible. These practices, they argue, also make a non-coercive alternative to the state a viable mode of government. In contrast, philosophical anarchists devote themselves to critiquing the state’s philosophical justifications, and do not address alternative forms of social and political order or government.

Philosophical anarchists do *not* categorically deny the possibility of valid moral requirements. But on their view, concurrent legal requirements or authoritative commands are

⁹⁴ Classical anarchists of note include Kropotkin, Bakunin, and Proudhon.

superfluous because valid moral requirements, by definition, already demand compliance. Because law lacks independent moral significance, “subjects have no political obligation...to obey the law or to support the political leaders or institutions that try to compel their allegiance” (Simmons 2001, 107). For the philosophical anarchist, the requirement to act morally derives from what Simmons terms the ‘external justification’ of moral principles, rather than legal grounds.⁹⁵ However, as many theorists have shown, this view leaves philosophical anarchists unable to respond when people ignore their moral requirements. Critics of philosophical anarchism argue that coercive enforcement mechanisms are necessary because entirely non-coercive association is impossible, a point I take up below.

The Paradox of Voluntarist Obligation Revisited

Because philosophical anarchists hold that voluntary acts are the only acceptable source of political obligation, they reject the main arguments for political obligation – hypothetical consent, fairness, and duty-based or associative accounts – and renounce the possibility of political obligation entirely. While I concur that obligations must be voluntarily assumed, philosophical anarchism’s critique of legitimacy is inconclusive because it overstates the role of voluntarism vis-à-vis other sources of binding requirements.

Consent

Philosophical anarchists reject arguments from consent because the current view of consent does not meet their more stringent standards for voluntary action, not because they deny that consent can establish valid obligations. Historically, arguments for political obligation have used consent to argue that free individuals are nonetheless bound to obey the state because those individuals

⁹⁵ Examples of this line of argument include Raz 1999, Smith 1999, and Simmons 2001, 84-100.

have voluntarily agreed, in some fashion, to submit to the authority of the state. Philosophical anarchists argue that this narrative is false: “[t]he historical origin of the state is not consent, but submission. And the function of contract theory is simply this: to call submission consent or transcendence, fantastically to preserve one’s pride in the face of one’s degradation” (Sartwell 2008, 60).⁹⁶ Because actual consent acts are too infrequent to ground the general requirement to obey, proponents of consent-based arguments have turned to hypothetical consent. Hypothetical consent arguments maintain that “[a]s long as a government’s actions are within the bounds of what [a plausible social] contract hypothetically *would have* provided, would have *had to* provide, those living within its territory must obey” (Pitkin 1965, 996).⁹⁷ Since hypothetical consent does not require voluntary acts, philosophical anarchists deny that it generates political obligation.

For *a posteriori* philosophical anarchists, if truly voluntary political associations existed, actual consent could yield a valid general, comprehensive obligation to obey, a claim I reject.⁹⁸ In his early work, Simmons defends the capacity to voluntarily bind oneself even in the case of consenting to obey, if certain conditions are met. A promise to obey all valid laws, Simmons contends, is binding, but strictly limited “to those cases in which the rules by which valid laws are identified continue to be respected,” and by two categorical restrictions (Simmons 1981, 36). First, “all promissory obligations are limited, because we cannot undertake moral obligations to do the morally impermissible” (36). Second, “the injustice of a law or other moral considerations may constitute sufficient justification for failing to discharge any promissory obligation that we

⁹⁶ Pateman 1985 and Pitkin 1966 make a similar point.

⁹⁷ The most notable examples are Pitkin 1965 and 1966. More recently, see Lewis 1989, Brudney 1991, Murphy 1997, Stark 2000, and Estlund 2008 (in his discussion of ‘normative authority’).

⁹⁸ Wolff notably rejects this claim.

may have to obey the law” (36). Though “most citizens in existing communities do not have such obligations, the realization of voluntarist ideals would surely change this” (37). Simmons’s conception of voluntarism requires the ability to intentionally create one’s ties and undertake obligations in the *present*, but allows individuals to categorically restrict their capacity for voluntary action in the *future* via an requirement to obey morally permissible laws. By contrast, I submit that one can promise to obey a *specific* law (for example, to “tell the truth, the whole truth and nothing but the truth”), but because strong voluntarism requires that we know exactly what we are undertaking an obligation to do, there can be no *categorical* promise of obedience.

Philosophical anarchists draw a faulty analogy between promising and consent-based political obligation. Consent theory, long the dominant liberal argument for political obligation, is modeled on promising, which appeals to core liberal intuitions about individual liberty and the source of moral requirements. For philosophical anarchists, “[c]onsent is a *clear* ground of obligation. If we are agreed on anything concerning moral requirements, it is that promising and consenting generate them” (Simmons 2001, 11). On nearly all accounts, a promise creates a freely-assumed requirement to perform a specific action determined by that promise. However, consent and promising diverge on the conceptual level:

First, consent need not involve commitment into the future. It often exerts power in the present or may be given and later withdrawn. By contrast, promises are *pro tanto* irrevocable and, typically, bind the agent into the future... Second, consent’s primary moral impact is to create a *permission* for another to act in an otherwise unauthorized way. The obligations generated are its subsidiary consequences. Whereas, a promise’s primary moral impact is to generate an obligation on the promisor and powers and permissions for the promisee (namely, to come to expect or rely on what is promised,

with grounds for complaint if disappointed, and the power to relieve the promisor of obligation) (Shiffrin 2008, 501).

While promising “enables individuals to create a new relationship where none existed before,” consenting to a general, comprehensive, vertical requirement to obey is “consent to an already existing relationship of obligation” (Pateman 1985, 21).⁹⁹ Thus, in consent-based theories, political obligation is “a subordination to the judgment of others” (Pitkin 1966, 51).

Fair Play

Unlike consent, philosophical anarchists reject the argument from fairness because it “draws away from the paradigm of acts that generate obligations” (Simmons 2001, 11). George Klosko, the foremost proponent of the fairness argument, contends that when schemes provide ‘presumptive benefits,’ or those things necessary to pursue any idea of the good life, individuals have an obligation to support that scheme.¹⁰⁰ Philosophical anarchists reject this claim because it derives obligation from the importance of the benefit provided, rather than voluntary actions

⁹⁹ Other rejections of this attempt to subsume all possible forms of voluntary commitment under the rubric of promising contend that an alternative model centering on the act of agreement better captures voluntarily-undertaken commitments. Margaret Gilbert’s joint decision model, which rejects the “standard view of an agreement as an exchange of promises,” is perhaps the most prominent response to the promissory account of voluntarism (1993, 680). Unlike promises, which can be given by the promisor without any reciprocal commitment from the promisee and must be kept regardless of the acts of others, “a joint commitment is ‘joint’ in a strong sense: no individual is committed until all the others are; it is impossible to rescind the commitment for one party without rescinding it for the others... mutual consent is required to rescind a joint commitment. The commitment produces, in effect, a single subject with its own commitment: we are committed unless we (together) change our mind” (693). Agreements thus yield a distinct type of obligation, which differs substantially from promissory obligation: Gilbert claims that obligations of joint decision are context sensitive in a way that promissory obligations are not (699).

¹⁰⁰ See Klosko 1992, Chapter 2. Klosko does not require *active* acceptance of benefits; it is sufficient that the scheme provide indispensable benefits. When schemes are fair, recipients are obligated and their compliance can be forcibly extracted, even if they cannot opt out of the scheme. Indeed, Klosko argues that fairness can overcome Nozick’s objection to such “nonexcludable schemes.” Nozick’s critique can be found in Nozick 1974, 90-5. For Klosko’s counterargument, see Klosko 1992, 39-55. For Klosko, schemes as a whole must meet a requirement of fair distribution of benefits and burdens (Klosko 1992, 63). Fairness does not consider individual outcomes; rather, a particular scheme is fair if its procedures and institutions operate legitimately (67). Consequently, one must obey regardless of whether the benefits that individual receives from the scheme are comparable to those received by others.

(such as active pursuit or acceptance of benefits by individuals).¹⁰¹ Further, anarchists deny that fairness is sufficient to support the general obligation to obey because the principle of fair play *in itself* cannot justify its application in particular cases, nor delineate its proper role in evaluating legitimacy claims. Rather, they point out, “[j]ust as it is possible to pursue efficiently a desirable end by indefensible means, it is possible to distribute burdens fairly that ought not to be distributed at all” (43). Chief among the burdens that ought not be distributed, they argue, are the trappings of state legitimacy: an obligation to obey or be rightfully coerced.

Natural Duty and Associative Obligation

Finally, philosophical anarchists reject duty-based arguments for political obligation because duty, which makes claims on individuals either by virtue of moral personhood, or of a social role that the individual inhabits, is incompatible with the anarchist ideal of voluntary and non-coercive association. Philosophical anarchists concede that non-voluntary moral requirements on individuals sometimes correspond to coercively-enforceable state commands or institutional requirements, but argue that this compliance is contingent and does not rest on an independent general requirement to obey. Non-voluntary associative obligations, they maintain, fail to generate a “normatively independent” requirement to obey one’s own state (86-96). Further, even if we could defend a duty to support just institutions, they argue that this duty cannot explain why we need to support particular ones. Thus, natural duties do not give individuals reasons to obey their *own* state, rather than *any* state or institution in which obedience would discharge the duty in question.¹⁰² For Simmons, “[i]n asking about our political bonds we are asking about the moral requirements that bind us in a special way to the government or political

¹⁰¹ See especially Simmons 2001, 11-19 and 24-5. Klosko, by contrast, rejects the claim that political obligations must be self-assumed (i.e. must be obligations in the technical sense). See Klosko 2005, 87-91 and 2011, 503.

¹⁰² On this ‘particularity requirement,’ see Simmons 2001, chapter 4, and Stilz 2009.

institutions of our country of residence above all others,” and voluntary acts are the only acceptable answers (1981, 32). Owing to this basic disagreement over the source of political and moral requirements, philosophical anarchists and proponents of duty-based theories of political obligation necessarily speak past one another.

The Modern State and Political Obligation

Philosophical anarchists argue that because existing states are not voluntary schemes, they cannot claim legitimacy, nor do citizens owe anything, least of all an obligation to obey, to the state *qua* legitimate authority. Widespread actual consent, they maintain, is impossible within present-day states. They similarly dismiss the central claim of fairness theory: that commonsense moral intuitions about fair cooperation accurately describe the impersonal coordination of the distribution of benefits and burdens in late-modern states. Such intuitions, they maintain, reflect our experiences with small-scale cooperative schemes entirely different from the state. We accept a moral obligation to ‘do our share’ in small cooperative ventures out of fairness to others. To yield obligations of fairness, cooperative acts

require a proper motivation on the parts of the cooperating parties and their correct understanding of their basic situation, as well as the correct behavior to achieve coordination. Merely ‘behaving correctly’ (without further reference to one’s motivation and understanding) is insufficient...it is such conscious sacrifice for the common good (among other things), not the mere (habitual or coerced) ‘rendering of services,’ that gives rise to our sense of the demands of fair play (Simmons 2001, 40).

The requirement to do one’s share stems from our decision to accept benefits that we recognize as the product of mutual effort (24).¹⁰³

¹⁰³ Nozick’s analysis of nonexcludable schemes in *Anarchy, State and Utopia* raises similar points as a way of defending his minimal conception of the state. See Nozick 1974, 90-5.

Philosophical anarchists argue that we cannot apply this intuition to the citizen-state bond because “contemporary political societies simply do not constitute cooperative schemes of the sort necessary to generate obligations under the principle of fair play” (28). Individuals neither choose which benefits the state provides, nor do most comply with the burdens levied by the state out of a conscious desire to do their fair share. For philosophical anarchists, the state’s massively impersonal scale precludes properly-motivated cooperation, citizens are generally unreflective about the cooperative nature of public goods, states enforce their rules coercively, citizens show a “mindless reverence for law and authority,” and individuals have reason to believe that others wouldn’t adhere to the state’s rules when those rules lack external moral justification if not for the threat of punishment.¹⁰⁴ Thus “[a]ttempts to portray actual political societies as voluntary cooperative schemes...utilize an idea of cooperation that, when employed in discussing the principle of fair play, undermines that principle’s own intuitive support” (29). Although Simmons allows that fair play might explain a limited set of *moral* obligations within a truly voluntary scheme, fairness is not a successful basis for *political* obligation because it cannot ground a general obligation to obey.¹⁰⁵ And because states are *not* voluntary schemes, the requirement of obedience cannot be sustained.

Even outside philosophical-anarchist ranks, few theorists are firmly convinced that existing liberal-democratic states are voluntary associations.¹⁰⁶ Nearly all theorists now doubt that a voluntarist defense of state authority and general political obligation is possible, which is

¹⁰⁴ I take these points from Simmons 2001, 41.

¹⁰⁵ As Simmons puts it, “at very best the principle of fair play can hope to account for the political obligations of only a very few citizens in a very few actual states; it is more likely, however, that it accounts for no such obligations at all” (2001, 26).

¹⁰⁶ See, for example, Buchanan 2004, Hirschmann 1992, Raz 1999, and Stilz 2009, chapters 2-4.

why those who defend political obligation generally do so on non-voluntary grounds. Thus philosophical anarchism, which highlights the widening gap between voluntarist principles and the empirical facts of late-modern states, is both timely and perceptive. I will show, however, that it is ultimately unsuccessful.

The Case Against Philosophical Anarchism

While philosophical anarchism gives us ample reasons to radically revise our understanding of political obligation, three major problems plague its attack on state legitimacy. First, anarchists defend a fully voluntarist ideal of politics, which cannot account for the non-voluntary aspects of political life. Second, because philosophical anarchists reject coercion *a priori*, they cannot say how we should react when people flout moral requirements. In such cases it seems that lawful coercion is preferable to arbitrary individual enforcement. I shall argue that philosophical anarchists' stance on coercion is incompatible with their political voluntarism. Finally and most importantly, as I will show, the anarchist conception of voluntarism makes political self-determination impossible, a perverse outcome for a theory committed to voluntary political association. Because anarchists see obedience as the sole end of political obligation, they do not acknowledge voluntarily-assumed obligations to take any other kind of political action. Such obligations are the means by which individuals undertake action in concert: they establish who does what in any ongoing collective effort or horizontal association. A theory that ignores obligations to do anything other than obey cannot investigate opportunities for truly voluntary political association. Below I argue that my conception of political obligation is therefore more consistent with political voluntarism than the obedience conception philosophical anarchists adopt. The voluntarist approach to political obligation that I offer can defuse philosophical

anarchism's attack on legitimacy, replace their utopian view of political association with a constructive alternative that lets us critically approach the need for political order, and assess the state's role in meeting this need.

Politics Beyond Voluntarism

Many theorists respond to philosophical anarchism by arguing that voluntarism is an inappropriate mode of political association. This grossly overstates a valid point: that political association cannot be *entirely* voluntary because normatively significant non-voluntary ties are a major component of political life. Existing theories do not refute the most convincing and strongest aspects of philosophical anarchism, which highlight the state's practical problems by illustrating its divergence from voluntarist association. However, because philosophical anarchists see voluntarism as the only basis for binding political requirements, they do not see non-voluntary grounds for obedience, such as general moral requirements that coincide with laws, as relevant to legitimacy.

Because philosophical anarchists only accept an entirely voluntarist form of political association, their account of political life is as limited as existing non-voluntary defenses of general political obligation. Simmons himself recognizes that "the political participation of the vast majority of citizens is neither fully voluntary (or informed) nor simply coerced. Instead it consists of making the best of a situation to which there are no options worth considering" (Simmons 2001, 46). As my argument in the preceding chapter shows, I accept the basic anarchist claim that political obligations must be self-assumed. However, philosophical anarchists do not consider non-state political ties, nor do they investigate voluntary political relationships that occur outside the vertical citizen-state paradigm. In other words, they do not

see voluntary action as a means for people to *create* ‘options worth considering.’ Instead, philosophical anarchists put forward an essentially skeptical critique of state legitimacy, authority, and political obligation. While they show that existing arguments for legitimacy and obligation fail, they do not examine the positive potential of voluntary action, nor consider non-state forms of voluntary political association. In this sense, philosophical anarchism lacks the useful potential of classical political anarchism, which seriously examines alternatives to the state-centric model of government.

Proponents of obligation frequently treat the question of whether or not obligations are self-assumed as a purely semantic disagreement, which occludes the unique political stakes in voluntarily-assumed political obligation: the capacity for democratic self-governance. Recent defenses of political obligation make two justifiable concessions to philosophical anarchists: first, that a general, comprehensive requirement to obey is impossible, and second, that broadly-applicable requirements to obey cannot be voluntarist. In turn, philosophical anarchists claim that we ought to fulfill moral obligations and requirements, which “sometimes have the same substance as the subjects’ legal requirements” (107).¹⁰⁷ If both sides can agree that there are moral requirements to obey *some* laws, the point on which they *disagree* –whether to call such requirements political obligations or moral duties – does seem trivial. I argue that this is solely because political obligation’s defenders concentrate on finding an obedience requirement that philosophical anarchists could accept, and do not realize that voluntarily-assumed political obligations are a separate and vital issue. While content-dependent obedience evades the philosophical anarchist’s cogent attack on legitimacy claims built on a content-independent obedience requirement, it does so by bracketing voluntary political ties. As a result, neither side

¹⁰⁷ On the former, see Raz 1999 and, more recently, Klosko 2011.

investigates voluntarily-assumed political requirements beyond obedience, even though, as I will argue below, the anarchist's commitment to political voluntarism requires that they do so.

Voluntarily-assumed political requirements, and voluntary political action more generally, play a unique role in politics that neither philosophical anarchists nor obligation's defenders have adequately captured. To give voluntarism its due, we must recognize this distinctiveness *and* analyze its relationship to non-voluntary requirements. This, I submit, is sufficient reason to insist that obligations are self-assumed. A theory that defines obligation in voluntarist terms, however, must recognize the limited applicability of voluntarist political obligation. This is particularly true since, as Simmons notes, "even those (like myself) who are broadly sympathetic to voluntarist approaches to, say, political obligation or parental responsibility, almost always still acknowledge that not all our moral duties and obligations are voluntarily assumed" (95). Philosophical anarchists mistakenly maintain that voluntarist obligation can give a complete account of *political* life. Unlike the philosophical anarchist, I have argued that political responsibility has both non-voluntary and voluntary components. A properly differentiated account of binding requirements on the political actor can tackle the distinctive issues involved in voluntary ties, and recognize important non-voluntary requirements in political life without which voluntary political action would be impossible.

Coercion, Voluntary Political Association, and Self-Governance

Philosophical anarchists contend that the coercive nature of states categorically precludes voluntary action, a deeply problematic claim that leads them to identify coercion entirely with the state and its methods for maintaining order. Philosophical anarchists defend an exaggerated version of the "predisposition against the politics of coercion built into the fabric of most

mainstream political theorizing” (Stears 2009, 535). In their view, states cannot be voluntary associations because “the mere existence of an overwhelming force by which the laws will be enforced compromises conceptually the possibility of voluntarily acceding to them” (Sartwell 2008, 51). For philosophical anarchists, voluntary, free, and uncoerced action are synonymous: “Free action is voluntary action, and political freedom or liberty is the overall condition... in which one is not subject to coercion by political or state authorities, or is subject to coercion only to some limited extent” (23). However, an alternative, increasingly influential position holds that “coercion is an inevitable feature of any political order and is, or at least can sometimes be, good, both for those who exercise it and for those who are subject to it” (Stears 2009, 534).¹⁰⁸ Philosophical anarchism’s stance on coercion and non-voluntary bonds is ultimately untenable because it does not help us constructively address the necessity, and in some cases the desirability, of coercive action.

Coercion and Anarchist Order

The fundamental challenge for the philosophical anarchist is finding a non-coercive source of order. Anarchists take our ability to engage in activities that require mutual agreement to social norms for granted. When individuals shirk moral requirements and implicit behavioral rules, however, a formal system of rules, coupled with sanctions for rule-breakers, is necessary to maintain social order.¹⁰⁹ As Anna Stilz puts it, the “fundamental error” of philosophical anarchism “is the belief that our rights and duties of justice can be defined and guaranteed without political authority, but simply through individuals’ fulfillment of clear and obvious

¹⁰⁸ Stears locates this alternative tradition, which he terms the ‘politics of compulsion,’ in thinkers like Schmitt, Weber, and Nietzsche, as well as contemporary agonists like Connolly, Mouffe, Honig, and Tully, and even ‘disillusioned liberals’ like Waldron. See also Young 2011, Medearis 2004, and Mansbridge 1996.

¹⁰⁹ On this point, see Buchanan 1975, chapter 1.

interpersonal moral duties” (Stilz 2009, 28).¹¹⁰ There is no guarantee that everyone will act morally in the absence of coercive state enforcement. The modern state may in fact be ‘parasitic’ on widespread conformity to norms of moral reciprocity, but it (or some other form of authoritative adjudication) is a *necessary* parasite. Because anarchists do not see *any* non-coercive way of interacting with the state, they cannot constructively critique the state.

Because philosophical anarchists maintain that coercion “is always *prima facie* an evil” (Sartwell 2008, 33), they cannot distinguish better from worse methods of promoting social order and cooperation. Because they believe that “all forms of human association ought to be, as far as is possible, voluntary...[t]o the extent that government is a nonvoluntary association – that is, to the extent that it rests on coercion... ‘anarchism’ entails that government should not exist” (4). It is doubtful that philosophical anarchists can provide an account of non-coercive order, and even if they could, such an account would itself likely constitute a form of government, as the classical political anarchists realized. While political anarchists explore non-state sanctions, such as exile or other means of persuading individuals to follow group rules, philosophical anarchists cannot consider these alternatives to government by states. Philosophical anarchists cannot identify a positive basis of political order because they refuse to examine the coercive aspects of life in common that are an unavoidable practical problem in politics.

Philosophical anarchists cannot say how society ought to deal with individuals that ignore or transgress moral requirements, or how an autonomous, non-coercive model of social cooperation should respond to non-cooperators – in other words, what government would look like in the absence of states. There is a persuasive case to be made that lawful coercion is preferable to arbitrary individual enforcement as a means of dealing with uncooperative

¹¹⁰ This charge, she states, applies equally to cosmopolitans like Joseph Carens, Simon Caney, and Martha Nussbaum.

behavior. This does not automatically justify the modern state's claim to legitimacy, since lawful coercion has worn many guises and the modern state is a fairly recent development, but it certainly does not preclude that claim. This thoroughly skeptical point should resonate with *a posteriori* philosophical anarchists much more than it currently does, especially since they deem existing states "illegitimate by virtue of their contingent characters" rather than the definition of the state itself (Simmons 2001, 105), as Simmons puts it. Neither Simmons nor other philosophical anarchists identify the legitimate and illegitimate features of existing states, and explain why the illegitimate features of modern states outweigh the legitimate ones.

Since "coercion exists wherever and whenever human conduct is prohibited or required by a center of power, meaning, or action external to, or independent of the human self – individual or collective" (Cook 1972, 115), doing away with the state will not do away with coercion, a fact that political anarchists recognize.¹¹¹ As anarchists define it, "political coercion is not a matter simply of not being able to do what you want, but of being in a situation where other people are articulating your choices by force" (Sartwell 2008, 53). Such situations are hardly confined to the state, as many have pointed out: non-state economic, social, and familial actors regularly dictate individuals' options.¹¹² This suggests that a theory committed to human freedom should confront coercion in *all* its forms, not just in state commands. An *a priori* condemnation of coercion will not cure politics (or indeed human relations) of its coercive side. The question for political theory is what we ought to do given this reality. One may consistently denounce coercion in the abstract, but because coercion is an inescapable element of social and political life, we must grapple with its inevitable manifestations in specific, practical terms. To

¹¹¹ On this, see Sartwell 2008, 11-33.

¹¹² For in-depth discussions of this point, see Young 2011, Olsaretti 2008, and Mill's *Subjection of Women* (2006), a 19th-century example.

address actual authority claims, theorists must employ a principle that distinguishes between better and worse uses of coercive power. In order to distinguish just and unjust coercion, we must assess coercion in terms of its effects rather than its abstract qualities.¹¹³

Philosophical anarchists cannot draw such distinctions because they condemn coercion as such. In chapter two, I argued that a given action is non-voluntary if all other alternatives are prudentially (but not morally) unacceptable. Even if obedience is non-voluntary because it is the only prudentially-acceptable alternative, if it is also the only *morally* acceptable alternative, then the non-voluntary nature of that obedience claim is largely unproblematic. This approach to voluntarism, unlike the anarchist's *a priori* claims about coercion, can distinguish situations that *should* be voluntary from those that need not be. This lets us investigate a major problem that philosophical anarchists cannot consider: non-voluntary situations in which the only prudentially acceptable alternative is *morally unacceptable*, or those that offer no prudentially acceptable choice at all.

Take the example of a nuclear power plant worker who is told by her boss to throw the plant's spent fuel rods into a local river, which violates state nuclear waste disposal laws and has catastrophic environmental effects.¹¹⁴ She is also told that plant management intends to fire any whistleblowers, as well as workers who refuse to take part or challenge this practice in any way. In this situation, she has only one prudentially acceptable option – to do as she is told – and in the long run even this is prudentially unacceptable, since she will also be harmed by radioactive

¹¹³ Here I have in mind J.S. Mill's analysis of the limits to society's authority over the individual: society must respect, even promote, individual autonomy over self-regarding acts, which in his analysis often involves actively deploying power against the 'despotism of custom.' The view that 'coercion must be made to counteract coercion' also echoes Madison's famous treatment of power in *Federalist 51*.

¹¹⁴ Laws that regulate the disposal of toxic waste are themselves an excellent example of a non-voluntary legal requirement that protect people against unjust private power.

waste in the local river. Since throwing spent fuel rods in the river is clearly morally unacceptable, and all morally acceptable choices will get her fired, her situation is non-voluntary in a problematic way. Ordinary moral intuitions suggest that the plant managers exercise their coercive power unjustly in ordering her to comply or be fired. What is necessary in such a situation is some way of protecting the worker from the prudentially unacceptable consequences of doing the morally right thing. Legal protection of whistleblowers, enforced by the state, is an intuitively plausible solution. Though the state must coerce plant management to protect the worker (and to make the plant comply with safe nuclear waste disposal practices), this seems to be an example of just coercion.

A theory of political voluntarism *must* be able to distinguish just and unjust coercion, in order to make claims about when individuals may act in ways that limit others' ability to take voluntary action, and how to respond when some wrongly coerce others. Philosophical anarchists cannot consider these questions because they reject coercion outright, and do not recognize its constructive and necessary role in enforcing the proper boundaries between individuals. And because they reject the modern state but offer no alternative account of political authority, they offer no insight into the proper role of political authorities in policing individuals' coercive acts and relationships. Above I offered a deliberately clear-cut hypothetical case, but history provides abundant examples both of objectionable non-state coercion (of workers during the early days of the labor movement, of women by their husbands), and of unjust legally-encoded coercion (of African-Americans by Jim Crow laws, Federal Housing Association and bank lending policies, and so on), ameliorated by coercive state solutions, (the *Brown* decision, the Voting Rights Act, the Civil Rights Act, etc). In short, philosophical anarchists pay a steep price for failing to see that the state is not always the villain and coercion is not always bad.

Voluntary Obedience

Philosophical anarchists deploy a problematic, inconsistent view of individual intent. Simmons argues that although many people feel obligated to their political community, this identification is not “in any way inconsistent with denying that we are morally bound by political obligations to our countries of residence” (Simmons 2001, 157). This point highlights a major problem that any attempt to ground political obligation must confront: the question of *feeling* obligated versus *being* obligated. However, Simmons’s claim here conflicts with his position on free riding. For Simmons, one is only a free rider when “one chooses to take advantage of (or should know that one is taking advantage of) the cooperative sacrifices of others” (34). While Simmons holds that the individual’s internal orientation determines whether a particular action counts as free riding, he argues that individual identification with a political community is not sufficient to establish obligations to that community. Simmons cannot consistently maintain that free riding requires the *intention* to take advantage of cooperative schemes, but deny that the *intention* to cooperate is relevant to evaluating one’s political ties. The criterion of intent must be applied uniformly.

Subjective identification is not sufficient *in itself* to ground particular political obligations, but I take Simmons to be making the stronger claim that even if one strongly feels obligated, no such obligation exists. If one wanted to consent to the requirements of one’s state, in full knowledge of the effect that state institutions had in creating that desire, Simmons would not accept it as generating a valid obligation. A theory built on the importance of voluntary action cannot deny individuals the power to create their own political ties. Simmons’s claim that subjective identification is normatively irrelevant reflects the anarchist conviction that “[v]oluntary action, in a political context, is conceptually incompatible with overwhelming coercive force” (Sartwell 2008, 51). In effect, this means that philosophical anarchism’s

conception of political action is an empty set: voluntary action is impossible, and non-voluntary action is unacceptable. Put another way, philosophical anarchism is subject to a problem it identifies with hypothetical consent, but in reverse: while anarchists critique the impossibility of hypothetically *dissenting*, one might convincingly accuse them of making it impossible for citizens to voluntarily *consent* by their lights.

Although Simmons recognizes a right to disobey, individuals “may sometimes have no justification for acting contrary to their states’ demands or for undermining their states, even if they owe their states no such obligations and have the right to disobey – for we are not always morally justified in exercising our rights” (Simmons 2001, 157). In practice, most people obey the law, often for moral reasons. Given that philosophical anarchists accept moral requirements on action, they should acknowledge that some people obey out of their sincere conviction that a moral requirement happens to coincide with a law, rather than because they are coerced. But in order to maintain that states make voluntary action impossible *a priori*, following laws out of sincere conviction *must* be non-voluntary. If acting on one’s moral convictions is non-voluntary, the normative importance of voluntary action is dramatically diminished.

Just Coercion and the State

Further, certain schemes might legitimately create duty-based requirements to comply that are both moral and political. Philosophical anarchists recognize moral requirements to perform institutionally-assigned tasks, but deny that states have a legitimate right to coercively enforce such tasks (Simmons 2001, 96). In such cases, Simmons argues, a valid moral requirement happens to overlap with an unjustifiable command and obligation claim: no valid *political obligation* to perform that action exists (89). For Simmons, morally neutral practices are not weighty enough to generate any meaningful obligations. Against this, I submit that the normative

significance of certain schemes derives from their mere existence, whether because people will behave differently based on expectations shaped by the scheme's existence or because certain schemes coordinate the provision of public goods in morally relevant ways. Some state commands, such as safety regulations, affect how people discharge their moral obligations. Raz argues that safety regulations like those governing nuclear power plants, which coordinate individual actions according to expert knowledge not held by most citizens, as well as regulations designed to protect some public good, such as restrictions on private barbeque ownership in wooded areas, support a requirement to obey *some* laws (Raz 1999, 167). In addition, the state may coordinate action more effectively than isolated individuals can, or have specialized knowledge and expertise in effectively regulating certain issues. Finally, such laws may make people aware of the moral repercussions of seemingly innocuous individual actions, like having a barbeque in the woods.

To provide necessary public goods that require widespread cooperation, it may be preferable for the state, rather than a fully voluntarist or free-market system, to distribute both the goods and the burdens of contributing to those goods. For example, arguably, a public school system that equitably distributes school-tax money across socioeconomically stratified areas is ethically superior to a privatized educational system. Distributive systems coordinated by the state might be more insulated from market forces and private interest than a private-sector venture would be, and thus able to allocate goods and resources according to norms of fairness and equity rather than competition.¹¹⁵ In practice, private interest groups have an increasingly tight hold on the state's decision-making process. Philosophical anarchism does not account for

¹¹⁵ The success of state distributive schemes in embodying norms of fairness and equity depends on adequate institutional safeguards against the decision-making dynamics characteristic of iron triangles, in which close ties of mutual self-interest between legislators, bureaucrats, and interest groups yield policy that serve those interests rather than the public interest.

the ability of states to legitimately mediate non-voluntary duties, but more regrettably, it relinquishes the possibility of fruitfully taking the state to task for such failings. To address issues like these, a theory of political obligation with a constructively critical attitude toward the state is both necessary and preferable to philosophical anarchism's outright rejection of state legitimacy. A theory that can never say 'yes' to obligation, the state, and coercion will lack credibility among those wondering when to say 'no.'

Voluntarism as the Power to Act

Philosophical anarchists mistakenly oppose the realm of voluntary acts to the normative framework of the state whose defining feature, for them, is coercive force. This dichotomy does not truly respect the capacity for voluntary action it purports to value. The only *political* obligation philosophical anarchists recognize is the obligation to obey, which they argue people do not and should not voluntarily assume. In other words, the only political choice they acknowledge is the choice to promise to obey. They thereby foreclose the possibility that people might create, through voluntary acts, political obligations of radically different content. However, voluntary political action is fundamentally about individual political power: the ability to shape one's own political destiny through one's voluntary acts, and voluntarily create one's political *bonds*. Voluntarism is thus a matter of self-government, which involves voluntarily establishing limits on our freedom to enjoy the benefits of society, and enforcing those limits when necessary.

The underlying problem here is that philosophical anarchists do not and cannot consider non-coercive forms of political power. Power "is not *necessarily* coercive – and certainly not necessarily bad. Nor does it cease to exist when it is not being exercised over someone

coercively or oppressively” (Medearis 2004, 57).¹¹⁶ While philosophical anarchists see political power only as exercises of coercive power-over, power may be used constructively as well as oppressively and coercively. Further, specific exercises of political power are not equivalent to the *capacity* to exercise power.¹¹⁷ The voluntarist perspective I defend highlights political power’s constructive dimension: the power-to-act. Power’s constructive dimension, I submit, is “best understood as ‘those capacities to act possessed by social agents in virtue of the enduring relations in which they participate’” (Medearis 2004, 57).¹¹⁸ Without considering this constructive capacity to act, it is impossible to explain how individuals could engage in true ‘self-government’ or voluntary political association. In short, because power and coercion are inescapable elements of social and political life, they “must be approached and dealt with not in terms of *a priori* formalism, but in specific, empirical terms” (Cook 1972, 122).

Political power as a constructive capacity to act is situated in social relations and structures, including coercive structures like the state. As I argued in the previous chapter, one’s capacity to exercise political power – one’s power-to-act – is largely a function of one’s position within the existing arrangement of social, economic, political, and legal institutions (both vertical

¹¹⁶ This point echoes Held: “Coercion can be effected through an exercise of power, of force, or of violence [which may be physical or nonphysical]...the person coerced must in some sense be doing what he is doing against his will...coercion is the activity of causing someone to do something against his will, or of bringing about his doing what he does against his will...it follows that power may be used in noncoercive as well as coercive ways...If a person’s will has been broken, so that it can no longer oppose a given directive, coercion is no longer necessary, although a given constraint may remain coercive in the sense that if the person willed to escape it, he would be prevented” (50-1). This definition assumes that individual will exists prior to, and is not constituted by, engagement with social forces, but my view is that the will is itself subject to and shaped by structural coercion.

¹¹⁷ This distinction between the capacity to exercise power and specific exercises of power emerged in response to Steven Lukes’ theory of the ‘three faces of power.’ Lukes argued that in addition to the two forms of political power recognized by behavioralists (exercises of direct decision-making power, and ‘non-decisions’ stemming from agenda control and influence over public discourse), political power is also exercised through ideological means. As Jeffrey Isaacs points out, all three of Lukes’ faces define power entirely in terms of its exercise, a reflection of the power debate’s empiricist proclivities. However, as Isaacs argues, the capacity to exercise power, and the latent power relations on which that capacity is founded, is not equivalent to specific exercises of power. See Isaacs 1987.

¹¹⁸ Medearis draws on Isaacs 1987, 80.

and horizontal).¹¹⁹ As a general rule, the ‘better off’ one is, financially and socially, the greater one’s power to act. In this way, institutions come to reflect their interests. These “persistent forms of social relationships, and the social practices they sustain, tend to structure and constrain the pattern of wants and aspirations which social actors are able to recognize and articulate” (Benton 1982, 9-10). Further, existing institutional arrangements are often supported by public discourse, social norms, and other ideological factors. The danger, then, is that inequalities of power tend to be self-sustaining. Those with disproportionate power often have an interest in preserving unjust structures, and those harmed are often dependent on the process that harms them (Young 2011, 148). We cannot assume that those with power will voluntarily correct oppressively unequal institutional arrangements, any more than we can assume that people will always act according to moral rules. Coercion is sometimes the only way to remedy power inequality and structural domination, as, for example, in dismantling racial segregation. But because philosophical anarchists do not recognize power’s intersubjective, constructive dimension, they cannot recognize that some forms of coercion may be justified precisely because they enable those oppressed by current social/economic/political forces or voluntary arrangements to make meaningful voluntary choices and take self-determining action.

Political Voluntarism: Beyond Obedience and Coercion

The anarchist critique does not show that political obligation and legitimacy are impossible; it shows instead that a voluntary defense of general, comprehensive obedience is impossible. Philosophical anarchists claim that while some state coercion might be externally justified (in serving morally necessary ends, such as desegregating the Jim Crow South), this does not imply that those coerced have an independent requirement to obey. This disjuncture, they argue, shows

¹¹⁹ The interactions between horizontal and vertical structures, and their impact on voluntarily-assumed obligations, voluntary political action, and self-determination, are a major focus of chapter four.

that a general obligation to obey, and thus state legitimacy, are indefensible. I reject this claim. Although an *a priori* requirement of obedience is itself inimical to the ideal of voluntary political bonds, since it entails suborning one's judgment and agency to authoritative commands,¹²⁰ this does not imply that other requirements to obey are indefensible. We may be under legitimate non-voluntary requirements to obey in certain cases, though anarchists would attribute this to a moral rather than political source. This point does not conclusively prove that *voluntary* political obligations do not exist: it shows that a requirement to obey is not identical to a voluntary obligation.

In response to philosophical anarchism, an increasing number of theorists reject the correlativity thesis itself, arguing instead that “the authority of a command (and even its permissibility) – its power to create a requirement to obey – is conceptually separate from its legitimacy (the question of whether coercive enforcement would be permissible)” (Estlund 2008, 42). Those who reject the correlativity thesis generally argue that legitimate authority is a defensible concept, but a general obligation to obey is not.¹²¹ Edmundson argues that a *prima facie* duty not to interfere with the enforcement of state commands, rather than a more stringent duty to obey, is sufficient to support valid legitimacy claims (1998a, 44). On Raz's view, legality carries no special moral weight (Raz 1999, 160). This view partially parallels philosophical anarchism, but diverges because Raz does not believe that legitimate political authority requires a successful defense of the general obligation to obey. Further, Raz defends the state's right to coerce in certain circumstances. While he sees no justification for a general duty to obey, he argues that the presence of legal regulations might determine *how* people comply with certain

¹²⁰ See Wolff 1998.

¹²¹ Theorists who employ this conceptual strategy include Smith, Sartorius, Raz, and Edmundson.

moral requirements, as in the case of workplace safety regulations (167).¹²² Drawing on Raz, a related argument holds that “the conditions that constitute the grounds of political authority [i.e. the state’s protection of moral rights that exist outside of government] undercut the possibility of the only reasonable ground of political obligation being satisfied” (Sartorius 1999, 144).

My own position roughly follows Raz: I contend that legitimacy does not require a general, comprehensive obligation to obey law *qua* law. Contrary to philosophical anarchists, then, I submit that a patchwork of externally-justified requirements to obey particular laws is sufficient to justify enforcement of those laws by a properly constituted political authority (i.e. is sufficient for ‘precisely as much legitimacy’ as liberal-democratic states require and deserve).¹²³ Among other things, a conditional non-voluntary duty to obey grounded in a properly differentiated variety of moral principles may be sufficient for legitimacy. As the first chapter suggested, laws justified by an external moral principle (e.g. fairness or a duty of justice) are likely due more than minimal compliance. Broader analysis of binding political requirements yields more substantial insight into the nature of legitimacy and what legitimate political authority is due than a general, comprehensive requirement to obey does.

Though philosophical anarchists only accept strictly voluntarist association, they define politics and political obligation in the same narrow, state-centric terms as the arguments they deride. Philosophical anarchists accept the view that politics in modern states is entirely a matter of command and obedience; other interactions are simply not political. As I have argued, however, ordinary individuals and public officials shape the policies, decisions, and laws of

¹²² See also Raz 1986, 55-59.

¹²³ See p120 in chapter two above.

liberal-democratic states through their choices, though the ordinary individual's practical ability to do so is far more constrained in practice.

In addition, philosophical anarchists cannot investigate non-coercive government or government by voluntary association because their theories erase the distinction between the state and government. While Simmons describes philosophical anarchism's unifying feature as the "thesis of state illegitimacy" (Simmons 2001, 106), his discussion of legitimacy tells a different story. Although he accepts a fairly standard, traditional conception of legitimacy, he applies this conception to the state *and* government, and explicitly brackets the relationship between the two. In his account, "[a] state's (*or government's*) legitimacy is the complex moral right it has to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with those duties, and to use coercion to enforce the duties" (130, emphasis added). While he does not explicitly define 'state' and 'government,' he distinguishes them via the source of their legitimacy. States "earn their legitimacy by virtue of the (unanimous) consent of their members," which "transfers to the collectivity those rights whose exercise by a central authority is necessary for a viable political society" (ibid). By contrast, "[g]overnments are legitimate only if they have been entrusted by the state (society) with the exercise of those same rights" (ibid). In other words, a state – a legitimate central authority – is created when all sign the social contract (as it were), while a government is created when all consent to a particular arrangement for exercising that authority. From this, it appears that philosophical anarchists should themselves recognize the difference between power as capacity and exercises of power, since it is implicit in their distinction between *an* authority and *exercises* of authority's rights.

This distinction between particular authoritative *acts* and the *capacity* to take authoritative action is, I submit, essential for understanding how 'government' and 'the state'

differ. Government is that which *exercises* power. More accurately, government is the sum of all authoritative acts by empowered agents, including ‘non-actions,’ such as a U.S. Attorney’s decision not to prosecute a particular case or a federal judge’s decision not to issue an injunction against disclosure of trade secrets, and ‘non-decisions,’ such as the events by which some issues are excluded from legislative agendas. By contrast, the state is an entity with the power to act, and the power to *empower* particular individuals to act in its name, as its agents. It is at once both an historical phenomenon that developed in early-modern Europe, and an abstraction, one that is not embodied in any particular individual or group and “exists because certain relations obtain between people” (Kukathas 2008). While we can point to particular state agents as the source of state action, the source of the state’s normative claim to authority necessarily stands apart from the individuals who generate and carry out state activity. Its abstract capacity to exercise power, to control the terms on which other individuals and associations exercise power, and to successfully claim legitimacy for itself set the state apart from government.

The central premises of philosophical anarchism make it impossible for philosophical anarchists to provide *any* account of government. Philosophical anarchism holds that 1) coercion is always wrong, 2) the right to coerce is built into the concept of legitimate authority. Owing to these two claims, a philosophical-anarchist account of voluntary association or government that involves authority is incoherent. However, many philosophical anarchists conclude that “while no legitimate state is possible, it is possible to have a legitimate large-scale, cooperative rule-governed association that incorporates positions of rightful authority” (Simmons 2001, 111n16). Simmons himself states that “it seems reasonable to call such an association a state, but nothing of substance turns on the language we use” (ibid), a quixotic claim. If philosophical anarchists are willing to accept voluntary political associations that involve ‘positions of rightful authority,’

they must either accept some forms of coercion as legitimate (rather than only ‘justified’), or deny that authority implies the right to coerce (i.e. revise their view of authority). Otherwise, given their rejection of coercion and claims that authority inherently involves the right to coerce, they cannot consistently accept voluntary associations involving authority. What Simmons (and *a posteriori* philosophical anarchists more generally) reject in denying state legitimacy is not coercion and authority as such, but non-consensual uses of authority. However, they do not require that individuals consent to the authority of moral principles, or to the things other people can voluntarily do to us. These are simply the inevitable effects of living in society: to require that individuals consent to society would be absurd.

The problem thus lies in philosophical anarchism’s treatment of authority and legitimacy. The philosophical-anarchist view of legitimacy puts the onus on those subject to authority, who must voluntarily accept authority over them, rather than on some relevant qualities by which we might assess an authority’s actions. If, as philosophical anarchists maintain, the ability to rightfully command obedience and punish disobedience is authority’s defining feature, it is unclear how the state’s authority differs from (and is more objectionable than) that of a parent. On this view of authority, if someone physically attacked my sister and I were able to make the attack stop simply by ordering the attacker to leave her alone, I would thereby have exercised authority. If the attacker persisted after my order and I successfully used physical force to compel the attacker to subside, this would also count as authority on the command-obedience-enforcement view. By the philosophical-anarchist standard, however, my actions would not be legitimate, since it is vanishingly unlikely that the attacker would consent to my authority in this case. Obviously, had the attack succeeded, the attacker’s authority would also be illegitimate. More generally, people successfully exercise authority over one another all the time in horizontal

relations, frequently without explicit consent on those subject to it. Are we to conclude that a good deal of what goes on *outside* the state is also illegitimate? A blanket claim of this type is as unhelpful in thinking about social authority, power, and coercion, as it is in considering formal political authority: it does not see that some acts of unconsensual coercion (rape, for instance, or waterboarding) are *far* worse than others (fending off a rapist, or establishing food-safety standards).

One might object here that this claim rests on a false analogy between the state's enforcement capacity and the individual's. I agree: the discretionary power of political officeholders, for example, sets the public official apart from other social positions. I submit that because the state's capacity to exercise power is so far beyond that of an individual (warlords and business tycoons excepted), there is a special duty to reflect on authoritative state action. However, the philosophical-anarchist notion of authority cannot examine meaningful differences between state and individual exercises of power. What is missing in their account, I submit, are two characteristics that arguments for state legitimacy commonly include in their notion of legitimate authority: impartiality and non-arbitrariness. Impartial authority that is constituted by law and exercised lawfully differs fundamentally from ad-hoc, arbitrary force exercised according to one individual's will.

Since authority and power also exist in social, economic, and familial relations (i.e. in horizontal ties), we cannot eliminate the problems and misuses of authority simply by getting rid of states or formal institutions with coercive power. Philosophical anarchists not only fail to provide for voluntary association, they are unable to provide an account of limited government that works with their own premises about authority. The state's claim to legitimacy differs from the authority that governments exercise. If we distinguish between the state and government

authority, we can critique particular government actions, the way they are implemented, and the voluntary acts of public officials without automatically destabilizing state legitimacy and the more general monopoly on authority that the state claims.

Voluntarism and Horizontal Ties

Analysis of political voluntarism must consider actions that one may be obligated to perform that are not required by the state, but emerge from voluntary acts or membership in voluntary associations, or are constitutive of society itself, as with the principles of mutual aid and forbearance central to many early-modern conceptions of the ‘laws of nature.’ Horizontal bonds may generate political obligations, as in the case of grassroots activist movements. Some actions that individuals agree to perform, like organizing and attending group meetings and events aimed at affecting some specific policy, have important political ramifications. Horizontal obligations of a more personal nature, such as those within families and intimate relationships, similarly have a political dimension. These relationships exist within a complex web of legal rights, privileges, and requirements that shape ostensibly private joint decisions, like having an abortion or getting married. Familial and intimate relationships may be a source of justice claims and political action, as with women’s rights activists who demanded equal rights over their children and finances, legal protection against marital rape, and so on. Further, because power dynamics within these relationships affect how joint affairs are governed and joint decisions are made, they shape each party’s relation to authority.¹²⁴ Finally, some state laws and policies, such as laws

¹²⁴ The latter reason led J.S. Mill to call the Victorian family “a school of despotism, in which the virtues of despotism, but also its vices, are largely nourished. Citizenship, in free countries, is partly a school of society in equality; but citizenship fills only a small place in modern life, and does not come near the daily habits or inmost sentiments. The family, justly constituted, would be the real school of the virtues of freedom. It is sure to be a sufficient one of everything else. It will always be a school of obedience for the children, of command for the parents. What is needed is, that it should be a school of sympathy in equality, of living together in love, without power on one side or obedience on the other. This it ought to be between the parents. It would then be an exercise of those virtues which each requires to fit them for all other association, and a model to the children of the feelings and conduct which their temporary training by means of obedience is designed to render habitual, and therefore natural,

against marital rape, violent crimes and theft, and child abuse are in essence horizontal rather than vertical obligations. The ostensibly vertical obligation to obey these laws is misleading: individuals owe this compliant behavior primarily to other members of society, whom they would wrong by acting as the law prohibits.

Obligation theories that focus entirely on a vertical obedience requirement reify the state, treating it as natural instead of a human creation that is historically specific and can be changed. Despite its exclusive concentration on vertical obligation, the obligation literature as a whole tends to ignore how states actually issue and enforce commands, and devotes little critical attention to the structure of the state issuing those commands. But in practice, authoritative state action involves actual laws, competing claims, and uses of political power. In practice, state action reflects obligations to do many different types of things that individuals voluntarily undertake. Existing theories, however, do not interrogate the limits and aim of political obligation, instead assuming that obligation theory must validate obedience to the state. As a result, we cannot use existing theories of political obligation to critically assess state authority and power.

The philosophical anarchist critique decisively undermines existing attempts to ground voluntarist vertical obligation. But by taking vertical obligation as exhaustive of all possible political relationships, arguments for *and* against obligation cannot consider those areas of political life outside the formal vertical citizen-state bond, nor see the political character of horizontal ties. This omission further discredits both the anarchist rejection of obligation and existing responses to it. In Stilz's account, for example, there are only two possible ways of

to them. The moral training of mankind will never be adapted to the conditions of the life for which all other human progress is a preparation, until they practise in the family the same moral rule which is adapted to the normal constitution of human society" (Mill 2006, 160-1). See also Okin 1989, chapters 1 and 2.

pursuing justice: through the state, or individually. Similarly, philosophical anarchists only acknowledge political action at the state level, or by the individual. As a result, neither considers whether any obligations that individuals owe one another constitute political obligations. Non-state horizontal associations, whose actions are not limited to obeying state commands, constitute a vital mode of political engagement that our theories of obligation must address. The bonds in voluntary political associations are an integral part of politics, as well as prime candidates for the title ‘political obligation.’ By recognizing that command and obedience are only one element of the citizen-state relationship, a theory of voluntarily-assumed political obligation can investigate the horizontal dimension of politics. Such horizontal obligations could satisfy philosophical-anarchist standards for voluntary association, yet also be *political* obligations.

Overall, the horizontal dimension of political association represents a major opportunity for a theory of political obligation to regain some ground against philosophical anarchism, which overlooks horizontal political relationships against its own principles. Anarchism as a political position “does not prescribe any particular set of social arrangements but leaves such arrangements to the voluntary decisions of individuals” (Sartwell 2008, 115). But as with arguments in favor of political obligation, philosophical anarchism does not engage particular examples of political power to determine whether obligation exists. As the anarchist critique of voluntarism in the modern state itself suggests, horizontal political encounters are likely a much larger part of an individual’s political consciousness than the impersonal vertical practices of large late-modern states. This is particularly true when one considers the sense of inevitability with which many regard state commands, which also frequently coincide with external moral justifications for compliance. Philosophical anarchists, then, must consider *how* voluntary acts might actually generate political and social arrangements, and recognize that politics is not

exhausted by individual-state relations. Analyzing political association in practice would reveal that reports of the impasse between philosophical anarchism and political obligation have perhaps been exaggerated.

Conclusion

Philosophical anarchists, like those who defend general political obligation, only consider a narrow slice of the individual-state bond: the individual's requirement to obey the state.

Philosophical anarchists convincingly argue that voluntary acts cannot ground a general duty to obey in contemporary states. Nonetheless, I contend that the conclusion they draw from this – that political obligation is impossible – is unwarranted. Although philosophical anarchists make a compelling case against mainstream political theory's treatment of voluntarism, this strength is outweighed by their deeply problematic view of political obligation. This view excludes other forms of political responsibility that a strong voluntarist ought to consider, such as voluntarily-assumed horizontal obligations. To parry the philosophical anarchist's attack on obligation and state legitimacy, theorists must consider horizontal political relationships much more seriously.

Nevertheless, theorists of political obligation cannot afford to ignore the philosophical-anarchist critique. Although philosophical anarchism is not a *definitive* argument against the possibility of legitimate authority and valid obligations, it highlights the need for a theory of political obligation with a more skeptical, complex view of state power. In light of the modern state's enormous coercive power, I argue, it is more dangerous to assume state authority is justified *and* ignore the way it actually functions than to incorporate a healthy dose of the philosophical anarchist's skepticism about state authority into a theory of political obligation.

Though most theorists believe that rejecting a content-independent obligation to obey entails rejecting legitimacy, obligation theorists also have much to gain from philosophical anarchism's skeptical approach to obedience. As it currently stands, *all* positions that work within the prevailing definition of obligation miss the active, participatory dimension of liberal-democratic politics. Political obligation as I conceive it allows critical scrutiny of structural coercion within the background conditions of individual action, which in some cases might best be amended coercively. Thus far, I have argued that a more constructive approach to political obligation must look beyond command and obedience in determining the content of obligations, engage in sustained analysis of horizontal political relationships, honestly recognize the limited reach of a voluntarist theory of political obligation, and adopt a more nuanced approach to state authority. This would allow theorists to adapt the most successful elements of the philosophical-anarchist critique without its wholesale rejection of the state. In future chapters, I will consider whether and how the *state* might be obligated, and what those obligations would entail. In addition, horizontal political bonds will play a central role in my positive theory of political obligation. These bonds, as I will show, deliver on the democratic potential of a truly voluntarist theory of obligation.

“It is foolish to regard the political state as the only agency now endowed with coercive power. Its exercise of this power is pale in contrast to that exercised by concentrated and organized property interests” – John Dewey,

Liberalism and Social Action, 64

“Nobody denies that people should be so taught and trained in youth, as to know and benefit by the ascertained results of human experience. But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way.” – J.S. Mill, *On Liberty*

Chapter Four

From Voluntarism to Freedom: Political Obligation as an Evaluative Standard

The preceding chapters have established three main claims. First, the widely accepted goal of political obligation – a general, comprehensive requirement to obey the laws and commands of one’s own state, grounded on a single principle – is impossible to successfully justify, which implies that theorists should decouple political obligation and requirements to obey the state. Second, ‘binding moral requirements’ in politics come from voluntary *and* non-voluntary sources, and voluntarist political obligation concerns the whole variety of political actions one can voluntarily undertake a requirement to perform, rather than general, comprehensive obedience. Third, a broader approach that considers horizontal as well as vertical political obligations can refute philosophical anarchism, and perhaps more importantly, investigate a significant but frequently forgotten side of politics: horizontal cooperative political action.

This chapter shows that a truly voluntarist theory of political obligation lets us understand and critique enduring features of liberal-democratic politics that obligation theorists usually neglect. A theory of the voluntary acts and obligations that produce state action looks beyond the requirements the state imposes to the individuals whose actions generated those requirements. Voluntary action, as I have shown, is a fundamental component of liberal-democratic states: the voluntary acts of state agents develop, interpret, and enforce laws and public policy, and ordinary

individuals influence the state both by voluntarily exercising their political rights, and through other forms of voluntary political action. The state does not exist beyond the individual actors and actions within it in anything but a figurative sense.

A well-developed account of voluntarily-assumed political obligation, I will show, aids in both identifying the complex web of political ties and processes in liberal democratic states, and addressing the unavoidable ethical challenges they raise. In recent years, a large literature has emerged on an issue closely related to voluntarily-assumed political obligation: voluntary or free association in liberal-democratic states. States and voluntary associations exercise constitutive power over one another. The command-obedience model of obligation cannot explain how individuals and states interact and mutually affect one another, or how the horizontal and vertical aspects of liberal-democratic political life are related. A voluntarist theory of political obligation, however, can analyze the interactions between spheres of voluntary action and the state *and* between the state's voluntary and non-voluntary elements.

On closer inspection, voluntary action and association mirror the primary challenges in democratic life. Voluntarism is “intrinsically connected to the strongest meanings of self-governance” *precisely because* “the burdens of choice and of self-crafting are now left to individuals whose futures are no longer ascribed by thick communal location” (Warren 2001, 46). These choices, however, may be unjust, unacceptable, antisocial, or antidemocratic. Self-governance does not necessarily cultivate the values necessary to a democratic polity. The fact that individuals may craft their own future is no guarantee that the future will be just, or acceptable to others. This is the central problem of liberal-democratic politics. The best way of addressing it, I argue, is with a refined, properly constrained theory of voluntary political action. For this reason, I shall pursue a voluntarist remedy – political obligation – for the defects of

voluntarism. Below I show that a voluntarist theory of political obligation can tell state agents *and* ordinary individuals how to take the voluntary political actions that are unavoidable in liberal-democratic life *ethically*.

I begin by outlining the problems that voluntary action and association pose in liberal-democratic states. The second and third sections investigate the mutual constitution of horizontal voluntary associations and vertical state institutions and laws. Next, I argue that political freedom requires the power to shape our *own* bonds. In other words, political freedom is a matter of self-government. Democratic self-governance necessarily involves voluntarist political obligation. The goal of self-governance indicates the normative goal of voluntarism and political obligation. In the penultimate section, I present a standard for limiting, on voluntarist grounds, voluntary political action and association that unduly impinge on others' capacity for voluntary political action. Finally, I apply this evaluative standard to three case studies drawn from American political life.

The Downside of Political Voluntarism

Voluntarist obligation and association are fundamental components of self-government. Indeed, “[m]ost contemporary democratic theorists agree that an orderly and viable democracy ultimately depends on the existence of a vibrant associational life consisting of a multiplicity of social networks, associations, and groups” (Craiutu 2008, 263). Voluntarism is a principle for evaluating decision contexts and actions. As such, voluntarism applies both to self- and other-regarding actions: we can evaluate the voluntariness of a decision to major in oboe performance *and* a promise to help a friend move. In contrast, voluntary association applies voluntarist principles to social relations and bonds: it is a form of social organization that affords individuals

substantial freedom over their associational ties. Voluntary associations are held together by horizontal obligations between members rather than non-voluntary requirements. The freedom to create one's associational ties makes voluntary association appealing to democratic theorists. Voluntary association is touted variously as a school of democratic virtues and skills, a stabilizing force in democratic states, a counterweight to hegemonic economic and social forces, and a more effective alternative to top-down government by a centralized state.

However, as recent analyses have shown, voluntary action and association can also threaten democratic equality and justice.¹²⁵ In chapter two I argued that an action is voluntary if and only if the actor had at least one other prudentially acceptable alternative, or a real ability to create such an alternative. On this definition, an unemployed political scientist who joins APSA in order to gain access to APSA's online job listings does not join voluntarily, since it is prudentially unacceptable when searching for a job to lack access to job advertisements.¹²⁶ Acting voluntarily is no guarantee that one acts justly or morally, since one acts voluntarily in choosing an immoral but prudentially-acceptable option when one also had other prudentially-acceptable alternatives. An insurance broker who accepts a bribe from an underwriter to artificially inflate the cost of coverage to the client acts voluntarily: refusing the bribe and working with another underwriter is perfectly prudentially acceptable. Further, opportunities for voluntary action allow individuals to do things that others find objectionable (which raises crucial questions of tolerance and its limits), or that substantially curtail others' ability to act voluntarily. This chapter will focus on the latter problem, since acts or associations that curtail others' capacity for voluntary action raise the questions of self-determination and its limits that

¹²⁵ See, for example, Gutmann 1998, Rosenblum 1998, Tamir 1998, and Warren 2001.

¹²⁶ For the sake of this example, assume that 'unemployed' also means 'unaffiliated with any university,' and thus unable to access the Chronicle's online job listings through a university account.

animate this project as a whole. Voluntary action is unavoidable in liberal-democratic governance, politics, and state action. Since voluntary action and association both promote and endanger democratic ends, we must assess their effects “within the vast array of participatory spaces that large-scale, complex, and differentiated societies now offer combined with the multiple means of making collective decisions that now exist” (Warren 2001, 13).

Voluntary Action vs. Voluntary Association

Just as one individual’s voluntary act may prevent others from acting voluntarily, voluntary associations may limit as well as provide opportunities for voluntary action if the association pursues anti-democratic or exclusionary goals. Voluntary association rests on freedom of association, which “refers to the liberty a person possesses to enter into relationships with others – for any and all purposes, for a momentary or long-term duration, by contract, consent, or acquiescence. It likewise refers to the liberty to refuse to enter into such relationships, or to terminate them” (Alexander 2008, 1). However, freedom of association “entails the freedom to exclude” (Gutmann 1998, 11). Members of voluntary associations must be able to control who may join and who may not. Since associations establish both an enduring context for voluntary cooperative action, and the distinct practical possibilities among which individuals choose, exclusion limits others’ opportunities for voluntary action and cooperation. This is a problem when membership is the only prudentially-acceptable option: if, for example, exclusion from an association of local business owners makes it impossible to successfully operate a business, or exclusion from all electorally-viable political parties (as, for example, in whites-only primary elections in the Jim Crow South) prevents one from effectively exercising political rights. However, forcing a voluntary association to change its membership rules reduces members’ democratic control over the association’s structure (i.e. their capacities for voluntary action

within the association).¹²⁷ In short, voluntary association both enables democratic self-governance, and deeply threatens others' ability to engage in voluntary cooperative action.

Historically, exclusion by voluntary associations has frequently been on grounds of race or gender. American labor unions in the 19th and early 20th century, for example, did not allow black workers to join and often pursued a racist agenda, which actively barred black workers from improving their labor conditions.¹²⁸ To take another example, most Ivy League universities were single-sex until well into the second half of the 20th century: Yale began admitting female undergraduates in 1968, Princeton in 1969, Dartmouth in 1972, Harvard in 1973, and Columbia in 1983. Finally, nearly all fraternal societies that provided social insurance in the late 19th century excluded women and blacks from membership and thus from the tangible benefits they provided. This gendered, racialized exclusion from voluntary social-insurance associations influenced how the state subsequently provided social insurance (Kaufman 2002, 150-8).

Further, non-voluntary forces frequently influence members' actions even within voluntary associations. Strongly internalized social norms, for example, make it difficult for an individual to be the lone dissenting voice in an otherwise homogenous crowd. An association's non-voluntary qualities influence how it handles internal conflict, and thus whether members are more likely to choose exit, voice, or loyalty when facing such conflict (Hirschman 1970). This choice may not be voluntary: exit and loyalty may well be prudentially unacceptable, and voice may fail. Surprisingly, voice and internal dissent are often more effective in associations that face *non-voluntary* constraints on exit, such as a local business-owners' association under a court

¹²⁷ This grounds many arguments in favor of restricting immigration: see, for example, Wellman 2008, and Fine's 2010 response. As my analysis of political obligation focuses on obligations *within* states, a sustained analysis of immigration is unfortunately not possible in the present context.

¹²⁸ For an excellent history of the racial dimension of American labor relations, see Nelson 2001.

order to desegregate, or the only national association for a particular profession. Such associations are more likely to address internal dissention by providing for voice because they cannot “externalize politics through exit” (Warren 2001, 106). Voice tends to be *less* effective in associations that lack significant non-voluntary exit constraints. Since such associations tend to be more homogenous, members will frequently choose exit over the difficult, personally burdensome options of loyally burying one’s opposition or exercising the lone dissenting voice.

Overall, then, the great strength of voluntary association – the opportunities for voluntary self-determination it presents – simultaneously endangers democratic cohesion and social justice. Voluntary associations may promote anti-democratic as well as democratic values, depending on the association’s goals. On one hand, voluntary associations are an essential part of self-governance because they allow individuals to choose with whom, and more importantly, *how* one will engage in cooperative action. Contemporary theorists frequently echo Tocqueville’s claim that “[s]entiments and ideas renew themselves, the heart is enlarged, and the human mind is developed only by the reciprocal action of men upon one another” (Tocqueville 2000, 491). By participating in voluntary associations, we learn the skills of democratic self-government, and come to value self-interest rightly understood (which encompasses collective goods more broadly) above narrow self-interest. On the other hand, these positive effects are neither guaranteed nor automatic: freedom of association entails the freedom to exclude. In practice, this exclusion can impede individuals’ ability to take voluntary political action.¹²⁹

The Non-Voluntary Preconditions of Self-Government

¹²⁹ In response, many scholars adopt the view that while liberal democracies must allow individuals to pursue their own idea of the good by respecting the freedom to exclude, “serious threats to the maintenance of the political order typically overcome” this freedom (Lomasky 2008, 200).

In previous chapters I claimed that liberal-democratic states are semi-voluntary associations: while liberal-democratic political membership is non-voluntary and imposes non-voluntary requirements on the individual, it also creates significant opportunities for voluntary action. However, the prevailing liberal view identifies non-voluntary association with the state and “construes civil society and economy as spheres of unrestricted freedom of association” (Warren 2001, 97). As I argued in the previous chapter, this view is mistaken: like any voluntary association, social and economic associations contain non-voluntary elements. Further, economic and civil-society associations do not exist in a vacuum: they are subject to state regulations and limits, which attenuate members’ associational freedom and influence their activities.

Since all voluntary associations (and indeed any collective activity) have non-voluntary aspects, including exit costs, one might argue that the difference between a non-state voluntary association and the state is only a matter of degree: that the state’s non-voluntary aspects are simply more extreme. This is, I believe, deeply misguided. The state is a unique form of association because we cannot opt out of the coercive enforcement of law. This monopoly on promulgating and enforcing law is the state’s chief non-voluntary feature. While the state has the unique power to determine what the laws will ultimately require and how infractions will be punished, in practice, the state’s decisions about law and policy are increasingly influenced by non-state actors: private organizations as well as powerful individuals.

Further, states increasingly delegate responsibility for *enforcing* law and implementing public policy to private for- and non-profit corporations. Over the past two decades or so, private military contractors have come to play a significant but controversial role in American military action, owing to the military’s “growing post-Cold War reliance on contractors for such jobs as providing security, interrogating prisoners, cooking meals, fixing equipment and constructing

bases,” jobs “that were once reserved for soldiers” (Merle 2006). A 2006 military census of civilians operating in the Iraq battlefield found approximately 100,000 civilians hired by private military firms working under U.S. government contracts, a number roughly equivalent to the military forces then deployed in Iraq and ten times greater than the number of private contractors deployed during the first Gulf War (ibid). Private security firms under contract to the Departments of Defense, Energy, and Homeland Security also participate in domestic counter-terrorism and disaster-response operations. Such private contractors are authorized by their contract with the federal government to exercise some of the state’s non-voluntary police power, but remain subject to government oversight. The state’s monopoly on coercive force remains prior to the police powers it delegates to private organizations: the state must *authorize* private organizations to carry out state functions, although in practice, private organizations exercise increasingly strong leverage over political decision-makers. The boundary between the state and ‘private’ voluntary associations/for-profit ventures is thus far more permeable than a binary opposition of non-voluntary state and voluntary association would have it.

However, the state’s non-voluntary aspects establish background conditions for voluntary association and action. Liberal theorists commonly claim that “a proper function of government is to provide institutional structures that draw persons together, most especially with regard to activity on behalf of the commonwealth itself” (Lomasky 2008, 188). States help to create the social stability and unity without which association would be impossible.

This raises a vital point: even a free life involves non-voluntary bonds, and we must often use *involuntary* means (such as the state’s ability to command obedience) to reliably establish this freedom. Further,

we cannot modify [such ties] unless we acknowledge their reality. If no one is out there except autonomous individuals, political decisions about membership and obligation would have no legitimate object. But there are, in fact, important decisions to be made about all the unchosen structures, patterns, institutions, and groupings, for the character and quality of involuntary association determine the character and quality of voluntary association...free choice requires involuntary association (Walzer 1998, 72).

If we do not recognize the unchosen yet constitutive elements of social and political life, we cannot consider how they ought to function, or make political decisions and evaluative judgments about them. This is especially important given the state's coercive capacity. To analyze the state's responsibility to arbitrate associational freedom and voluntary action, and reconcile the state's democratic dimension with its non-voluntary qualities, however, we must *also* investigate the state's associative, voluntarist dimension.¹³⁰

Horizontal Association and State Development

Horizontal associations have enormous power to shape the state. Because the American voluntarist tradition developed before government "ever got involved in domains such as social insurance or health care, for example," it influenced "the subsequent trajectory of American state growth" (Kaufman 2002, 29). Scholars are divided on voluntary association's normative impact, with Tocquevillian optimists on one side and Madisonian skeptics on the other. While both sides make vital points that underscore the need to evaluate voluntary political action, I argue that the track record of voluntary association in the United States supports Madison's claim that we must devise institutional solutions to voluntary association gone awry.

¹³⁰ While Walzer concludes that "the society of free individuals would be for most of its members an involuntary association" (72), this view neglects the voluntarist practices that reconcile freedom and the state's coercive power.

Democratic Benefits of Horizontal Associations

Horizontal voluntary association reinforces the norms of reciprocity and trust that support and stabilize liberal-democratic states. Tocquevillians like Dahl and Putnam accurately point out that “social integration through associations is necessary for democratic institutions to work” (Warren 2001, 30). They contend that a society can only cultivate democratic ethical sensibilities and civic virtue if its members participate in secondary associations, or horizontal associations that mediate between state power and intimate friend and family ties. Such associations teach participants to look beyond private self-interest and accept democratic behavioral norms more effectively than vertical relations of dependence.¹³¹

In addition, horizontal associations allow individuals to develop their political identity in a setting that is “distinct from the spaces of political judgment” found in vertical state structures, such as legislative and judicial institutions (Warren 2001, 34). Voluntary horizontal associations matter largely because “associations and social connections are places where ideas are formed, shared, developed, and come to influence character” (Shiffrin 2005, 865). While the conventional wisdom holds that large, impersonal associations do not generate positive democratic effects as reliably as small, close-knit groups, recent studies show that an association’s purpose and activities has far more impact on whether an association has democratic or undemocratic effects. Although some associations, such as ‘Residential Community Associations,’ “tend to undermine rather than increase commitment to the common national good,” others, like the National Park Service, promote “an attachment to the common political good in the American context” despite their potentially alienating size (Bell 1998, 240). Although horizontal associations do not *automatically* cultivate essential democratic values of

¹³¹ On this latter point, see also Parsons 1971, 24-6.

reciprocity, civility, and solidarity, as these examples show, associations that aim at public goods can promote democratic virtues regardless of their size.

Finally, horizontal voluntary associations amplify one's ability to advance one's own political agenda "in ways that can compensate for lack of other kinds of power" and transform the terms of public debate (Warren 2001, 81). Voluntary associations shape public opinion by "nudging issues into public consciousness or offering reasons that supplement, reinforce, or oppose the terms dominant in public discussion" (Rosenblum 1998, 206). Horizontal political associations can use their resources and public influence to dismantle entrenched socioeconomic inequities, as labor, feminist, and civil-rights organizations have done.¹³² However, voluntary association's political dimension – its ability to amplify efforts to change the basic terms of social cooperation – can prevent individuals from living a self-determining life when used by associations that promote anti-democratic or anti-social views.

Antidemocratic Associations and American Political Development

In practice, voluntary association has often failed to live up to Tocqueville's faith in it. Associations that emphasize particular communities, identities, or interests above the common good may promote more unequal distribution of social, economic, and political power.¹³³ And as associations become increasingly necessary for effective political advocacy, those who have the resources to organize associations enjoy a corresponding increase in their political power relative to those who lack such resources. This is particularly true in a post-*Citizens United* America. While voluntary associations may be an effective method of addressing injustice, associational life has a significant margin of error in the age of the super PAC.

¹³² For detailed analysis of this point, see Sabl 2002.

¹³³ As Madison famously argued, factions inherently work against the common good, possibly at the expense of political cohesion. *Federalist 10* is perhaps his most famous diagnosis of the ills of faction. See also Boyd 2008.

Distributive justice often suffers when voluntary associations are the primary means of collective action, as the history of American voluntary association indicates.¹³⁴ In the United States, “the associational form often preceded organized government,” which hindered the development of formal state institutions and created a suspicion of government that persists to this day (Warren 2001, 14). As a result, the American system displaces “much collective action onto associations – either as means of influencing government through lobbying or public pressure or as means of addressing needs, threats, and conflicts when government does not respond” (15). For this reason, “organized association is increasingly essential for the effective use of free speech in the United States” (Gutmann 1998, 3). The increased influence of associations diminishes the importance of formal political rights, such as the right to vote. When formal political rights are less effective, those with the means to organize associations enjoy far more political power than those who lack such means. The money special-interest PACs can spend to influence California ballot initiatives, for example, affords them infinitely more power over the referendum process than I enjoy.

The proliferation of voluntary fraternal associations in the late 19th century, Jason Kaufman argues, generated many of the problems that contemporary Tocquevillians address by recommending more voluntarism (Kaufman 2002, 198). American “associationalism hindered the development of political organizations for American workers” since workers were parochially focused rather than oriented toward national mobilization, and “heightened the various ethnic, religious, and racial lines that divide the country” (32). In addition, associationalism encouraged America’s “extensive tradition of antistatism, or distrust of government institutions” (ibid). American fraternal sickness and burial insurance associations,

¹³⁴ On the American voluntarist tradition, see Skocpol 1997 and 2003.

for example, helped defeat the campaign to enact national compulsory health insurance in the 1910s (144). However, voluntary social-insurance associations prevented state interference in social insurance so successfully that when private corporations began offering social insurance, the state could not effectively step in and control them, and fraternal associations were unable to compete (160). Private-sector interests triumphed largely because they co-opted associational tactics: “[b]y using the voluntary organizational model developed and popularized by the early fraternalists, American capitalists gained a tool that would come to dominate American politics of the present day: the special-interest group lobby” (86). Overall, the American voluntarist tradition played into the hands of “new elite and commercial interest groups in the postbellum years,” who “spearheaded the drive in many American cities to disenfranchise ordinary voters” (98). Voluntary associations curtailed the scope of state activity so effectively that private enterprises have been able to assume many essential social functions.

In short, horizontal activity can both push the state to expand the sphere of voluntary political action, and reinforce barriers to political self-determination. Done properly, voluntary association “provides a dense social infrastructure enabling pluralistic societies to attain a vibrant creativity and diversity within a context of multiple but governable conflicts,” and helps to correct for “existing distributions of power and money” (Warren 2001, 3).¹³⁵ At worst, though, voluntary associations exacerbate existing social divisions and inequalities. In contemporary states, “the venues of politics are increasingly plural while decreasingly contained by formal political institutions” (11), which magnifies horizontal voluntary association’s positive *and* negative effects. To evaluate specific cases, I will argue that we must consider whether an association’s activities expand or contract others’ opportunities for voluntary *action*.

¹³⁵ See also Verba et al, 1995.

The State's Effect on Horizontal Association

Just as voluntary associations have shaped the state, vertical states structures, including their coercive enforcement mechanisms, authoritative decision-making procedures, and legitimating functions, sculpt the horizontal, voluntarist dimension of politics. States affect voluntary associations both by directly regulating associational operations, and by policies and regulations that indirectly influence what associations choose to do, how they pursue their goals, and whether those goals will resonate with public culture and widely-accepted norms. A liberal-democratic state must employ strong protection for rights, social equality, and equality of opportunity to properly contain the potentially deleterious effects of horizontal voluntary associations. State agents balance the positive freedom to associate against the negative freedom to exclude, in order to decide when and how to interfere with voluntary associations. Because modern liberal democracies have a weapon in their arsenal, quite literally, that horizontal associations do not, it is especially important to assess how the state's agents exercise its power. We may evaluate state interference with voluntary action and association, I shall argue, according to whether it augments or diminishes the net capacity for voluntary self-determination.

At the broadest level, state influence over voluntary horizontal associations stems from the state's role in cultivating public culture and norms. Individuals are born into *a* state, which shapes their view of politics, society, and justice long before they can recognize its influence. The state's non-voluntary aspects help to socialize individuals and habituate them to the norms necessary for any successful voluntary association. We understand what associating *is* through our experiences with existing associations, associational practices, and norms, rather than a conscious decision to "learn the social and political skills that make association possible" (Walzer 1998, 66). Our social and political context teaches us how to take voluntary action:

“there could not be a society of free individuals without a socialization process and a culture of individuality, and without a supportive political regime whose citizens were prepared to support it in their turn” (72). Voluntary associations thus “represent the free choices of men and women who have been *taught* to make, and have been enabled to make, choices of just this kind...freely (some of whom prove the freedom by not making them)” (73, italics mine). As Walzer argues, freedom constituted by non-voluntary practices is still “immensely valuable...we ought to call it freedom simply, without qualification: it is the only freedom that [we] can ever have” (ibid).

As multicultural critiques of liberal democracy have shown, states inevitably promote some identities, forms of association, and social practices rather than others: state neutrality is a myth.¹³⁶ This is not necessarily a problem. At its best, state action may balance voluntary association and necessary non-voluntary political ties, and minimize their costs. As Amy Gutmann convincingly argues, a liberal democracy *should* treat associations that “do not foster reciprocity among a diverse citizenry,” such as those that “discriminate on grounds of race,” differently from those that do (Gutmann 1998, 6), perhaps by enforcing strict anti-discrimination laws or denying such associations tax-exempt status.

Direct regulation of voluntary associations is an important area of public law. Such regulations often concern membership rules and associational activity. Antidiscrimination laws that prohibit exclusion from employment opportunities on the basis of race, gender, or sexual orientation, for example, directly regulate membership rules for corporations, while anti-hate speech laws make certain activities illegal. The U.S. Supreme Court has held that while freedom of association “plainly presupposes a freedom not to associate,” the “right to associate for expressive purposes is not, however, absolute. Infringements on that right may be justified by

¹³⁶ The classic example here is Kymlicka 1995.

regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms” (*Roberts v. United States Jaycees* 1984, 623). Freedom of association derives from explicitly protected constitutional speech rights: in *NAACP v. Alabama* (1958), the Court held that freedom of association is essential to First Amendment speech rights, since collective activity is often the only avenue for effectively exercising speech rights.¹³⁷ Intimate (or ‘intrinsic’) associations, however, are protected from state interference.¹³⁸ In *Roberts v. United States Jaycees*, the Court upheld the Minnesota Human Rights Act as applied to the Jaycees, an all-male private association, ruling that compelling the Jaycees to accept women as regular members does not abridge either the male members' freedom of intimate association or their freedom of expressive association” (610). In short, the American state can and does exercise substantial direct control over voluntary associations.

The state also exercises power over voluntary associations through indirect regulations and policy choices. Overall, “the state recognizes zones of social, economic, and interpersonal freedom, and uses its legal system to underwrite rights that enable associational ties to flourish” (Warren 2001, 217). State regulations help some types of voluntary association and hinder others. The tax code grants tax exemptions to particular types of voluntary association, for example, which incentivizes those associational structures. Similarly, state rules that require permits to protest, protect unions from employers, or offer grants to particular types of projects indirectly influence the way that associations define and pursue their ends.

¹³⁷ First Amendment speech rights are themselves the subject of a vast body of jurisprudence, which for reasons of space I cannot address here.

¹³⁸ See also *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995) and *Boy Scouts of America et al. v. Dale*, 530 U.S. 640 (2000).

To take a more contentious example, the rise of ‘super PACs’ followed the Supreme Court decision in *Citizens United v. Federal Elections Commission* (2010) and the D.C. Circuit Court of Appeals decision in *Speechnow.org v. Federal Elections Commission* (DC Cir. 2010). Together, these decisions licensed unlimited political spending by organizations, as long as they do not contribute to candidates or parties. These decisions themselves were possible because the Court held in *Buckley v. Valeo* (1976) that constitutional free-speech protections apply to spending money to influence elections. Super PACs consolidate political influence and voice in the hands of the wealthy, thereby exacerbating the tendency of associations to magnify existing inequalities and diminishing the political voice of other associations. Though the *Buckley* decision did not directly create super PACs, it established the conditions of possibility for that type of association. Under the standard I defend in the next section, the state used its power over voluntary associations improperly in *Buckley* and *Citizens United*, because they diminished ordinary citizens’ ability to effectively influence elections.

Expanding the Self-Governed Sphere: Political Obligation as an Evaluative Standard

Political voluntarism illuminates the sources of political arrangements and decisions, and grounds principled ethical claims on the political actors whose voluntary acts brought them about. Liberal-democratic politics and government inevitably involve voluntary action: some people *are* voluntarily choosing the political rules, actions, and policies that constitute the fundamental background condition on action. While individuals’ responsibility for their voluntary actions is clearly inadequate for addressing global poverty (for example), it is more than capable of speaking to the choices that constitute the political sphere.

I have argued that political obligations are voluntarily-assumed requirements to act that emerge in relations of self-government or power, or are undertaken to affect existing political conditions, power structures, or opportunities for self-government. Multicultural and pluralist claims for political recognition and rights draw attention to the role of political structures in determining individuals' chances for autonomous self-fashioning.¹³⁹ In light of these claims, the question of 'who rules' is increasingly difficult to avoid, and self-government seems the only acceptable answer. The definition of political obligation I propose complements this project because it can ground ethical judgments about individuals' voluntary actions within political structures. In addition, political obligation supports a principle for distinguishing acceptable forms of voluntary action and association from unacceptable forms. To determine whether political voluntarism is an appropriate standard in particular cases, we must assess whether voluntary action and association would contribute to democratic self-governance, or detract from it. Thus, I shall assert that ethical acts are those that do not unduly impinge on others' capacity for voluntary political action.

Political obligation ties claims about justice to morally-weighty requirements on political actors. Because moral personhood itself entails responsibility for one's voluntary actions, it supports norms of reciprocity involving, among other things, obligations to take future action. To possess moral agency in a meaningful sense, one must have the practical ability to take voluntary action. Moral agents are responsible for how their voluntary actions impact others. If others are also moral agents, their ability to take voluntary action is equally important, and imposes the same responsibilities. Thus, morally-responsible actors are those that do not voluntarily interfere with or diminish others' opportunities for voluntary action.

¹³⁹ See, for example, Kymlicka 1995; Tully 1995; Wilson 1999; and Shachar 2005.

Self-Government, Political Obligation, and the Limits of Voluntarism

While freedom and voluntariness are closely related, their differences indicate the proper political role of each. I contend that freedom concerns one's *capacity* to effectively pursue one's own ends.¹⁴⁰ On this view, the ability to do something and succeed means that one is free to do that thing.¹⁴¹ Volition is built into this idea of freedom, because a free act's source is the will to take that action, but as we saw in the second chapter, volition is not itself sufficient for voluntariness. As such, "voluntariness and morally defined freedom are in no necessary relation to one another" (53).

Freedom thus entails both the ability and opportunity to act as one wills, but does not "guarantee voluntariness" (Olsaretti 1998, 57). Choosing a morally-right, prudentially unacceptable option is a non-voluntary but *free* choice. Further, while coercion undermines voluntariness when it makes all options but one prudentially unacceptable, one is not necessarily unfree in such situations. I am, for example, coerced into paying taxes on the stipend I received with a graduate fellowship, but am not thereby unfree, since I chose to accept this position even though it imposes a non-voluntary requirement to pay taxes. Further, I can use my fellowship time in any way I see fit. The small percentage of my stipend withheld in taxes does not impact how I choose to spend my working hours, nor on how much time I spend working. While most people likely have considerably less control over how they spend their working hours, since they must be physically present in their workplace at specific hours and so on, these limits on their freedom come from the nature of the job they have, not the fact that their earnings are taxed. This is why the claim that taxation is equivalent to forced labor is unpersuasive. Similarly, it is

¹⁴⁰ This view strongly resembles the capabilities approach to freedom: see Sen 1999 and Dowding 2006.

¹⁴¹ I take this test from Hindricks 2008, 166.

possible to act voluntarily yet be unfree, as shown by the example of workers selling their labor in a market where employers dictate the terms of employment. One may sometimes choose among multiple prudentially-acceptable jobs (for example, cargo-insurance broker, investment banker, or office manager), but cannot usually refuse to find paid employment, nor successfully demand to be paid as much as one wants.

Purely voluntarist normative standards are limited: “the mere fact that someone has made voluntary choices within [a] game does not establish anything about the voluntariness of the choice of playing the game in the first place” (74).¹⁴² In practice, we lack the ability to voluntarily opt in to the state in the way one chooses to play a game of poker. Voluntariness requires acceptable alternatives, but most lack the luxury of choosing a state they can enthusiastically endorse from among multiple acceptable options. Although we might choose *a* state to *no* state, this would not meet the standard of voluntariness. In the main, political membership is non-voluntary, precisely because there is no feasible and acceptable alternative to living in a state. The voluntariness of this initial choice, though, is far from the most important aspect of ‘playing the game.’¹⁴³ Democratic self-governance also entails the ability to respond when something goes wrong *within* the game. To address these situations, individuals must possess real freedom to create, shape, and revise the rules of the political game, and of social institutions more generally. In other words, to engage in self-governance, individuals must either have existing acceptable options, or be able to create or influence their options. Political obligation is a voluntarist practice that expresses this form of freedom: it therefore combines a

¹⁴² Olsaretti argues that this is addressed sufficiently by “extending the demands of voluntariness to the framework against which secondary choices are made... we can only be shown to have agreed to play the game if the conditions for the primary choice have been satisfied, namely, if we preferred to play the game over an available acceptable alternative” (74).

¹⁴³ In the Introduction, I made a similar point in the context of classical social contract theory: see pp10-16 above.

structural concern with voluntariness and an individual-level concern with freedom. Thus, political obligation grounds critique of individual actions that prevent others from enjoying such freedom.

Responsibility, Justice, and Obligation: A Limiting Principle for Political Voluntarism

Because the capacity to take political action is *itself* a valuable good whose distribution matters, we must assess voluntary acts in terms of how they impact others' prospects for self-government and voluntary action. I contend that a voluntary act is just when it expands (or does not affect) rather than contracts others' opportunities for voluntary political action. We may curtail voluntary action and association when they diminish others' democratic equality: their equal ability to exercise control over democratic processes or voice in democratic decisions.

Voluntarism cannot be the overarching standard in political life for two reasons. First, non-voluntary bonds constitute "some of the most important groups to which we all belong: the family, the state, the human race" (Honoré 1981, 45). Second, some limits on voluntary action are necessary to preserve freedom, as theorists universally acknowledge. This is as true of the most extreme Hobbesian, for whom associational life will always be a threat to the absolute sovereignty necessary to secure liberty, as it is of Rousseauian claims that one becomes free only by adopting limits on one's actions. I therefore contend that political voluntarism must be limited to those things that do not unduly curtail others' freedom. Associational freedom must also be restricted to allow others real opportunities for self-governing action.¹⁴⁴

To judge when voluntarism is appropriate in practice, we must consider structural distributive-justice issues that affect individuals' ability to participate in political life. As Iris Young argues, "institutional rules and social interactions conspire to narrow the options many

¹⁴⁴ In other words, "freedom of association must be limited to secure a regime in which freedom of association can flourish" (Alexander 2008, 16).

people have” (Young 2011, 34). Structural injustice “is a kind of moral wrong distinct from the wrongful action of an individual agent or the repressive policies of a state:” it is “a consequence of many individuals and institutions acting to pursue their particular goals and interests, for the most part within the limits of accepted rules and norms” (52). The actions that create social structures are not morally arbitrary. Thus, we must ask “in what ways we should understand ourselves responsible for the background conditions of others’ lives that are produced by structured institutional relations” (39-40). I contend that normative theorists must also investigate *how* individuals should discharge those responsibilities ethically, and how individuals ought to act in pursuing collective remedies to structural injustice. Active voluntarism lets theorists consider these questions, and make normative demands on political agents based on the answer.

A voluntarist theory of liberal-democratic political action must consider such responsibilities within a larger theory of democratic self-governance. Young emphasizes the direct quality-of-life effects of social positions that make one vulnerable to poverty, homelessness, or inadequate medical care, not the limitations they place on one’s capacity for voluntary self-determination. These effects are a basic social-justice issue and prevent many from living their lives as they choose. To tackle the capacity for self-governing action, however, we must also consider whether people can affect the decisions, institutions, and practices that distribute access to necessary material goods. This ability – in other words, political power – is itself distributed in an inequalitarian fashion. The unequal distribution of opportunities to take voluntary political action is a political problem and must be addressed as such: a more egalitarian distribution of wealth and educational opportunities is not a sufficient remedy. In some cases, vertical processes and state structures reproduce the same problems with voluntary association and action that they are supposed to solve, as, for example, with American campaign-finance

reform. Thus, to grapple with political voluntarism's exclusionary pitfalls, we must also address the voluntarist dimension of state institutions and action.

Voluntarist political obligation and justice-driven arguments are *complementary*, not mutually exclusive. Since voluntarism concerns the power to affect decision contexts *and* the presence of sufficient acceptable options, a voluntarist theory of political obligation must consider political self-determination as well as economic conditions. This is not to say that economic distribution is irrelevant: simply that the relationship between economic inequality and political power is too complex to address solely with egalitarian redistribution of wealth. If distributing wealth and social resources justly is one's overriding goal, the means by which society achieves it is a secondary normative issue. Such a theory might compromise democratic principles, for example, to achieve distributive justice. A theory that only considers distributive outcomes and overlooks distributive *processes* renders invisible the political dimension of morally necessary changes to distributive schemes.

The theory of political obligation I defend lets us analyze the individual actions that shape the background conditions for voluntary political action, and distinguish acceptable forms of voluntary action and association from unacceptable forms. Realistically, self-government and cooperative voluntary action are only possible for those whose basic material needs are met. If one must choose between participating in an activist group and earning enough money to afford rent and groceries, the latter will generally win.

Wealthy, well-educated, and well-connected individuals exercise disproportionate political influence as a result of their socioeconomic advantages. A serious commitment to political equality entails institutionalized limits on voluntarism, as well as more egalitarian

principles of distributive justice, to keep those who lack such advantages from becoming second-class citizens. In liberal-democratic practice,

the order that politics creates is itself a consequence of a process which inevitably violates almost all of the criteria that liberalism lays down. For all of the professed norms and values of the modern state, that is, this order actually more frequently reflects particular interests rather than general ideas, distributes power dramatically unequally, and enables particular elites to exercise almost continual influence over the lives of other citizens. Seen in this way, the ability to make the decisions which will eventually characterize law and agreement is in fact possessed by very few – entrenched bureaucrats, a small selection of partisan elites, an unrepresentative selection of appointed judges and, increasingly, the plutocratic hierarchy of corporate capitalism – and those few seek to employ that power to their own advantage (Stears 2009, 543).

Consider the following example. In 2012, cigarette companies spent nearly \$47 million in their campaign against California's Proposition 29 (which would have raised California's state cigarette tax by one dollar per carton), versus just over \$12 million spent by pro-29 groups, which included the American Cancer Society, American Lung Association, and American Heart Association.¹⁴⁵ Proposition 29 failed, 50.2% to 49.8%. The extra \$35 million spent by anti-29 groups may well have been decisive.¹⁴⁶ This goes to show that certain matters should not be voluntary: just as some things should not be for sale, some things should not be determined by self-interested, contingent voluntary choice.

¹⁴⁵ See California Secretary of State, "Campaign Finance" and Maplight, "'Prop. 29: Cigarette Tax.'"

¹⁴⁶ Granted, spending this money was probably the only prudentially-acceptable option for R.J. Reynolds, Philip Morris, and the rest, but as I have argued, we cannot treat corporations as though they are identical to an individual voluntarist agent.

Voluntarist principles require more stringent limits on corporate political activity to prevent powerful private interests from entirely dominating political decision-making. Different standards for voluntary action apply in political and business spheres because the purpose, means, ethical challenges, normative constraints, and internal logic of political and business activity are not identical. I have argued that we may curtail political voluntarism to preserve broadly accessible, meaningful opportunities for individual voluntary action. In business, however, the company's financial interests, not moral agency, establish voluntary action's normative limits.¹⁴⁷ However, actions that are acceptable in competition *between* companies are not always acceptable when businesses act in the political sphere. When businesses take political action (i.e. attempt to influence authoritative decisions backed by lawful coercive force about collective action schemes, the terms of social cooperation, or the lawful limits of individual behavior), they must stay within the political limits of voluntary action. A business's activities must therefore be more tightly constrained when they affect broader opportunities for voluntary action in society than when they only affect competing private enterprises.

Voluntary action's individual-level importance differs from its importance to economic corporations. While individuals realize their moral agency and capacity for self-determination through voluntary action, voluntary action serves an instrumental purpose for businesses. Major considerations in favor of individual voluntary political action therefore do not apply to a business's efforts to influence political decisions. In other words, businesses do not have the normative claim on political voluntarism that people do. Further, private corporations have far greater power to influence social arrangements than individuals, since "the augmented power of

¹⁴⁷ Milton Friedman's influential version of this view maintains that "there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud" (1970).

concerted action” unavoidably generates “the potential to threaten other individuals, groups, or even the political authority upon which liberty itself rests” (Boyd 2008, 236). Thus, I submit that we should therefore be more wary of voluntary actions taken by businesses than individual voluntary acts. Private corporations should not be granted the same latitude in their political activity as individuals.

Political Obligation in Practice: Three Case Studies

I have argued that vertical and horizontal political action mutually establish the non-voluntary constraints on, and opportunities for, voluntary action that constitute the background conditions for *all* political action. Voluntary choices within vertical political institutions, such as choices about tax exemptions for organizations, shape horizontal activities. In its turn, horizontal political acts also influence both vertical decision-making and other horizontal activity. Unlike fairness or duty-based principles, political obligation addresses the voluntary choices and commitments that generate political action. Thus, it offers unique resources for evaluating political decisions and assessing the individual responsibilities incurred in shaping, implementing, and enforcing law, political decisions, and public policy. To illustrate this claim, I shall analyze three practical examples from the voluntarist standpoint.

Vertical Obligations, Horizontal Effects I: The Great Society

First, consider Lyndon Baines Johnson’s Great Society agenda, which included civil rights legislation, the ‘War on Poverty,’ Medicare/Medicaid, federal aid to public education, and public funding for the arts, humanities, and infrastructure. The Great Society initiatives were the most ambitious and successful vertical effort since the New Deal to restructure horizontal relations in American society. LBJ described the War on Poverty as “an effort to allow [people] to develop

and use their capacities, as we have been allowed to develop and use ours, so that they can share, as others share, in the promise of this nation” (Johnson 1967, 182). Here I will assess two major pieces of Johnson’s education initiative – the Elementary and Secondary Education Act of 1965 (ESEA), and the Higher Education Act of 1965 (HEA). These two laws “dramatically changed education in the United States,” and reflected “a new philosophy that endorsed access and opportunity for all who qualified” (Andrew 1998, 130). Overall, though, “even though ESEA and other Great Society educational programs successfully institutionalized the federal commitment to improving education for the poor,” political exigencies prevented the architects of these laws from providing sufficiently effective enforcement mechanisms (Kantor 1991, 51). Thus, in practice, the ESEA and HEA could not “make the education of disadvantaged students a top priority of local school districts” (ibid). This case highlights the practical stakes of official compliance with public law, as well as discretionary authority.

The Elementary and Secondary Education Act was the cornerstone of the Johnson Administration’s effort to improve educational opportunities for students from low-income communities. The Act provided \$1.3 billion in federal aid to elementary and secondary schools, the bulk of which went to low-income schools. The Higher Education Act established the first federal grants for low-income college students, expanded federal aid to universities for libraries and research, and established low-interest student loans. Among others, members of the 1964 Legislative Task Force on Education and its chair, John Gardner, U.S. Commissioner of Education Francis Keppel, the National Education Association, and the National Catholic Welfare Conference influenced the ESEA’s final form (50-4). The architects of the ESEA had to balance the interests of educational advocacy groups against those of the legislators who would be voting on the bill. Government officials were central to the ESEA’s development and passage.

Keppel and other officials in the Office of Education mediated disagreements between the Legislative Task Force, educational interest groups, and religious organizations (50). By designing a bill that satisfied enough parties to then become law, Keppel and Gardner fulfilled their obligation to LBJ, who had outlined his administration's education agenda and tasked them with formulating the specific legislative and policy strategies for implementing that agenda.

While the ESEA and HEA transformed federal education policy, its effects on educational practice were less dramatic because they allowed local officials substantial leeway over their implementation methods. Along with Title VI of the Civil Rights Act of 1964, which prohibited discrimination in any federally-funded program, the ESEA's federal aid for education was a powerful incentive for Southern school integration (Andrew 1998, 122). However, "Great Society policymakers were reluctant to mandate major changes in local educational practices" because "opportunities for federal action were constrained by the nature of the Democratic party coalition and the administrative capacity of the federal education bureaucracy" (51).¹⁴⁸ The absence of clear mandates allowed Southern school officials to avoid actually implementing the law without thereby violating their sworn obligation to 'well and faithfully discharge the duties' of their office. Thus, while many districts accelerated the pace of integration to keep from losing federal money, their reforms were frequently nominally compliant at best. The U.S. Office of Education, tasked with enforcing the ESEA, accepted 'freedom of choice' integration plans in many Southern districts, which allowed those schools to comply with the letter of the law but retain school segregation in practice. Owing to this and other lapses in enforcement, the Student Non-Violent Coordinating Committee charged that in practice, "protection of white rights" took precedence over the integration required by the 1964 Civil Rights Act (SNCC 1967, 296). The

¹⁴⁸ See also Jeffrey 1978.

HEA was more successful in expanding access to higher education for disadvantaged students, but subsequent revisions to the act have diminished these effects.

This example reveals a difficulty of political ties constituted by voluntarist obligations. The ESEA's architects were constrained by coalition politics within the Democratic party. Because party coalitions are constituted by voluntary obligations between members, any effort to alter the goals a coalition pursues must be acceptable to the rest of the coalition. Those who opposed either school integration as such or the avenue by which coalition leaders wished to integrate schools were free to leave the coalition. To maintain the coalition as a whole, then, integrationists had to compromise, trading off some enforcement capacity for a formal policy of integrated schools. Put differently, the discretionary powers of integrationist officials were limited in practice by the fact that the Democratic coalition was held together by voluntary bonds, which meant that coalition members could break those bonds if the party agenda changed in a way they opposed.

Voluntarist evaluation of Great Society educational reforms suggests normative conclusions regarding the limits of official discretion and local-level independence from coercive federal interference. In my analysis, the voluntary acts and decisions that generated the ESEA and HEA were laudable overall, but lacking in terms of providing for effective enforcement: their enforcement provisions were too weak and thus did not effectively oblige officials to integrate schools as a specific task required by their obligations of office. Under my evaluative standard, the architects of the Great Society education legislation exercised their voluntary decision-making power acceptably. Education makes one aware of alternative life goals, and educational attainment makes it more likely that one will successfully pursue one's chosen career and other life goals. By improving disadvantaged students' access to educational opportunities,

both laws expanded the sphere of self-determining activity and horizontal voluntary action for such students. These ends trump the claims made by the ESEA's critics (for example) that the law unduly curtailed local self-government. Since the *individual's* capacity to take voluntary action is what matters, the autonomy of local school districts (i.e. the school board's ability to voluntarily determine local education policy) should not be used to systematically deny some students equal educational opportunities.

Vertical Obligations, Horizontal Effects II: Federal Housing Administration Mortgage Insurance

Federal Housing Administration (FHA) mortgage-insurance policies also show how voluntary choices in implementing broad policy directives may systematically narrow individuals' capacities to take self-determining action in horizontal relations. The National Housing Act of 1934 created the FHA to stabilize the housing market by regulating mortgage terms and interest rates and insuring private mortgage loans. Overall, the FHA "restructured the private housing market in a way that fundamentally altered the conditions under which Americans purchased and owned their homes" (Tobey et al 1990, 1395). In principle, FHA insurance for mortgage lenders granted Americans greater financial access to homeownership because it helped borrowers qualify for mortgages and receive lower interest rates.

In practice, however, FHA policies between 1964 and 1986 racialized American wealth possession by subsidizing homeownership and access to areas with higher property values for white Americans while denying people of color such benefits. In conjunction with racial restrictive covenants (a deed restriction barring developers and homeowners from selling or renting their property to people of color) and other local actions taken to prevent neighborhood integration, FHA loan practices ensured that whites dominated the booming suburban real estate

market.¹⁴⁹ The 1934 FHA Underwriting Manual gave a higher rating to “neighborhoods definitely protected in any way against the occurrence of unfavorable influences,” chiefly meaning “the ingress of undesirable racial or nationality groups” (U.S. Federal Housing Administration, paragraphs 310-11). FHA officials were thus bound by their obligations of office to engage in racially discriminatory practices mandated by official guidelines. The FHA explicitly promoted racially restrictive covenants and local zoning ordinances favoring single-family homes.¹⁵⁰ In a practice known as redlining, the FHA denied mortgage insurance to neighborhoods in which people of color predominate. FHA underwriting guidelines designated white suburban neighborhoods as “Type A,” the best places to insure mortgages, and ‘redlined’ urban areas. The FHA denied federal assistance to redlined areas because of assumptions about the safety of those loans.

As a result of FHA policies, suburban communities became both whiter and wealthier than redlined areas (Gordon 2005). While Title VIII of the Civil Rights Act of 1968 prohibited housing discrimination and FHA policy finally changed, the years of federally-sponsored race discrimination in mortgage insurance have had an enduring effect on the fortunes of people of color and their communities (Kimble 2007, Gordon 2005). Further, the belief that urban blight was caused by a black ‘culture of poverty’ took hold in popular discourse, while the economic success of the suburbs was ascribed to the natural functioning of the Protestant work ethic and served to reinforce the belief that to achieve the American dream, one needed only sufficient motivation and hard work. In other words, urban blight was seen as the natural consequence of race-rooted character failings rather than the result of policy decisions targeting people of color.

¹⁴⁹ On this point, see Kimble 2007 and Katznelson 2005.

¹⁵⁰ The 1947 FHA Underwriting Manual removed these explicit recommendations of racial restrictive covenants (Jones-Correa 2000, 566).

The FHA's pernicious structural effects show the stakes of policymakers' unjust voluntary choices. As with many New Deal federal agencies, FHA policies and practices reflected the individuals who steered and staffed that agency. Unlike many other New Deal agencies, which were staffed by highly educated, reformist technocrats, however, the FHA was "staffed at the federal and local levels by former real estate professionals who operated under and accepted the profession's racial strictures, and who then transferred these norms into federal practices" (Jones-Correa 2000, 566). The FHA Underwriting Manual was authored by one such individual, Frederick Babcock, who incorporated his own previously published views on neighborhood racial homogeneity into official endorsements of racial restrictive covenants (ibid). The FHA's institutional racism encouraged realtors and other non-governmental actors to discriminate against people of color, reifying racially-segregated housing, and exacerbating structural inequalities of wealth, opportunity, and community infrastructure. The decisions that created the FHA's racialized policies – and the obligations to enforce them undertaken and carried out by officials – clearly violate the evaluative standard for voluntarism defended above.

This example also shows the necessity of non-voluntary checks on both private voluntary association (here, homeowners' associations, who used racially restrictive covenants) and official discretion (the former realtors who wrote racial discrimination into federal policy). The Supreme Court's decision to affirm the legality of racially restrictive covenants in *Corrigan v. Buckley* (1926) wrongly licensed an exclusionary form of voluntary association. The state should interfere to prevent individuals from undertaking obligations that reinforce racial discrimination and diminish opportunities for those who face such discrimination, rather than promote such practices through federal policies that incentivize racial discrimination. The Court later ruled in *Shelley v. Kraemer* (1948) that the courts could not enforce such covenants, since enforcement

would be discriminatory and therefore violate the Equal Protection Clause of the Fourteenth Amendment. This ruling correctly recognized that the state should not coercively enforce unjust uses of private power, but was incomplete because it did not extend to a positive state right of interference.

Horizontal Obligations, Vertical Effects: Proposition 13

Horizontal obligations within social movements have propelled numerous changes in vertical institutional arrangements, law, and policy in the United States. Rather than using an example from the women's, civil-rights, or labor movements, here I will assess the California tax revolt that culminated in Proposition 13.

Proposition 13 was a 1978 ballot initiative that amended the California Constitution. As amended, the California Constitution caps property taxes at 1% of their 1975 assessed value, limits annual increases on property taxes to 2% per year, prohibits reassessment of property values except when property is sold or new construction is completed, and requires a two-thirds majority in both houses of the state legislature to raise any statewide tax rate. To place an initiative on the ballot, California law required signatures from 8% of the number of voters who voted in the previous gubernatorial election, or roughly half a million valid signatures in 1978. Howard Jarvis and his United Organization of Taxpayers (now called the Howard Jarvis Taxpayers Association) succeeded in their fourth attempt to get Proposition 13 on the ballot and collected over 1.2 million signatures in 1978. This record number was the result of significant grassroots mobilization: Proposition 13 “was qualified for the ballot by thousands of little people volunteering their time and effort” (Kuttner 1980, 22).

Once they had secured a place on the ballot, Jarvis and his organization launched a “Yes on 13” campaign, employing a political consulting firm and working with various conservative

interest groups. Again, a “large grassroots element” of citizens dissatisfied with the dramatic California property tax increases of the 1970s propelled this campaign; grassroots organizations “were encouraged to ‘do their own thing’ and produce and distribute their own campaign literature” and “were also responsible for a ‘get out the vote’ drive on election day” (Baratz and Moskowitz 1978, 10). Proposition 13 passed with almost 65% of the vote, and sparked similar antitax movements in other states, making “the tax revolt issue into the major domestic story of 1978” in the media (11). In short, Proposition 13 was a successful attempt to alter the vertical requirements on individuals by horizontal means, which succeeded in large part because so many people undertook and discharged horizontal political obligations to aid the measure’s passage.

While many Californians favor Proposition 13, assessments of its consequences are strongly divided. Its proponents point to estimated taxpayer savings of over half a trillion dollars. Its detractors argue that the loss of property tax revenue has decimated funding for basic services, including schools, police, infrastructure, water, fire brigades, and libraries, forced increases in sales tax and special assessments created by referendum, and made localities increasingly dependent on the state to make up budgetary shortfalls. On this view, Proposition 13 is responsible in large part for California’s ongoing budget woes. Further, “replacing property taxes with user fees (and assessments) tends to provide gains to middle- and high-income households at the expense of lower income households, though efficiency may increase” (Hirsch 1981, 420-1). Finally, Proposition 13’s critics charge that it has disproportionately benefited corporate property owners and wealthy individuals, while making it unduly difficult for the first-time homebuyer to purchase a home.

The evidence of Proposition 13’s negative effects is quite convincing. The ongoing budget crisis has caused dramatic cuts to basic services like public education, infrastructure

maintenance, and firefighting. California's public education system is the chief casualty of the structural deficit Proposition 13 caused (O'Sullivan et al 1995). Class sizes in the Los Angeles Unified School District have grown to 40 students. At UCLA, mandatory fees (i.e. tuition) for UCLA in-state undergraduates have risen from \$4,378.27 in 2002 to \$7,713.23 in 2007 to \$14,010.13 in 2012 (reflecting a number of systemwide fee hikes), while the size of a lower-division discussion section in the Political Science Department has risen from 12 to 20 students. The maximum federal Pell Grant amount, which is awarded to students with an expected family contribution to their tuition of zero, was \$4,000 in 2002-2003 and \$5,550 in 2012-2013.¹⁵¹ A Pell Grant would have covered nearly all of one's tuition at UCLA in 2002 for those least able to afford college, but covers less than 40% of current tuition. The rising cost of public higher education, like the cuts to facilities, programs, staff, and teachers in public elementary and secondary schools, makes it increasingly unlikely that those born into a socioeconomically-disadvantaged position can enjoy the same opportunities as students from socioeconomically-privileged backgrounds. To the extent that Jarvis and his affiliates brought about this state of affairs, they have used their capacity for voluntary action wrongly. The political obligations they undertook to one another – obligations that enabled Proposition 13 to pass – required them to act in ways prohibited by sufficiently weighty non-voluntary moral principles of equality and fairness. In other words, these obligations violated the broader non-voluntary duties on which society rests, and therefore should have not been fulfilled.

Conclusion

Voluntarist obligations are essential to a complete account of liberal-democratic politics. I have argued that we cannot understand or effectively critique enduring features of liberal democracies

¹⁵¹ Pearson Government Studies 2003, 9; U.S. Department of Education, "Federal Student Aid."

without considering voluntary action and voluntarily-assumed requirements to act. Voluntarism forces us to confront the fact that political decisions reflect voluntary choices and voluntarily-assumed obligations between actual individuals, a troubling fact when opportunities to make such choices are unequally distributed and reinforce existing socioeconomic inequalities.

However, as I have argued, voluntarism also offers an alternative. By starting from the position that the capacity for voluntary political action and self-government is inherently valuable, we can make judgments about the normative limits of political voluntarism.

The theory of political obligation I defend supports a unified evaluative standard for assessing, on voluntarist grounds, the inevitable voluntary acts of state agents, activists, *and* ordinary citizens. With it, we can give an internally consistent, democratic critique of voluntary choices that diminish others' avenues for voluntary self-determination. Political obligation allows us to recognize where the voluntary choices and voluntarist obligations that shape our political context occur. Because it rests on the basic value of voluntary action, it lets us critique those voluntary choices that diminish others' avenues for voluntary self-determination.

Voluntarist obligation is an essential concept for understanding political freedom in semi-voluntary states. This unique association with political freedom bolsters the case for a fundamental distinction between voluntary and non-voluntary bonds, and propels my claim that voluntarist obligation is a crucial component of liberal-democratic political ethics. Contrary to the dominant view of political obligation, I maintain that "the individual's freedom is not the precondition for political activity but rather the product of it" (Barber 1984, 4). By rejecting the narrow definition of obligation as obedience in favor of a strongly voluntarist conception concerned with the requirements for political action that individuals create, it is possible to conceive of obligation as an *expression* of individual political freedom. Overall, I have argued

that voluntarily-assumed political obligation and self-government are intrinsically valuable as well as inextricably linked. The voluntarist perspective lets us investigate a broad range of voluntary political bonds and activities open to ordinary individuals. To the extent that opportunities to take voluntary political action are widely accessible, they are the best hope for democratic self-governance in contemporary states.

Voluntary association is clearly *not* an unqualified good for democratic societies. Voluntary political action through horizontal associations may be an effective method of addressing injustice, but as the super PAC and fraternal organization examples make clear, voluntarism also poses a challenge to justice and political equality. While voluntary association and horizontal ties may be used to exclude, though, we cannot eradicate all danger of exclusion without eradicating all traces of voluntary cooperative political action – in other words, all traces of self-government – from liberal-democratic states. Further, it would be impossible in practice to purge the liberal-democratic state of its voluntarist side. In the next chapter, I discuss the democratic implications of this analysis, and develop an account of politics and government that can accommodate political obligation.

“Democracy is not a caucus, obtaining a fixed term of office by promises, and then doing what it likes with the people. We hold that there ought to be a constant relationship between the rulers and the people. ‘Government of the people, by the people, for the people,’ still remains the sovereign definition of democracy. There is no correspondence between this broad conception and the outlook of His Majesty’s Government. Democracy, I must explain to the Lord President, does not mean, ‘We have got our majority, never mind how, and we have our lease of office for five years, so what are you going to do about it?’” – Winston Churchill, Speech to the House of Commons, 11 November 1947

Chapter Five

Democracy as Action: The Politics of Political Obligation

While voluntarist political obligation addresses the agency that individuals necessarily exercise within institutions, without which the state would be inert and government nonexistent, it also highlights the central, unavoidable challenge of democratic politics. As the previous chapter suggested, voluntarism poses normative predicaments that closely parallel the primary problem of democracy: that self-government does not necessarily produce good, just, or acceptable political outcomes. Like voluntary action, democratic decisions involve the freedom to choose badly and wrongly. Just as democratic control over a voluntary association’s membership rules (for example) can produce extremely exclusionary (but democratically produced) rules, democratic political decisions may license or even promote exclusion. Indeed, certain forms of democratic institutions may diminish the quality of democratic decision-making, reduce citizens’ sense of efficacy and motivation to participate, and exacerbate existing socioeconomic inequalities.¹⁵² In short, democratic procedures do not guarantee that particular democratic decisions will be just, nor that all with the right to participate will choose to do so.

¹⁵² This is the primary charge Pateman makes against Schumpeterian, ‘protective’ models of democracy, for example, but democratic institutions that intend to promote active citizenship and popular involvement are not immune to these ill effects. Mansbridge 1983 vividly illustrates this point with her discussion of the Selby town-hall meetings.

Democratic-self-government also faces significant, perhaps insurmountable, practical challenges in the present age. Democratic theorists must contend with the gap between democratic ideals and practice, the instability of political attitudes and the factors that influence them, and finally, the widespread yet understandable political alienation in contemporary liberal democracies. Further, the ideal of collective self-government and the representative institutions of existing liberal-democratic states are not a perfect fit, but an uneasy compromise. As a result, many theorists conclude that the democratic ideal itself is the problem: that democratic political agency “is pitched at a very demanding level indeed, the people somehow ruling themselves,” which “is arguably incompatible with the very form, indirect or representative, that modern democracy for the most part has to take” (Ci 2006, 151).

As the foregoing analysis of political obligation indicates, however, this conclusion is rather premature: in existing liberal democracies, some people do in fact possess this type of political agency. Analysis of liberal-democratic institutions, practices, and norms shows that voluntary action is a much larger part of liberal-democratic politics than existing theories recognize. A theory that takes political voluntarism seriously can *assess* the voluntary choices that shape democratic decisions and policy outcomes. As I will show, self-government entails certain constraints on democratic action and decision. The foregoing account of voluntarist political obligation sheds light on why this is the case, and what those constraints should be. Analysis of political obligation in semi-voluntary states both exposes practical issues with self-government that also challenge normative democratic theories, and grounds a constructive response. Because a voluntarist theory of obligation investigates who actually engages in self-government in a liberal democracy, it provides a stronger descriptive account of the state, which can be used to evaluate whether contemporary states provide meaningful opportunities for

democratic self-government. Thus, it can aid analysis of self-government's normative boundaries and the proper meaning of democratic representation and equality.

This chapter argues that political voluntarism implies a more robust conception of political equality and democratic participation than the dominant Schumpeterian and deliberative models offer, *and* that voluntarist political obligations are an essential part of collective democratic self-government. Below I develop an account of the 'democratic politics of voluntary action' – the form of politics and government that allows for *self*-government and voluntarily-assumed obligations.¹⁵³ My account draws on participatory democratic theory, which calls for the 'full democratization of authority structures' themselves in social, economic, and political life, but departs from it in acknowledging that strong, pervasive, and rightful duties of obedience exist even in a state that is not organized on participatory lines. Political obligations are created by *action*. Voluntarily-assumed obligations are at once the building blocks of democratic self-government and the tools by which authority structures may be democratized. Thus, I argue that voluntarist obligation implies an active conception of democracy, and further, that such a conception grounds a response to political voluntarism's shortcomings. A commitment to the value of voluntary political action, I contend, entails a stringent notion of political equality that grounds an internally consistent, democratic, principled limit on democratic decision and action.

The first section of this chapter discusses the central problem of democratic self-government. The second assesses a major practical obstacle to political voluntarism –the

¹⁵³ I take this brief description of participatory democratic theory from Pateman 1970. For more recent work in this participatory vein, see Boyte 2011, Cabannes 2004, Hilmer 2010, Norris 1999, Pateman 2012, Smith 2009, and Wampler 2012a and 2012b. The account I develop below also bears some important similarities to what Ulrich Beck terms 'subpolitics,' but unlike Beck, I see action by agents outside formal state and corporate structures as political, rather than a distinct *sub*-political category of socially-oriented action. In Beck's account, "*Subpolitics* is distinguished from politics in that (a) agents *outside* the political or corporatist system are also allowed to appear on the stage of social design... and (b) not only social and collective agents, but *individuals* as well compete with the latter and each other for the emerging power to shape politics... 'Subpolitics' means social arrangement from below" (Beck 1997, 103-4).

‘democratic gap’ and its contributing factors – and argues that empirical and Schumpeterian theories of democracy cannot adequately address it. In the third, I show that the dominant normative model of democratic government, deliberative democracy, cannot tackle voluntarist political obligation *or* practical threats to democratic equality because it focuses on public justification and non-coercive deliberation, rather than decisions and decision-making power. I then consider an alternative, participatory model of democracy, and briefly reply to the most common objections leveled against it. I argue that participatory democracy is the only democratic theory capable of effectively addressing voluntarism’s pitfalls, including exclusion by voluntary associations. In the final section, I address the politics of political obligation, and defend an account of democracy as action capable of establishing both widespread opportunities for political obligation, and substantive limits on democratic decision.

Democracy and the True Voluntarist Paradox

Limits on voluntarism (enforced by the power to punish antisocial behavior or otherwise make some choices prudentially unacceptable) are necessary for *any* political community. In the most basic sense of the word, governing is the act of implementing such limits. A governing body must be able to make many important non-voluntary claims on its citizens (military service, taxes, punishment of lawbreakers, etc). ‘Self-government’ therefore always entails accepting constraints created by others on what we may do, since constraints on action are an indispensable part of what it means to live in society. This is the true paradox of political voluntarism. Just as Odysseus recognized that his true goal – avoiding the Sirens – required that he be tied to his ship, general non-voluntary constraints on some voluntary acts are what preserve one’s broader *capacity* for voluntary action. We cannot exist alongside others without these constraints,

whether as deeply internalized norms about what we may do to one another or as laws enforceable by the power to punish lawbreakers. While this claim sounds quite liberal, my argument derives such constraints (or, in traditional liberal language, limits on one's natural liberty) from an active view of freedom tied to the intrinsic value of voluntary action and the ability to shape the background conditions of social cooperation, rather than freedom as non-interference.

On the view I accept, democracy is “a political system in which citizens themselves have an equal effective input into the making of binding collective decisions” (Saward 1998, 15). Democratic political equality encompasses “two complementary ideals, one involving equal distribution of the *power to make collective decisions* and the other equal participation in *collective judgment*” (Warren 2001, 60). Further, democratic government entails formal accountability requirements: the governed must be able to hold those who govern them responsible through clear and transparent processes.¹⁵⁴ Theorists generally classify particular democratic theories according to how decisions are made (by aggregating or integrating competing views), and who makes them (the people directly, or indirectly through their elected representatives).¹⁵⁵ Whether direct or indirect, aggregative models emphasize competition, dissensus, and majoritarian procedures, while integrative models emphasize consensus, transforming and synthesizing conflicting views, and non-majoritarian procedures.

¹⁵⁴ Thus “a system in which some individual or sub-group possesses superior power to make binding collective decisions without any formal accountability to citizens” is non-democratic (Saward 1998, 15). This claim may be defended on a variety of grounds, including a republican principle of non-domination that rules out arbitrary government power over the individual, a commitment to impartiality, and a consequentialist assessment of the absence of formal accountability.

¹⁵⁵ I draw this two-axis approach from Hendriks 2010, but these distinctions are basic and well-known by students of democracy. Ian Shapiro, for example, contrasts the dominant aggregative and deliberative (integrative) approaches along the first axis (Shapiro 2003, 10-26).

While democracy's essence is the belief that people should create the laws that govern them, there are always many individual perspectives on what those laws should do. Thus, the paradox of political voluntarism permeates democracy's very foundation. Although "[m]odern democracy relies on the axiom of the self-control of individuals: each person is master of himself and of no one else" (Beck 1997, 88), democratic *government* rests on *collective* self-determination: it requires that we accept collective decisions as authoritative.¹⁵⁶ While "diversity and debate are inescapable, indeed meritorious, features of moral reasoning," people also want to live in society, which requires some acquiescence to common norms (Webber 2007, 70). The representative form that democracy takes in modern states further exacerbates this tension.

While Rousseau famously argued that decisions made in accord with the general will are always consistent with the individual's democratic freedom (Rousseau 2006, 30-36), many scholars maintain that the tension between individual and collective self-determination cannot be resolved, only mitigated. To contend with this tension, theorists advocate, among other solutions, majoritarian procedures that minimize dissatisfaction with democratic decisions, political rights that protect dissenting voices, or institutions that build competition between competing factions into the fabric of democratic government.¹⁵⁷

A unitary, 'we the people' conception of democracy is inadequate because democratic practice inherently involves contestation of authoritative public values. Perhaps the sole constant in the calculus of politics is the tension between the claims of society and the individual's will. So long as individuals try to "dominate and control the authoritative allocation of public values,

¹⁵⁶ For an extended analysis of this point, see Mendel-Reyes 1999.

¹⁵⁷ Proponents of majoritarianism are too numerous to list, but a few standout examples include Graham 1982, Shapiro 2011, and Schumpeter 1976. Sunstein 2003 is a recent rights-based approach. Finally, Madison is the paradigmatic modern advocate of good institutional design, with Shapiro 2011 a more contemporary example.

the benefits and rewards of the political system and social order” (Cook 1972, 111) coercion will remain a fixture of social and political life.¹⁵⁸ And because modern liberal-democratic states entail “a massive apparatus of coercion that is not directly biddable... the hope that the state-power could ever really be ‘our’ power or fully under collective control is completely misplaced” (Geuss 2001, 128-9). Even radical democracy “in its classic form—opening the marketplace or town hall to the citizens to gather, debate, and make their own laws—does not guarantee the realization of Emerson’s vision that every individual have ‘his fair weight in the government,’ that ‘every opinion [have] an utterance,’ and that ‘all the people truly feel they are lords of the soil’” (Mansbridge 1983, 126-7).

While state power can never be fully under collective control, my account of political obligation assumes that major improvements over current liberal-democratic decision procedures are possible. Unlike philosophical anarchists, who claim that the liberal-democratic state itself is the problem and are therefore satisfied with simply denying its legitimacy entirely, my approach asserts that while the state is deeply flawed, major improvements are possible. The liberal-democratic state is a problem insofar as its scale, institutions, and political practices prevent many people from exercising decision-making power, and reinforce the political advantages that wealth and social status confer. These problems, however, are not unique to the state: they also plague social and economic realms of collective decision-making, a fact that philosophical anarchists do not recognize. Because analysis of political obligation uncovers the voluntarist sources of current institutional arrangements, it supports normative critique of deep inequalities

¹⁵⁸ A number of scholars echo this point: see, for example, Anscombe 1990; Gert 1972, 45-8; Held 1972, 59-62; Weinstein 1972, 63-4; Mansbridge 1996; McBride 1972; Pettit 1997, *passim*; Shapiro 2011, introduction and chapter 1; and Wolff 1998, 38-78. However, in distinction to Cook, who sees this competitive drive to dominate in terms somewhat akin to Nietzsche’s view of the will to power, I take a somewhat less agonistic view of human sociability. In his view, “the necessity of coercion is rooted in the very nature of man” (1972, 110).

in individuals' political power-to-act. Finally, because my account is premised on the value of voluntary self-determination, it gives normative guidance for transforming liberal-democratic institutions.

Substantive Boundaries on Self-Government: Impossible or Necessary?

Whenever people act in concert, it is inevitable that "someone's autonomy will be thwarted. For whereas conflicting decisions can co-exist, conflicting actions which are the expression of such decisions cannot...the autonomous decision of one [party] will fail to get translated into action" (Graham 1982, 132). *This* is the problem of democratic government. The question, then, is under what conditions such autonomy-thwarting democratic acts are acceptable. One can be consistently committed to democracy *and* reject particular exercises of democratic decision power. Suppose every single citizen of Los Angeles unanimously agreed to secede, form a new state, and make me sovereign, with no restrictions on my power and no possibility of removing me from office. Or consider a more realistic example: Jim Crow laws, which elected representatives passed according to existing legislative procedures and enacted legally. If we could not reject democratic decisions with clear antidemocratic consequences, we would have to accept decisions to give up democratic freedom forever, or to systematically and democratically deny equal political rights to some members of society.

On the other hand, democratic stability requires that one submit to collective decisions regardless of whether one's own preferred outcome would have been better. A commitment to democratic procedure must trump one's opinion of particular decisions. However, we cannot prioritize a decision-making *procedure's* democratic bona fides in this way unless we accept (at least some) democratic decisions to restrict democratic decision-making power. Appeals to the inherent superiority of democratic procedures vis-à-vis other decision-making procedures must,

for the sake of internal coherence, rule out particular decisions that render those procedures or their results undemocratic. To maintain democracy, we must be able to say that such acts are outside the scope of democratic decision – to deny that Angelenos can democratically construct a Leviathan of their own, or that Southern states may choose to mandate racial segregation and discrimination by law.

Thus, *any* commitment to democracy (whether for instrumental reasons or some intrinsic value in democratic politics) requires some substantive limits on what the demos may decide. Here J.S. Mill’s argument against selling oneself into slavery is a useful analogy. Mill contends that “[t]he principle of freedom cannot require that [one] should be free not to be free. It is not freedom, to be allowed to alienate [one’s] freedom” (Mill 2006, 103). Voluntarily enslaving oneself would make that individual unable to choose freely in the future. Because one cannot willfully alienate one’s own freedom, one also cannot voluntarily sell oneself into slavery.

To be consistent, instrumental arguments for democracy must accept limits on democratic decision. Those who claim, for example, that democratic procedures are best at fairly balancing conflicting interests in a diverse polity, or that citizens are more apt to regard democratic decisions as legitimate, must reject democratic decisions that strike a flagrantly unjust balance between competing interests or undermine perceptions of legitimacy.¹⁵⁹ In addition, they have no grounds to privilege democratic (rather than autocratic) procedures if both are shown to yield equally successful decisions. One who argues that democracy is justified because it best promotes economic growth and prosperity, for example, would be hard-pressed to explain why South Korea, Taiwan, or Singapore, which experienced rapid growth under (and, some argue, because of) authoritarian political systems, should have instead been democracies. It is similarly

¹⁵⁹ Dahl 1956 is a classic example of the first type of argument, while Gutmann and Thompson 1996 and 2004; Dryzek 2000; and Fishkin 2012 offer variations on the second.

difficult to see how an instrumental argument for democracy could respond to growing economic inequality in Western liberal democracies.

In addition, these examples indicate why a wholly instrumental defense of democracy *as such* is impossible.¹⁶⁰ To make the case for democracy, we must either supplement instrumental arguments with external normative principles, such as the inherent justice of democratic authority, or define the benefit that democracy provides too broadly (i.e. ‘citizens’ belief in the state’s legitimacy’) to yield much insight. The latter response falls to the same objection Leslie Green and John Simmons make against attitudinal arguments for political obligation: that state institutions promote a belief in their legitimacy, which citizens then internalize.

Those who see self-government as inherently worthy fare better in defending democracy *as such*, but because they claim that democratic participation is intrinsically valuable, they must reject democratic decisions that curtail future democratic participation. If self-government has intrinsic value, we must accept both those substantive limits necessary to maintain democratic procedures, and the equality without which self-government would have no practical meaning. As Mill acknowledges, “a limit is everywhere set” to our freedom “by the necessities of life, which continually require, not indeed that we should resign our freedom, but that we should consent to this and the other limitation of it” (103). Thus, he argues, the state can limit one’s power to dispose of one’s own freedom to protect a deeper form of individual freedom, since free choice is the only way to achieve one’s own good.

¹⁶⁰ This charge also applies to contractarian arguments for political authority and the state. Hobbes’s theory, for example, falls apart precisely because he claims that individuals may “in many cases refuse [the sovereign’s command] without injustice,” specifically when such refusal would not “frustrat[e] the end for which the sovereignty was ordained,” because the “obligation...to execute any dangerous or dishonourable office, dependeth not on the words of our submission, but on the intention, which is to be understood by the end thereof” (Hobbes 1994, XXI.15-6, 142). In other words, on Hobbes’s own account, individuals may refuse to obey when obedience would have the same practical consequences as life in the state of nature (i.e. when it would threaten one’s life to obey). Hobbes’s instrumental argument for absolute sovereignty thus *cannot* succeed. The larger point I take from this, however, concerns the importance of critically evaluating the acts of a political authority.

At some level, then, the capacity for voluntary action must be constituted by coercion. Owing to the paradox of political voluntarism, “coercion must play a large, valuable, and relatively legitimate role in almost any democracy that functions well,” and thus “democracies must find ways of fighting, while they use it, the very coercion that they need” (Mansbridge 1996, 46). A self-governing polity must find procedural, institutional, and affective solutions to arbitrary, unfair, or unjust coercion and non-voluntary constraints. To address the downside of political voluntarism and voluntary association, theorists generally turn either to liberal principles that limit an association’s ability to curtail non-members’ freedom, or to external principles of equality that play a similar role.¹⁶¹ The voluntarist perspective evaluates negative liberty solely in terms of its impact on political freedom as the power to act. In the previous chapter, I claimed that democratic ideals of equal political freedom themselves establish some limits on associational freedom. For similar reasons, democratic ideals also require certain limits on what the demos may democratically decide. The question of *whether* democratic authority may be limited is the wrong one to ask: the more important question is *how*. I shall argue that a solution to the paradox of political voluntarism exists within democratic theory itself: specifically, that participatory democratic theory, which extends the scope of democratic action to decisions about the authority structures of political life, can defuse political voluntarism’s exclusionary potential and set internally consistent limits on the purview of democratic action.

Democratic theorists must recognize the boundaries on democratic decision that their own premises demand. Unbounded democratic decision-making power is impossible even in principle. To ensure widespread opportunities to take voluntary political action, democratic decision-making power must be properly limited. Analysis of voluntarist political obligation

¹⁶¹ On the former, see de Marneffe 1998 and Tamir 1998.

suggests that democratic equality *should* trump many liberties that conflict with it, because an autonomous moral agent must be able to take voluntary action to shape one's own destiny and moral world.

The 'Democratic Gap' and Other Empirical Challenges

In addition to these conceptual issues, democracy in large industrial states is beset by a host of practical problems. As any democratic theorist would acknowledge, a vast gulf separates democratic ideals from democracy as it is actually practiced. Owing to growing recognition of the 'democratic gap,' "extensive evidence suggests that many, not all, western citizens are becoming more skeptical about their democracies, more detached from parties, less trustful of political leaders, and less supportive of their system of government and political institutions" (Newton 2012a, 4).¹⁶² Although the ideal of self-government gives democracy its "chief emotional and rhetorical appeal" (Ci 2006, 145), high levels of political apathy and disengagement among citizens plague existing democracies. As a result, many democratic theorists now doubt that robust democratic self-government is possible.

Empirical studies provide two basic explanations for the democratic malaise: a top-down approach that centers on poor political leadership, institutional design, and lack of accountability, and a bottom-up account that emphasizes citizens' deficiencies.¹⁶³ While I shall reject the normative position that the latter approach implies – that a democracy must protect its citizens from their own incompetence by minimizing their role in political decision-making – both top-down and bottom-up analyses offer useful insights into democracy's practical problems. A

¹⁶² On this point, see also Norris 1999 and Warren 2002.

¹⁶³ I take this distinction from Newton 2012a.

normative theory of democracy should not rest on empirically unrealistic assumptions about how people can and do make collective political decisions. It should also address the challenges to democratic ideals posed by mass society and the nation-state's scale.

Citizen Competence, Apathy, and Representation

A venerable tradition stretching back to Plato holds that the *demos* is not fit to govern itself because the people are selfish, irrational, uninformed, susceptible to demagoguery, and able to recognize only a short-sighted, incomplete version of their true interests. Likewise, empirical democratic theorists have long expressed skepticism about citizens' political competence. They claim that the masses are generally ill-informed about political issues, that individuals do not have stable, coherent, rational policy preferences, and that citizens often act against their self-interest. Philip Converse's 1964 claim that many citizens "do not have meaningful beliefs, even on issues that have formed the basis for intense political controversy among elites for substantial periods of time" (Converse 1964, 245) is a cornerstone of this line of argument. For many, Converse's empirical research "punched a significant hole in conventional, romanticized accounts of the popular underpinnings of democracy" (Bartels 2003, 48). The elite model of democracy emerged in the mid-20th century to address what empirical analysts saw as the inadequacies of traditional democratic theories.

By and large, empirical analysts of democracy reject democratic ideals built on active and widespread participation. They argue that the manipulability of individual's political attitudes and prevalence of low-information citizens topple a strong version of collective political agency. To defend a stringent ideal of self-government, one would have to attribute "to the will of the *individual* an independence and a rational quality that are altogether unrealistic" (Schumpeter 1976, 253). Since citizens are not rational political agents and the notion of an objective interest

is unsupportable, most conclude with Schumpeter that democratic outcomes are neither “meaningful in themselves,” nor inherently correct (253). They conclude that because democratic decisions are the sum of irrational individual desires rather than a reflection of some intrinsic good, those who defend democracy must “fall back upon an unqualified confidence in democratic forms of government as such – a belief that in principle would have to be independent of the desirability of results” (ibid).

Thus, empirical theorists contend that representation is not inimical to the democratic ideal, but required by it. Like Schumpeter, for whom “the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote,” they conclude that the citizen’s main role in a democracy is to “produce a government” by voting for representative political decision-makers (269). In this ‘elite theory of democracy’, democracy rests on electoral competition among political elites, rather than direct citizen involvement in policy-making. Elite theorists maintain that decision-making by political elites (constrained by competitive political institutions that establish the proper incentives) protects individual interests more effectively than decisions made by the fickle, irrational, easily-swayed masses. Indeed, they see widespread political apathy as a boon to democratic stability rather than a symptom of democratic decline, and claim that democracy “would quickly founder on the reefs of cognitive incompetence” with greater citizen influence over political decisions (Sartori 1987, 120).¹⁶⁴

Subsequent research on public opinion and political attitudes shows that the way most citizens approach political questions does not resemble a Rawlsian reflective-equilibrium mode of deliberation. For example, many Americans lack basic knowledge about American political

¹⁶⁴ Sartori 1987 is perhaps the strongest statement of this view. More recently, see Caplan 2007 and, for an overview of this debate, Kuklinski and Peyton 2009.

institutions, civil liberties and political rights, and their own elected officials (Fishkin 2012, 72). Further, citizens “have ‘meaningful beliefs’ [contra Converse] but those beliefs are not sufficiently complete and coherent to serve as a satisfactory starting point for democratic theory, at least as it is conventionally understood... citizens have *attitudes* but not *preferences*” (Bartels 2003, 49). Unlike preferences, which are stable and rationally consistent, attitudes are context-dependent: they reflect the way an issue is framed, elite cues about policy alternatives, and which aspect of the issue an individual finds salient.¹⁶⁵ As Bartels argues, this poses a problem for any democratic theory that rests on the citizen’s capacity to reflectively formulate and pursue political preferences (56). This conclusion also undermines the interest-based approach to democracy. One’s interests may look quite different depending on which aspects of one’s identity one considers. Take a low-income evangelical voter choosing between a pro-life candidate and one who supports social-welfare programs. We cannot conclusively say which choice is in her objective interest.

Further, regardless of whether citizens are incompetent, the empirical literature indicates that public opinion does not actually drive political decision-making in a representative democracy. A good deal of evidence suggests that ordinary citizens do not play much of a role in American democratic decision-making. Rather than public opinion, political parties, public

¹⁶⁵ There is a large literature on such ‘framing effects:’ see, for example, Kinder 2003, an overview of the literature on framing, agenda-setting, and priming effects on political attitudes in mass communication, Neuman 2007, and Bartels 2003. On priming (e.g. the idea that people will vote based on candidates’ positions on a particular issue when that issue becomes salient in an election) more specifically, see Sears and Levy 2003. Studies of priming generally conclude, based on stronger correlations between the issue and one’s intended vote in surveys taken after a campaign primes an issue than in surveys taken before, that campaigns must *make* issues salient by priming them. Lenz 2012 dissents from this view, arguing what scholars take to be evidence of priming actually reflects a change in voters’ attitudes. He finds that voters are bringing their attitudes on a particular issue in line with their preferred candidate after the candidate primes the issue. This attitude change, he contends, shows that voters are persuaded by their preferred candidate, rather than manipulated by campaigns.

officials, and interest groups determine most policy outcomes.¹⁶⁶ Bartels argues that the Bush tax cut, and the persistent but (until recently) fruitless opposition to the American estate tax, suggests that American public policy is primarily produced by powerful public officials motivated their own ideological agenda rather than public opinion (Bartels 2008, 198).¹⁶⁷ These examples underscore the importance of evaluating *how* officials exercise their discretionary authority. Further, public opinion does not itself emerge *sui generis*. Public opinion does not represent the aggregate of rational preferences in the electorate, but “the infinitely complex jumble of individual and group-wise situations, volitions, influences, actions and reactions of the ‘democratic process’” (Schumpeter 1976, 253).¹⁶⁸ This ‘infinitely complex jumble’ of social ties and relationships molds the individual’s political identity. Elite opinion, mass media, advocacy groups, and other social organizations shape what we take to be expressions of public opinion: thus “public opinion is in fact a weapon that can be deployed, more or less effectively, by interest groups that are struggling to shape what Congress does” (Shapiro 2011, 181).¹⁶⁹

Given that elites exert significant influence over public opinion, it is unlikely that aggregative decision procedures will ensure government accountability. Competition for a majority of votes cast by malleable, low-information voters does not guarantee that the victors

¹⁶⁶ See Bartels 2008, Lee 2002, Lenz 2012, Cox and McCubbins 2007, and Bawn et al 2012. See also my analysis of the Elementary and Secondary Education Act of 1965, and the Higher Education Act of 1965 above at pp188-192.

¹⁶⁷ These cases, he argues, reveal “the considerable latitude provided by the American political system to policy makers pursuing their own ideological goals” (Bartels 2008, 164).

¹⁶⁸ More recent, quantitative versions of this claim are made by Zaller 1992 and Bartels 2003, among others. Most agree that the variation observed in individual preferences “follows from the different circumstances under which repeat issue questions are asked and which are uppermost in the individual’s mind at the time” (Budge 2012, 29).

¹⁶⁹ Bartels makes a similar point. In his analysis, the public played a reactive rather than proactive role in the Bush tax cut decision: “the public’s views about appropriate fiscal policy were a *consequence*, rather than a *cause*, of elite action... At most, public opinion was a *resource* to be used—and shaped—by elites in their own policy struggles” (Bartels 2008, 193). See also Zaller 1992, Skocpol and Williamson 2012, Kinder 2003, and Gilens 2012.

will be public-minded in governing. Two central problems with aggregative methods also burden elite theory. First, “the aggregative conception fundamentally accepts and may even reinforce existing distributions of power in society” because it simply tallies individuals’ existing preferences, which have been shaped by existing political conditions and power dynamics (Gutmann and Thompson 2004, 16). Second, “aggregative methods do not welcome all kinds of primary preferences equally. Those that can be readily translated into economic categories fit much better than those that express values that are incommensurable” (17). Aggregative methods may focus government activity on private economic interests rather than other political issues.

Substantial empirical evidence suggests that elite competition cannot likely serve the protective function elite theory assigns to it. As a recent assessment of direct-democratic experiments points out, the critiques of citizen judgment should make us wary of representative as well as direct democracy (Budge 2012, 29). If, as the empirical literature strongly indicates, political attitudes and individual perceptions of self-interest are unstable and subject to framing effects, then if anything we ought to be more concerned about elites, whose social position gives them a bully pulpit for influencing public opinion. Political elites motivated by competition for office may not use this platform scrupulously. *Quis custodiet ipsos custodes?* Political psychology and public opinion research gives us even more reasons to be concerned about the answer. Overall, elite theory neglects the potential dangers of indirect democratic rule over an inattentive populace. In consequence, it does not provide adequate resources for evaluating elite action. A voluntarist theory of political obligation, however, grounds normative judgments that constructively address such concerns.

Democracy and Inequality

Finally, “one of the great puzzles of modern democracy has been the lack of any systematic relationship between expanding the franchise and downward redistribution” (Shapiro 2011, 9). Time and again, the *demos* have proven themselves willing, even eager, to vote against downward redistribution (e.g. by electing a swath of Tea Party Republicans in 2010) and embrace *upward* redistribution (e.g. in business subsidies and tax cuts for the wealthy that shift the tax burden onto the middle class). How can we account for the fact that American “[e]conomic inequality is, in substantial part, a *political* phenomenon” (Bartels 2008, 3), one enacted by democratic decisions?

Policy decisions, enabled by the balance of power in existing political institutions, have played a major role in the rising economic inequality of the past 30 years. From his analysis of the Bush tax cuts and other major economic policy outcomes, Bartels concludes that “the political economy of the New Gilded Age” reflects the psychological dynamics that drive voting behavior and “the real limitations of public opinion as a basis for democratic policy making” (27-8). In short, there is “strong evidence that economic inequality impinges powerfully on the political process, frustrating the egalitarian ideals of American democracy” (6). However, the democratic process *produces* this inequality.

I submit that the widespread apathy and disaffection that bedevils democracy’s proponents is an understandable response to the individual’s limited ability to influence actual political decisions. It is quite plausible that many citizens are disengaged because they recognize liberal democracy’s esoteric truth: that the primary form of political participation in large representative democracies, voting, affords them no realistic ability to affect democratic decisions, and is therefore irrational, as the initiates in political science know.

Empirical democratic theories, though, take widespread apathy and the self-interested, uninformed approach to political issues as given, inherent qualities of democratic citizens rather than a product of the liberal-democratic political context. Such theories presume that what they observe – a citizenry defined by high levels of apathy, susceptibility to manipulation, short-sightedness, and irrationality, which is held in check by institutionalized competition between elites – is the only possible form that democratic politics could take. Schumpeter argues that modern citizens are incapable of responsible political action because they are ignorant about policy and cannot make good judgments about political problems, but more tellingly, because there is “no task at which [the capacity for responsible action] could develop” (Schumpeter 1976, 261). However, we should not conclude that responsible self-government is impossible just because existing institutions do not give citizens a realistic means of developing their self-governing capacities. Rather, Schumpeter’s point implies that existing institutional arrangements impede democratic ideals. To address the mutually reinforcing problems of economic and political inequality and bring democratic practice closer to democratic ideals, I shall argue that institutional protections must be built into democratic decision-making processes. Otherwise, for many, the ability to undertake political obligations that key American civil and political liberties formally guarantee will remain out of practical reach.

Deliberative Democratic Theory: Justification Without Decision-Makers

While structural inequalities in political power imperil democratic self-government, the dominant deliberative approach to democratic theory cannot adequately address this problem because it ignores decision-making power. Deliberative democracy is “a form of government in which free and equal citizens (and their representatives), justify decisions in a process in which

they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future” (Gutmann and Thompson 2004, 7). Critics of deliberative theory have shown that it cannot adequately deal with deep disagreement, nor consistently explain when and why we should accept non-deliberative politics. In addition, I shall argue, deliberative theory cannot address the issues of self-government that voluntarist political obligation raises because it focuses on legitimating political decisions, rather than on whether citizens have any power to affect those decisions, and overlooks the constructive dimension of power.

For deliberative theorists, democracy’s essence is “the common deliberation that should underlie collective decision making,” not voting and representation (Chappell 2012, 2). Schumpeterian and agonistic theories of democracy, they contend, wrongly conceive of politics as an endless struggle between opposing interests.¹⁷⁰ Instead, deliberative theorists seek a more inclusive model of democracy that promotes a thoughtful public exchange of ideas as the best solution to moral disagreement in politics. In a deliberative theory, “the traditional tests of democratic inclusion, applied to deliberation itself, constitute the primary criterion of the extent to which deliberation is democratic” (Gutmann and Thompson 2004, 10). The deliberative ideal lays out procedural conditions on deliberation (reciprocity, publicity, and accountability), as well as substantive limits on policy decisions (for example, a respect for basic liberty or fair opportunity).¹⁷¹

¹⁷⁰ A full treatment of agonistic theories, exemplified by Honig 1993 and Mouffe 2005, is outside the scope of the present argument, but my argument against technocratic, aggregative view of democracy in the final section of this chapter also indicts the competitive heart of agonistic politics.

¹⁷¹ I take this formulation from Gutmann and Thompson 1996, 12. This version of the deliberative ideal has become the ‘industry standard,’ more or less.

Because robust large-scale deliberation is not feasible, deliberative theorists have moved away from the mass public to consider small-scale deliberative venues.¹⁷² In this vein, deliberative theorists have turned to ‘mini-publics,’ such as Fishkin’s studies of deliberative polling, the “Deliberation Day” proposal (Ackerman and Fishkin 2004), the Citizens’ Assemblies in British Columbia and Ontario, and citizens’ juries. Such bodies do not frequently issue binding decisions (Smith 2012), nor do scholars argue that the conclusions generated in mini-publics *should* be binding. Fishkin, for example, rejects the call to “restrict ‘deliberative democracy’ to processes culminating in binding decisions” (Fishkin 2012, 73).¹⁷³ However, as Simone Chambers argues, if theorists do not “have a good grasp of how the broader democratic context can be shaped to compliment, or at least not undermine, deliberative experiments then many of the democratic advantages of mini-publics will be lost” (Chambers 2009, 331).

While recent deliberative theories rightly recognize that existing liberal-democratic institutions cannot foster adequately inclusive deliberation, they do not address the barriers to self-governing action that many institutions generate. The success of deliberative institutional innovations, deliberativists contend, depends on their ability to transform citizens’ views. For Fishkin, the purpose of a Deliberative Poll is to bring about “a change in policy attitudes: a change in answers to the question: what is to be done” (Fishkin, 2012, 75). Deliberative democratic participation thus aims “more to manufacture the common good than to discover it” (Shapiro 2003, 22). Indeed, the deliberative model does not insist that political decisions reflect

¹⁷² In the main, deliberative democratic theory “looks at and investigates alternatives or supplements to mass democracy in the form of innovative small-scale deliberative experiments, rather than ways of making mass democracy itself more deliberative... [and] pays almost no attention to elections campaigns, referendums, or broad questions of public opinion formation” (Chambers 2009, 331). For deliberative rebuttals, see Goodin and Dryzek 2006 and Niemeyer 2011.

¹⁷³ Ian Shapiro contends that this “marks [deliberativists’] acknowledgement, however tacit, that it is the act of deciding rather than the mental processes behind it that is essential to democratic legitimacy” (2011, 170).

what citizens *actually* want: instead, decisions should reflect what citizens *ought* to want, or would want after proper deliberation. At base, deliberative democrats assume that appropriate deliberative procedures ensure a decision all could (and should) accept, and thus that the decision will be justified.¹⁷⁴ The deliberative ideal holds that unanimity is the only correct outcome: disagreement is a sign that deliberation has failed. However, given what Waldron has called ‘the circumstances of politics’ – “the felt need among the members of a certain group for a common framework or decision or course of action on some matter, even in the fact of disagreement about what that framework, decision, or action should be” (Waldron 1999, 102) – we cannot wait for consensus or ignore actions taken in these circumstances.

Deliberative theory, however, is unconcerned with the act of deciding itself. Since reciprocity is their chief value, deliberative democrats must reject – and not just provisionally – any theory that denies the need for moral justification, and therefore also any theory that bases politics only on power. Deliberative democrats are committed – and not just provisionally – to mutually justifiable ways of judging the distribution of power. Deliberative democracy accepts the provisionality of its principles but rejects the provisionality of moral reasoning itself as a way of assessing politics (Gutmann and Thompson 2004, 115).

The first two claims have merit: a theory that sees politics *solely* in terms of power cannot evaluate the *distribution* of political power without appealing to external normative principles (e.g. fairness or equality). The problem is the way deliberative theorists construe ‘moral reasoning as a way of assessing politics.’ Deliberative moral reasoning uses principles of reciprocity, publicity, and accountability to assess the quality of *deliberation* (rather than

¹⁷⁴ Deliberative theories “assume that dissensus or disagreement is a sign of the incompleteness or politically unsatisfactory character of deliberation” (Waldron 1999, 91). For an excellent analysis of this point, see Gaus 1997.

decision-making). While “[d]eliberative democrats care as much about what happens after a decision is made as about what happens before” (6), deliberative moral reasoning does not pertain to the actual act of *deciding*. Because the “primary aim of deliberation is to justify decisions and laws that citizens and their representatives impose on one another” (27), deliberative theory does not address the issue of who has, or ought to have, decision-making power.

In practice, however, decisions are the heart of politics and political action: they establish who gets what, when, why, and how. Democracy is much more a matter of decision-making power and much less a matter of how we feel about decisions others have made without us. While decision-makers have an important responsibility to justify their decision (or to make justifiable decisions), post-hoc justification is not sufficient for democracy. Because the deliberative ideal concerns legitimation rather than decision and action, it is at best a partial conception of self-government, and cannot speak to the major issues involved in voluntarist political obligation.

The underlying problem is deliberative democracy’s approach to power. Deliberative theorists, like philosophical anarchists, see only power-over, and overlook the constructive power-to-act that analysis of political voluntarism emphasizes. However, the capacity to exercise political power or take political action is just as important to democratic self-government as issues of power-over, if not more so. Self-government entails a meaningful capacity to exercise political power in political life. Without considering the constructive dimension of power, we cannot address practical impediments to self-governing action. In addition, because deliberative theorists reject coercion wholesale, they “are not able to tell us much about what is wrong with the political world and, consequently, can tell us little about how we might make it better”

(Hauptmann 2001, 420). Because government always involves decisions about which values and preferences should be authoritative, it seems naïve to cast coercion as an intrinsically antidemocratic concept. Deliberative theory's partial characterization of coercion and power obscures their constructive potential as a tool for dismantling injustice.

Even those deliberative theories that see existing distributions of social, political, and economic power as a grave impediment to genuinely deliberative politics cannot adequately address them. James Bohman is a notable exception to deliberative theorists' general inattention to power-as-capacity. He proposes a "capability-based notion of political equality in deliberation," in which freedom is "the capability to live as one would choose" and "includes the capability for effective *social* agency, the ability to participate in joint activities and achieve one's goals in them" (Bohman 1997, 342-3). However, to enact this notion, deliberative theorists would have to look outside the non-coercive deliberative ideal and thus ultimately adopt an alternative model of democracy. Similarly, a purely deliberative ideal cannot address structural power inequalities without accepting an entirely different, non-deliberative approach to power.

Further, empirical evidence suggests that deliberation may promote group polarization rather than consensus.¹⁷⁵ Simply allowing opposing views an equal platform under ideal deliberative conditions is no guarantee that people will be able to find common ground (Shapiro 2003, 27). Instead, deliberation may "bring differences to the surface, widening divisions rather than narrowing them" (Shapiro 2011, 27).

Deliberative theory cannot address the undue influence over public debate and justification that some derive from socially advantaged positions unless they recognize power as

¹⁷⁵ See, for example, Sunstein 2001 and 2003.

a capacity to act.¹⁷⁶ Terms like ‘equal liberty’ are deeply contested. Those with a disproportionate capacity to exercise power can affect the terms of debate – the meaning of ideals like ‘equal liberty’ – more effectively than those lacking such capacities. In other words, in practice they may well be able to “rationalize undemocratic or illiberal ends” by framing substantive deliberative principles effectively. This possibility is precisely the sort of unjustified exercise of political power that we should be worried about: it is not only the substantive outcome that may be problematic, but the fact that people use their undue influence to achieve it. Habermasians would respond that a requirement of sincere speech would solve the problem. However, the powerful may sincerely believe it when they say that laissez-faire economics is the highest form of equal liberty, just as Occupy Wall Streeters may sincerely believe the opposite. Some disagreements go all the way down. In practice, the outcome of such disagreements is frequently decided by the unequal power-to-act that some in society possess. We cannot understand such outcomes if we do not connect the specific exercise of power to the unequal capacities that enabled it. Because the deliberative ideal does not recognize that one’s underlying capacity to act makes specific exercises of power-over more or less effective, it is neither sufficient to guard against unjustified exercises of political power, nor an accurate description of political practice.

Recent empirical analyses of agenda-setting in deliberative bodies reveal a related problem: existing systematic power inequalities and political structures interact and mutually reinforce one another. Agenda-setting processes shape decisions by “consistently excluding

¹⁷⁶ Gutmann and Thompson acknowledge that “deliberation can be used cynically... [it] can serve as a cover for the exercise of power politics,” and “is not a substitute for the other forms of power in politics” (Gutmann and Thompson 2004, 46). However, they argue that deliberation itself, used to “publicly expose the unjustified exercise of political power” by distinguishing “claims that rationalize undemocratic or illiberal ends and... those that support the equal liberty, opportunity, and civic equality of individuals” is “one of the most effective antidotes” to such failings (46-7).

certain problems [and solutions] from discussion” (Lang 2008, 85). Further, the structures of decision-making processes themselves may bias deliberative outcomes. In the British Columbia Citizens’ Assembly, these factors kept women’s representation off the agenda. Existing social norms of formal gender equality prevented participants from seeing the need to discuss the substantive measures necessary to actually achieve equality (100). These norms were reinforced by elite-led decisions about which empirical evidence on gender politics to present to the deliberants. Finally, existing norms led some deliberants to view their role as a passive one, or to fear speaking up: one self-described strong feminist “was fearful of being labeled as such and dismissed...[and] others who demonstrated a strong belief in increasing women’s representation maintained that their role was to ‘listen’ and ‘learn’ rather than advocate” (103).

Further, it is difficult to see how deliberating without any guarantee that one’s input will affect actual political decisions would transform apathetic, low-information citizens into thoughtful, inclusive deliberators. While deliberative theorists often claim Mill as an inspiration for the ‘schools of public spirit’ they wish to establish (Fishkin 2012, 79), Mill himself suggests that deliberation is not enough. Thoughts must be expressed in action, because

The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom, makes no choice. He gains no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used. The faculties are called into no exercise by doing a thing merely because others do it, no more than by believing a thing only because others believe it... if the inducements to an act are not such as are consentaneous to his own feelings and character (where affection, or the rights of others are not concerned), it is so much done towards

rendering his feelings and character inert and torpid, instead of active and energetic (Mill 2006, 59).

In other words, without being involved in actual political decision-making, individuals will continue to lack the practical wisdom involved in self-government.

Taken together, the deliberative model's unconcern with *who* has decision-making power, its reductive view of power, and its failure to come to terms with structural injustice are the reason it fails to ground a response to major problems in liberal-democratic practice. Democratic theory must reassess coercion to recover its potential to advance justice. However, to understand the beneficial potential of coercion, deliberative theorists would have to “relinquish much of what is distinctive about their view of democracy” (Medearis 2004, 57). The next section argues that voluntarist political obligation can only be accommodated by an alternative, participatory model of democratic government.

A Defense of Participatory Democratic Theory

Voluntarist political obligation highlights both the ways that discretionary authority matters in politics and governance, and the way that individuals actually do govern themselves (which while important are nevertheless limited). An empirically-grounded theory of democracy, motivated by the preceding analysis of voluntarist political obligation, is consequently better positioned to consider non-ideal constraints on self-government than most current theories of democracy. The voluntarist perspective, which investigates the individual actions and decisions by which individuals shape both their own lives, and collective social and political arrangements, bears a natural affinity to participatory democratic theory. Thus, the voluntarist theory of political obligation developed above implies a participatory conception of democracy. This

section will outline the participatory model, and consider the pragmatic objection that deliberative theorists (among others) raise against it.

Participatory democratic theory is currently enjoying a revival in the normative literature on democratic citizenship, and participatory governance has in recent years become a hot topic among comparativists.¹⁷⁷ As with every brand-name approach in political theory, there is great variation among those theories that claim the participatory label. What unites these varieties is their rejection of what Barber termed ‘thin democratic politics,’ which is unforgivably

[o]blivious to that essential human interdependency that underlies all political life... thin democratic politics is at best a politics of state interest, never a politics of transformation; a politics of bargaining and exchange, never a politics of invention and creation; and a politics that conceives of women and men at their worst (in order to protect them from themselves), never at their potential best (to help them become better than they are) (Barber 1984, 24).

Participatory democracy is unique among democratic theories because it recognizes the political dimension of social and economic activity, and analyzes the relation between social/economic structures and democratic equality and politics. Social, economic, and political institutions and authority structures, participatory democrats argue, help constitute the character of the people they affect, fundamentally shaping their approach to political action and democratic life. As such, participatory democracy’s basic tenets diverge significantly from both representative and deliberative models.

¹⁷⁷ On the former, see Boyte 2011, Hilmer 2010, and Norris 1999. The empirical literature on participatory governance is growing quite rapidly: standout examples include Abers 2000, Avritzer 2005 and 2009, Baiocchi 2003, Heller 2012, Nelson 2012b, Peruzotti 2012, Rucht 2012, and Smith 2009. Scholars frequently use participatory budgeting in Porto Alegre as a case study: see Abers 1998, Baiocchi 2001, Santos 2005, and Souza 2001. For a general overview of participatory budgeting, see Wampler 2007.

Participatory democracy seeks what Pateman has called the ‘full democratization of authority:’ in other words, democratic control not only over selection of representative political decision-makers, but also over the structures of sociopolitical institutions themselves. Unlike representative theorists, participatory democrats deny that national-level representative institutions and infrequent elections for one’s representative are “sufficient for democracy” (Pateman 1970, 42).¹⁷⁸ Chief among other spheres whose authority structures must be democratized are economic activity and, as J.S. Mill memorably argued, the family.¹⁷⁹ Power dynamics within these spheres shape each member’s relation to authority, and affect how economic and familial affairs are governed and joint decisions are made. The participatory model sees economic organizations and the family “as political systems in their own right, offering areas of participation additional to the national level” (43). To realize the ideal of self-government in practice, democratic authority structures must replace authoritarian ones in political, social, and economic spheres.¹⁸⁰

Participatory theorists contend that political participation itself fosters the attitudes and political skills necessary for stable democratic self-governance. Participatory democrats argue that high levels of citizen apathy and low feelings of political efficacy stem from individuals’ experiences with existing political institutions, rather than an innate predisposition (104). Thus, they reject the elite model’s central contention that widespread political apathy ensures democratic stability. Instead, participatory theorists argue, participation’s central function is

¹⁷⁸ More recent versions of this claim may be found in Beck 1997, Boyte 2011, Hilmer 2010, Mendel-Reyes 1999, Norris 1999, Peruzzotti 2012, Young 2001, and Wampler 2012b.

¹⁷⁹ See note 124 above.

¹⁸⁰ As Pateman argues, one’s sense of political efficacy is part of “the psychological effect referred to by the theorists of participatory democracy” (1970, 46). Empirical studies support the claim that one’s sense of efficacy depends on whether one’s workplace allows one to participate in decision-making. See Valentino et al 2009, Carter 2006, and Elden 1981.

“educative in the very widest sense, including both the psychological aspect and the gaining of practice in democratic skills and procedures” (43). Thus, they argue, a participatory system “is self-sustaining through the educative impact of the participatory process. Participation develops and fosters the very qualities necessary for it; the more individuals participate the better able they become to do so” (ibid). This claim is consistent with empirical studies that show that personality traits are malleable and significantly altered by different group structures.¹⁸¹ In addition, recent studies have found that “individuals’ experiences with various elements of public engagement, including the most communicative aspects of public life, exert tangible force on the same attitudes [i.e. the sense of political efficacy, civic pride, and trust in the democratic process] that are also believed to predict their participation in the first place” (Gastil and Xenos 2010, 332).¹⁸²

Increasing awareness of the deliberative model's limits, as well as the growing empirical literature on participatory governance, has facilitated participatory theory's resurgence. Unlike deliberative theorists, participatory democrats consider the effects of sociopolitical institutions on character formation, as well as who actually exercises authority and political power. Because participatory models see participation in decision-making (rather than passive acceptance of post-hoc justification) as the source of democratic participation's benefits, it has transformative potential that deliberative democracy lacks. Participatory theories stress individuals' practical ability to have equal input into collective decisions, not just equal formal opportunities to influence decisions by publicly providing reasons. If the participatory ideal of equality were achieved, it would “mean that political power is no longer monopolized by institutions standing over against individuals; the *external source of interference* disappears” (Norman 1982, 105,

¹⁸¹ For an overview of this literature, see Huddy 2003.

¹⁸² See also Morrell 2005, Kriesi 2012, and Beaumont 2011.

emphasis added). Participatory theories are thus able to support, and in many cases even require, a far more radical critique of current power systems than deliberative models.

Participatory Democracy and Political Practice

The deliberative critique of direct democracy is representative of many arguments against the robust participatory ideal. The deliberative critique hinges on the practical challenges in contemporary society to widespread, active political participation. Gutmann and Thompson, for example, claim that “because of the large number of citizens in modern democracies, the advantages of direct democracy can be realized only in local units or subunits” of the political system (Gutmann and Thompson 2004, 31). Increased participation, many fear, would diminish government efficiency.¹⁸³ Further, many claim that participatory democratic politics is too time-consuming for most individuals. Finally, participatory democracy’s critics maintain that it carries distinct ethical disadvantages. Participatory decision-making, on this view, results both in poorer political decisions and poorer justification for those decisions (ibid).¹⁸⁴

The first objection, as participatory theorists themselves recognize, raises a valid point: that at the national level, full participation in actual decision-making is impossible. At this level, as Pateman acknowledges, “the role of the individual must consist almost entirely of choosing representatives” (Pateman 1970, 109). This objection, however, is in another sense largely orthogonal to the most important aspect of the participatory argument. Direct and participatory democracy are not synonymous. In the latter, participation is not simply a matter of decision by popular votes, but citizen control over agendas, institutional structures, and decision procedures themselves. In a participatory theory, politics extends far beyond national-level state institutions.

¹⁸³ See Gutmann and Thompson 2004, 30-1, and Dahl 1994.

¹⁸⁴ See also Cohen 2002 and Cronin 1999, 38-59.

Individuals are meant to participate in decision-making in the economic, social, and political spheres in which they actually live, rather than simply select representative decision-makers. The claim that participatory democratic politics is an unworkable ideal rests upon what Ulrich Beck has described as “a category error, *the equation of politics and state*, politics and the political system” (Beck 1998, 98). The ideal of equal participation in decision-making appears much more plausible when we recall that it is meant to be applied to a participatory society, rather than a narrowly constrained realm of national political institutions.

The more serious charge concerns the purported “zero-sum game between democracy and efficacy” that Dahl and others have identified (Rucht 2012, 118).¹⁸⁵ Dahl argues that government institutions must balance citizens’ ability to effectively influence what government does with the institution’s capacity to govern: to effectively deal with a wider range of important issues (Dahl 1994). It is true that when all within an institution share decision-making power, that institution will at times be less able to act in a time- and cost-efficient manner than if it followed a more authoritarian decision-making procedure. Maximizing democratic control over government may indeed involve expensive, “time-consuming and cumbersome procedures” (Rucht 2012, 118). However, this problem is a challenge for democracy in *any* form.¹⁸⁶

Representative institutions like the U.S. Senate may grind to a halt in the face of a filibuster.¹⁸⁷

Deliberative institutions must also balance democracy and efficiency. A strong deliberative

¹⁸⁵ ‘Efficacy’ here means governmental efficacy rather than the individual’s sense of political efficacy, or “the feeling that one *could* have an impact on collective actions if one so chose to do so” which is “the self-confidence necessary to action, and the habit of doing something about problems when they arise” (Warren 2001, 70).

¹⁸⁶ Thus, Dahl argues, the choice between a political unit within which citizens can “act more effectively to influence the conduct of their government, even though some important matters might remain beyond the capacity of that government,” and a political unit that can “deal more effectively with these matters, even if [citizens’] ability to influence the government in a democratic fashion were significantly less” is “a fundamental democratic dilemma” (Dahl 1994, 23-4).

¹⁸⁷ Indeed, barriers to swift and efficient action were designed into the American system.

system, in which all citizens extensively debate “all fundamental and controversial” political issues, is “a utopian ideal that can serve as an orienting principle but which will never be met in large political communities such as nation-states” (115). As a recent survey of mini-publics concluded, “the goods of inclusiveness and considered judgment can come at the cost of the effective realization of publicity and popular control” (Smith 2012, 107). In short, any democratic institution involves a trade-off between democratic ideals and time/cost-efficiency.

Second, while active political participation may indeed be too time consuming for most people, this is largely due to the present structure of economic activity in advanced democracies. Income inequality has increased dramatically in the last 30 years. In this ‘new Gilded Age,’ many people have little time for anything besides the job(s) that pay for basic necessities. As Bartels points out, the decisions of democratically-elected policy-makers enabled these economic conditions. Thus, while many Americans have little time for politics, this is contingent on prior national-level political decisions and can therefore also be changed by future political decisions.¹⁸⁸

Third, a substantial body of evidence suggests that direct democracy is no less capable of arriving at sound decisions and justifying them than indirect democracy. Worldwide, participatory governance (or ‘co-governance’) is on the rise, with participatory budgeting in Porto Alegre the highest-visibility example. Overall, assessments of citizen participation in recent direct-democratic decision-making and co-governance experiments have been positive.¹⁸⁹

A recent survey of co-governance concludes that the “evidence shows that citizens can, in the

¹⁸⁸ The question of democratic distributive justice is itself the subject of dedicated scholarly attention: see, for example, Post 2006, Santos 2005, and Zucker 2001. As this is not the primary subject of the present project, my comments here are regrettably brief.

¹⁸⁹ See, for example, Abers 1998, Avritzer 2005 and 2009, Baiocchi 2001, Heller 2012, and Wampler 2012b.

right circumstances, fulfill the requirements of democratic citizenship” properly (Newton 2012b). Done right, public participation can help to improve public services, increase government transparency and minimize corruption and clientelism (Talpin 2012, 191).

Direct-democratic practices in Switzerland, a relatively small but modern, globally integrated, complex, and wealthy society, provide “a powerful empirical rebuttal of the arguments raised by skeptics like Sartori” (Kriesi 2012, 53). In Switzerland, direct-democratic procedures, in the form of referenda and ballot initiatives, have had “(largely favorable) economic and social consequences” (40). Swiss cantons with such procedures have higher GDP per capita, lower public expenditures, “higher satisfaction with life... a lower public debt, higher tax morale and better public services” than those without strong direct-democratic institutions (52). More importantly, though, this higher satisfaction with life “is a direct consequence of the greater legitimacy of public decisions that involve such procedures. Citizens value the possibility of participating in political decision making in and of itself, independently of its implications for state performance, which increases the perceived fairness of political decisions that are taken by direct-democratic procedures” (52).¹⁹⁰ In other words, the fear of citizen incompetence that drives ethical objections to participatory democracy confuses humans produced by existing institutions with human capacities *as such*.

In my analysis, the participatory perspective’s benefits outweigh its pragmatic challenges. A participatory theory can consider the economic and social preconditions of meaningful political equality, provide a robust account of self-government, and as the next section will show, support principled limits on democratic decision, all things that existing normative accounts fail to do. Consequently, a participatory perspective supports more substantively significant

¹⁹⁰ On this point, see also Stutzer and Frey 2006.

normative judgments about democratic action, and recognizes the role that voluntary acts and obligations play in a self-governing society.

Democracy as Action

If democracy means that people should be the authors of the laws that govern them, elite and deliberative theories seem at best only tenuously democratic because they afford citizens little if any role in actual decision-making. By contrast, the participatory ideal employs a strong conception of self-government: it places the power to make political decisions in the hands of the people. However, as most participatory theorists recognize, full, active participation in all relevant national decisions is impossible in contemporary states. This is where voluntarist political obligation reenters the picture. I submit that political obligation, and political voluntarism more broadly, can help theorists extend the concern with individual agency into non-participatory spaces, including the institutions that administer political decisions.

Against Aggregative, Technocratic Democracy

The foregoing analysis of political obligation fundamentally challenges the status quo in liberal-democratic theory. Like participatory democracy, an active-voluntarist theory of politics contests the value currently placed on freedom *from* politics. In existing liberal democracies, “the freedom not to spend a major part of one’s time deliberating about politics is part of what it means to live the life of a free citizen” (Gutmann and Thompson 2004, 31). Liberal democracy involves a division of labor: professional politicians and public officials govern so that ordinary citizens may pursue other ends.

Most defenses of liberal democracy employ a purely instrumental view of democracy and collective political agency, according to which

the democratic form of government is relevant and important, and worthy of allegiance and defense, only (or largely) insofar as it is an indispensable political instrument for limiting the power of government to interfere with individual lives. It matters relatively little whether government is strictly ‘by the people’” as long as government does not interfere with individuals in their pursuit of their private lives. Democracy is thus seamlessly continuous with liberalism, limited government and extensive individual rights, and as such its real point lies not in realizing the political agency of the people but in protecting the agency of individuals qua individuals (Ci 2006, 153).

Insofar as this position sees democracy as a matter of individual rather than collective agency, it is superficially consistent with my position on popular sovereignty.¹⁹¹ Democracy does not create a collective political agent distinct from the individuals engaged in democratic politics. A strong unitary notion of ‘the people’ erases the individuals that make up a democracy.

However, this view does not recognize that collectively constructed social, economic, and political background conditions are what preserve both negative liberties and positive capacities to act. This atomistic, decontextualized approach to agency, freedom, and democratic politics leaves no place for voluntarist political obligation. Private life is far less distinct from public activity, and shaped far more by authoritative and coercive power, than such arguments for the liberal-democratic state appreciate. What is ordinarily seen as “the private sphere of noncollective action” – economic activity – “turns out on inspection to be sustained by a particular collective action regime that is imposed” through *political* decisions and mechanisms (Shapiro 2011, 35).¹⁹² As Barber notes, “in the absence of public judgments, private judgments

¹⁹¹ See pp205-206 above.

¹⁹² This claim is emblematic of a line of argument that stretches back to Engels’ analysis of the origins of the state.

will prevail. Where the community will not act for itself, the market will act for it” (Barber 1984, 107). Thus I reject the liberal-instrumentalist view that “[c]itizenship is an artificial role that the natural man prudently adopts in order to safeguard his solitary humanity” (8). Instead, I submit that democratic citizenship reflects our inescapable interconnectedness and interdependency, and should therefore empower those who suffer from existing economic and social inequalities when markets are allowed to operate unchecked.

In large contemporary states, participatory and non-participatory spaces, like the horizontal and vertical dimensions of politics, are mutually constitutive. Political obligation is vital to this process, and influence particular policy and legislative outcomes. The voluntary obligations that officials owe to other officials, constituents, special interests, and party members constrain their behavior and drive them toward one or another choice. The obligations that citizens owe to one another – to take minutes at local library or school-board meetings or bake cupcakes for school fundraisers, to distribute flyers and mobilize for a political campaign or ballot initiative, to participate in an advocacy group’s activities – also influence what representative decision-makers do and how public life in their communities will look.

In addition, like participatory democrats, I diverge from the liberal-instrumentalist’s view of individual agency. While it is likely true that “no political system can ever fully overcome the patterns of advantage and disadvantage generated by its social and economic systems,” it does not follow that voluntarist institutions “can only reflect [these] persistent patterns” (Mansbridge 1983, 127). The state’s job is not only to mediate conflicts between interest-bearing subjects by aggregating individual preferences: it must also provide a framework for citizens to negotiate, compromise, and otherwise collectively determine responses to ongoing conflicts, sources of political dissatisfaction, and social needs. As we saw above, a preponderance of evidence

indicates that stable, coherent policy preferences and interests do not exist and could not be reliably identified even if they did. Even when people profess a putatively common interest, they generally diverge on the details: they may have conflicting opinions about what it would take to meet that interest, how that interest stacks up against other interests and social goods, and how to promote it. Such disagreement has challenged (and in some cases, torn apart) countless social movements and horizontal political associations.

For the purposes of illustration, consider two examples: the feminist movement and the anti-abortion movement. In the 1970s and 1980s, feminists began to consider how their ostensibly colorblind project in fact privileged the experience of white women and marginalized the unique challenges that women of color face. This was not necessarily due to any exclusionary intentions on the part of white feminists. Instead, it stemmed from the fact that each individual feminist has a different understanding of oppression, rooted in one's personal experiences and social position.¹⁹³ Even when undertaken with sincerity and conviction, then, collective political action cannot escape the challenges that arise from each individual's subjective perspective.

Next, anti-abortion activists agreed on their general goal, but diverged on their reasons for supporting such a ban, on what, if any, exceptions should be made in an abortion ban, and on how best to pursue their goal. Some preferred to work through the legislative process and the system of interest-group politics, others through public demonstrations or non-violent civil disobedience at abortion clinics, and a small minority chose violent methods, bombing clinics and assassinating abortionists. Naturally, schisms ensued. These schisms reflected deep (perhaps irreconcilable) differences in what activists saw as appropriate reasons for political decisions (i.e. non-sectarian religious reasons versus fully secular ones), the proper scope of state action, and

¹⁹³ In other words, white privilege conferred a type of 'non-decision' power that shaped the movement's goals.

most tellingly, the appropriate use of force and violence when their opponents could not be swayed by argument and legal action failed.¹⁹⁴ Technocratic politics may be able to address second-order disagreements over particular policy choices by adopting one preference-aggregating method or another, but this approach cannot adequately conceptualize, much less address, first-order disputes over the chosen method itself, nor refusal to accept the procedurally valid outcome of that method.

The central question in both of these examples is whose definition of the movement's goal and means carried the day, and why. The answer to this largely reflects factors that elite and deliberative theories do not recognize as political: existing structural relations of race, class and gender that shaped participants in the feminist movement (for example), and the concern for public justification that drove most anti-abortion activists to reject violence. Politics as an aggregation of individual preferences *cannot* consider differences in how effectively people are able to act, nor how they shape one another's desires, actions, and larger capacity *to* act effectively. Such differences are irrelevant to a theory concerned with satisfying the fixed, given preferences of individuals with an equal moral claim to such satisfaction. However, these differences are *highly* relevant to one's ability to successfully *make* such claims. Structural socioeconomic inequalities distort the aggregative process: instead of weighting individual preferences equally ('one person, one vote'), wealth and social connections give those who possess them far greater influence over the legislative process. The deliberative model rightly points out that public perceptions of political decisions matter, and that politics involves persuasion, not simply aggregation, although they are not sufficiently attuned to the socioeconomic dimension of one's ability to successfully persuade. I have defended an

¹⁹⁴ Gorney 1998 is particularly illuminating on the first and third points here.

alternative model of voluntarism concerned with structural effects on action because structural inequalities in one's material opportunities shape one's ability to successfully live as one wants. In other words, structural factors affect not only what individuals choose and whether they attain their goals, but whether their formal ability to choose is practically meaningful, and whether they feel it to be so.

Voluntarism in Non-Participatory Institutions

A voluntarist theory of political obligation reveals the contingent origins of existing social, political, and economic arrangements. Voluntary choices determine which laws and policies will govern us, and how they will be implemented, applied, and interpreted. Political obligations between individuals (either in their everyday capacity, or an official capacity) are the glue that coordinates collective political action. For this reason, previous chapters have spent a good deal of time considering the obligations of public officials and officeholders, which helps to fill in a blind spot in participatory theory: national-level political decision-making and government at the national level. Because political obligation treats the capacity for voluntary political action as intrinsically significant, it also allows us to evaluate *how* individuals exercise this agency in non-participatory institutions.

The unavoidable problem for any defense of participatory democracy is that government in large states must be administered. This problem bears a slight resemblance to the first objection to participatory theory discussed above (that active participation in national decisions is a logistical impossibility). However, in large states, governing involves a good deal more voluntary action than deliberative theorists would recognize. Administration requires administrators – officeholders, in other words. Officeholders always have discretionary (i.e. decision-making) power:

every democratic system embodies to some degree the principle that certain officials are empowered to take decisions in the name of the whole society on the basis of their own views about justice. This is how most political systems actually solve the problem of settling on social choices in the face of justice-disagreements: we designate one of the contestant views as the one to govern us for the time being (Waldron 1999, 203).¹⁹⁵

This type of decision-making is anathema to the participatory ideal, or so it would seem.

My response to this apparently devastating objection has two parts. First, some officeholders – some parts of ‘government’ – are not within the state at all, but in social or economic realms. Social and economic officeholders enjoy ample power over the background conditions that shape political action. The lobbyist hired by a large corporation to advocate against more stringent labor regulations and protections for workers’ rights does not hold political office, but to the extent that she succeeds in her task, she will have influenced the way that worker-employer relations are governed. As the previous chapter showed, dynamics within social and economic associations shape members’ way of relating to authority, and such associations influence both the terms of political debates and particular political decisions. The president may indeed have a bully pulpit for influencing public opinion, but pastors in evangelical megachurches have an *actual* pulpit, from which they exert considerable influence over their flock. On closer inspection, then, the challenge that administration and bureaucratic discretion pose to participatory theories actually implies the *need* for a participatory society, to address the much larger problem of unelected government in and by social and economic institutions.

¹⁹⁵ See also Sheppard 2009.

Second, voluntarist political obligation provides some guidelines for using this discretionary power. The voluntarist perspective shows that individuals exercise meaningful political agency even in non-participatory liberal-democratic institutions. Existing states offer many more opportunities to voluntarily undertake political obligations than theorists typically recognize. Public officials incur obligations both in assuming office, and in the course of exercising their discretionary authority. Ordinary individuals may join NGOs or pledge their financial support to non-profits with a political agenda, such as the Sierra Club or Planned Parenthood. Further, ordinary individuals undertake political obligations in their local community – as members of Parent-Teacher Associations, public library boards, Chambers of Commerce, and community-service organizations, among others. Individuals who do not occupy formal public office are much more likely to undertake obligations to participate in collective decisions about public goods provision at the local level than at the national level. Overall, voluntary political obligations fundamentally shape law, policy, and collective political action. Thus, a good deal more self-government takes place in liberal democracies than our present conceptions of law and the state would suggest. As I have argued, though, this is itself problematic because typically these activities are carried out by a select few. Although all have the same formal opportunity to attempt to influence the state, some enjoy disproportionate success in their attempts, whether because they hold public office or occupy an economically and socially privileged position in society.

A robust account of voluntarist political obligation can discuss obligations both as they currently are (i.e. as they emerge in liberal-democratic institutions) and as they might be, because the unique significance of obligation lies in its connection to *moral* as well as political agency. In order to properly assign responsibility for the actions backed by political authority, we must

recognize the ways that individual voluntary acts and obligations shape state and government action. Political obligation offers normative purchase on such issues. It allows us to understand the ordinary individual's voluntarily-assumed moral requirements in political life: to assess what they owe one another in horizontal efforts and what they may owe political authorities by virtue of their voluntary acts. More importantly for the present purpose, it allows us to appreciate the full significance of official voluntary action: to understand and then evaluate its role in shaping government decisions and background social conditions.

The previous chapter concluded that widely accessible opportunities to take voluntary political action are the best hope for self-governance in existing states, which generates a strong presumption against authoritative decisions *and* voluntary acts that curtail those opportunities. Such decisions and actions are doubly wrong if the decider arrives at them by weighting voices in political debate entirely in proportion to the speaker's socioeconomic power. This type of calculation flagrantly violates the ideal of democratic equality. Unfortunately, calculations about others' capacity to exert political power are quite common in liberal-democratic practice. The best we can hope to do, as many others have advocated, is to mitigate the effects of power inequalities by redistributing social and economic benefits more equitably.

I submit that we must also address structural inequality through the social norms people internalize, since such psychological factors determine the practical success of normative ideals. The source of obligation's 'bindingness' is the belief that individuals are responsible for their voluntary actions. Voluntary bonds are a reliable and important part of politics only because people widely hold this belief. Participatory democrats maintain that a participatory system is possible precisely because participating will reorient individuals toward the necessary democratic values on an internal, psychological level. More generally, democratic government

and the rule of law only work because people *feel* that norms (including norms regarding personal commitment) are a constraint on their behavior. As we saw above, evidence from direct-democratic institutions indicates that people can come to value equal participation in decision-making independent of the outcome of particular decisions. This suggests that participatory democracy as equal decision-making power could sustain one's commitment to democracy even when one rejects specific decisions. Overall, the empirical literature indicates that institutions can "gain the allegiance of citizens by demonstrating certain decision-making characteristics, [and] members of different groups in diverse societies are likely to respond similarly to the same procedural attributes" (Klosko 2000, 228). The question of how we might cultivate strong egalitarian norms is itself properly the topic of its own book; for the present, it is sufficient to note that it is the appropriate one to ask.

One final example here will show what political obligation adds. The failure of the Equal Rights Amendment illustrates, in another register, the practical importance of the choices by which a group defines and pursues its goals, and indicates problems in both participatory and aggregative/technocratic politics. The various groups in the pro-ERA coalition shared a goal – passage of the Amendment – as well as a general ideological orientation and a more diffuse commitment to political empowerment. This very commitment to empowerment and ideological purity, Mansbridge argues, is in large part to blame for the pro-ERA camp's strategic missteps. Feminist constitutional lawyers wielded disproportionate influence over the ERA debate's framing in key states, and "their first loyalty was to their own political and legal principles, not to a specific political 'cause' like passing the ERA, or to a specific organization, like NOW" (Mansbridge 1986, 76). As a result of their efforts in framing the Amendment's meaning, "a

decision that would have important consequences for the ERA debate in wavering states was taken with very few of the participants realizing that they were taking a major step” (81).

In short, ideology was the driving force in pro-ERA efforts, which prevented activists from taking effective strategic political action. Respect for members’ autonomy was the core of the pro-ERA ideology: “[f]rom the point of view of the movement as a whole, each organization, as well as each individual, was also an autonomous actor” (131). Local groups were therefore able to “avoid the internal dialogue necessary to hammer out” a unified movement position (132). Since no one was coordinating local organizations effectively, the terms of the debate were shaped through ‘decision by accretion.’ Since the pro-ERA movement lacked a unified front, legislators were far less responsive to pro-ERA efforts than they were to the more organized STOP-ERA. If legislators are indeed rational, self-interested actors motivated by their own reelection to engage in public credit-claiming and strategic position-taking, as a famous analysis of Congressional behavior contends (Mayhew 2004), this comes as no surprise.

The failure of the ERA, in other words, was in my view a failure to obligate. The pro-ERA movement did not generate the obligations between affiliated groups necessary to unite them behind a coherent, consistent position. In practice, the movement fell prey to the central challenge in constructing democratic institutions: their fidelity to democratic values of equal empowerment came at the cost of effective strategic action and leadership. Participatory decentralization in the movement allowed each group to determine their own particular position and methods without considering their effects on the ERA’s larger prospects. Affiliated groups, as Mansbridge points out, tended to fall into a self-reinforcing loop rather than engaging ideas that challenged their own approach (132-3). As a result, the pro-ERA movement also failed to obligate legislators to ratify the amendment.

The ERA example shows that political obligation and voluntarism have great practical significance in collective political action. A theory of democratic self-government must be flexible enough to accommodate those inevitable uses of strategic action without which one's efforts would fail. It must also develop a more nuanced account of democratic leadership than existing democratic theories offer. While elite theories embrace political elites at the expense of any real citizen participation in decision-making, deliberative theorists generally underrate the potential problems that leaders' agenda-setting powers present. By contrast, as a result of their stringent view of equality, participatory theories have a harder time accepting political leadership than deliberative, majoritarian, or elite theories of democracy.¹⁹⁶ Finally, a theory of self-government must consider *decisions*, since they determine what government will do. These decisions often occur in the face of strong disagreement and dissent. Thus the theory must balance sensitivity to dissenting voices against the perils of non-decision. Voluntarist political obligations do not present clear solutions to these issues. A theory of political obligation nonetheless improves our account of political practice and thus indicates otherwise obscured normative issues. It also supports a standard for evaluating political decisions grounded in a widely accepted understanding of moral responsibility and agency, which may be consistently applied to ordinary citizens and state agents.

The Limits of Democratic Decision

The politics of voluntarist obligation draws together widely-accepted intuitions about responsibility for voluntary action, serious attention to the influence that structures have on opportunities to engage in democratic self-governance, and a commitment to active participation

¹⁹⁶ On this point, see Mansbridge's discussion of leadership at Helpline, one of her two case studies in *Beyond Adversary Democracy*. She concludes that while Helpline was better than Selby at managing inequality because they were fundamentally egalitarian, "Everyone in this participatory democracy had trouble imagining what truly democratic leadership would look like" (1983, 193). See also Hendriks 2010 123-4.

in political decision-making. A voluntarist theory of political obligation therefore entails limits on voluntary action necessary for democratic equality. If equal political power-to-act is the primary democratic value, then as we saw with Millian liberty, decisions that diminish this equality are out of bounds.

Participatory democracy is attractive to a strong voluntarist because its defining characteristic – its extension of the scope of democratic action to decisions about the authority structures of political life – also precludes unjustly exclusionary decisions and forms of voluntary political association. For participatory theorists, all that is required for responsible citizenship “is nothing more than a faith in the democratizing effects that political participation has on men, a faith not in what men are but in what democracy makes them” (Barber 1984, 237). Institutional structures must promote democratic norms rather than private interest. Participating in institutions committed to democratic equality is far more likely to forge and strengthen social bonds, and help individuals to internally reorient themselves toward the collective good in political decisions.

Like participatory democratic theory, voluntarist political obligation emphasizes the constitutive effects of political action. Obligation is an intersubjective practice. Through our experiences of undertaking and fulfilling obligations, we acquire a particular understanding of ourselves – and our responsibilities – as moral agents. Further, relations of obligation help to constitute one’s political identity, and shape one’s political relationships. These relationships establish the context of horizontal political action and association, which in turn affect vertical political ties. Political obligation is about what individuals ought to do as a result of prior free acts: as such, one’s *capacity* for free political action is central to my analysis. Political participation is how individuals exercise that capacity to create new political ‘oughts’ and imbue

them with internal normative force: it orients us to such oughts on a psychological level. As the participatory model points out, individuals “acquire an identity *as* a citizen through participation in the practices and institutions of one’s society, through having a say in them and over the ways one is governed” (Owen and Tully 2007, 290). Institutions and practices that are formally organized around a strong norm of democratic equality will cultivate a different sort of citizen than institutions that promote a competitive, zero-sum conception of social interaction.

A democratic politics of political voluntarism and obligation requires equal relations to political power to preserve meaningful capacities to take voluntary action. It thus precludes any structure, decision procedure, or substantive policy that would exclude affected individuals from taking part. While unjustified coercion is of course still possible when the people have greater power over democratic decision-making, “equality of power is a better safeguard than inequality of power against excessive coercion” (Norman 1982, 106). To preserve democratic equality in practice, a polity committed to robust self-government requires institutional safeguards that prevent decisions that unduly contract others’ opportunities for voluntary political action, or systematically exclude some from equal participation. Just as I claimed in the previous chapter that voluntary action must be judged according to its effects on others’ prospects for self-government and voluntary action, democratic decisions must be assessed by their impact on political equality. Because “political and institutional power, economic wealth and the growth of understanding through education and experience, are positive sources of freedom” and the power to take voluntary action, “the absence of these is as much an impediment to freedom as is direct coercion” (94).

Conclusion

I have argued that my account of voluntarist political obligation implies a particular normative perspective on the ‘democratic gap.’ The non-voluntary aspects of politics, government, and modern states establish the terrain in which voluntarist obligations emerge. In a liberal democracy, contingent voluntary choices – by elected and unelected officials, socioeconomically-privileged individuals, members of horizontal political associations, and ordinary people – produce and enforce these non-voluntary constraints on voluntary action. The voluntary choices that shape law, policy, and state action thus shape future opportunities to assume political obligations and take voluntary political action. If the capacity to take voluntary political action is necessary to engage in self-government, a theory of democratic self-government must investigate and evaluate these choices. A strong commitment to political voluntarism and individual self-determination, I have argued, implies commitment to democratic government. However, the two main contemporary approaches to democracy – deliberative and elite/Schumpeterian models – are incompatible with a voluntarist theory of political obligation owing to the way they understand power, politics, and the citizen’s role in a democracy.

Analysis of voluntarist political obligation provides strong reasons to be leery of democratic polities in which political decisions are made by a select few. As Aristotle knew well, active political participation is a practical possibility only for those with sufficient leisure time. At present, many do not have this leisure time. Further, one’s influence over political decisions is frequently a function of one’s relative social, economical, and cultural positions. By drawing attention to the voluntary acts, choices, and obligations by which public officials and socioeconomically powerful individuals shape the background conditions for all within the polity, my account implies that greater participation by individuals from a variety of social

positions is likely preferable to government by elites. The issue, as I have argued, is not *whether* limits on democratic decisions are acceptable, but *which* limits are acceptable.

Conclusion

The preceding five chapters have provided an account of major challenges that political voluntarism and true self-government both face: the potential for exclusion, bad decisions, and unjust action. They have also outlined a constructive response to these challenges: a voluntarist theory of political obligation that allows us to critique political decisions that reflect only the choices of structurally- and culturally-advantaged individuals, as well as decisions that diminish others' capacity for voluntary self-determination.

The foregoing analysis of voluntarist political obligation challenges the foundational assumptions that sustain the prevailing approach to obligation. Most importantly, contrary to the general belief that voluntarism inherently undermines legitimacy, I have shown that while a satisfactory voluntarist theory of political obligation is in fact possible, the only defensible version requires a radically different view of the aims and scope of political obligation. While nearly all theorists define political obligation exclusively as an individual requirement to obey the laws of the liberal-democratic state, I have argued that this approach to obligation, law, and political authority is fundamentally misguided. Because theorists see political obligation as a general, comprehensive requirement of obedience that must either be entirely affirmed or rejected, the obligation literature is mired in unproductive review of familiar positions. None of the dominant positive arguments for general political obligation – fairness, gratitude, consent, and variations on natural duty – stand up to theoretical scrutiny. In addition, the existence of political obligation has come under devastating attack from philosophical anarchists, who reject, on voluntarist grounds, the possibility of a general obligation to obey. I have shown that this exclusive concentration on obedience fatally impairs scholarship on political obligation: it splits the literature into two irreconcilable camps, and obscures a vital distinction between 'horizontal'

obligations binding citizens and the ‘vertical’ obligation citizens owe the state. In short, the framework in which theorists consider political obligation has generated an impasse that existing approaches to political obligation cannot surmount.

Thus, to move the debate forward and reinvigorate connections between political obligation and other areas of political theory, I have argued that the sole focus on obedience must give way to serious consideration of the various political activities one might voluntarily undertake an obligation to perform. In this spirit, I defined political obligation as a voluntarily-assumed ‘binding moral requirement’ to take political action. This definition of obligation accords with both everyday moral intuitions and philosophical claims that voluntarily undertaking responsibility to perform some action is sufficient to generate a moral requirement. Since this definition rests on how obligations are generated and assumed, voluntarism is the most important element of my conception of obligation. I have argued that an *a priori* requirement of obedience and voluntarism are conceptually incompatible. Instead, voluntarism means that the *way* obligations are generated, rather than the specific actions they require, is what matters. While the voluntary acts that generate political obligation are not sufficiently widespread to ground a generally applicable obligation to obey, my account of voluntarist obligation seeks to attenuate such ambitions, and instead direct scholarly attention to the crucial yet marginalized voluntarist aspects of political life. Voluntarist obligation is a central intersubjective practice: it is how people build lasting relationships and coordinate cooperative action. Thus, an institutional orientation that reflects our embeddedness in politics must guide analysis of political obligation.

While most standards for political action construe moral requirements on the political agent in either voluntarist or non-voluntarist terms, a theory that offers normative principles to guide political action must be able to think about *all* the ways that political agents might be

responsible. In other words, normative claims about political responsibility require a properly differentiated understanding of its voluntary and non-voluntary sources. The ‘paradox of voluntarist political obligation’ that is responsible for the anxiety so many scholars feel about political voluntarism is on my view a bit of a red herring. Just as requirements to obey do not require a consistently voluntarist basis, binding requirements on individuals to perform some political action may come from a non-voluntary as well as a voluntarist source. As Theda Skocpol has argued, “a zero-sum way of thinking that pits “state” against “society” – or the national state against local voluntarism – cannot... lay the basis for wise reasoning about either the nation's civic troubles now or what might be done about them in the future” (Skocpol 1997, 459). As my analysis indicates, this approach rests on an empirically-inaccurate binary opposition of voluntarist society and non-voluntarist state.

This project revives a practical approach to voluntary action and obligation inspired by the constructive side of political voluntarism in classical contract theories, which reminds us that political authority must be *constituted* by action. Together with this intersubjective, constructive view of political authority, the notions of individual natural freedom and innate equality that first made voluntarism a live political issue imply that political authority must wear a democratic face. The view of moral agency I have defended is not neutral on the value of voluntary self-determination: true moral agency requires that the agent can create morally-weighty relationships and generate meaningful responsibilities through voluntary action. The link between voluntary action and responsibility is fundamental to widely-accepted notions of moral agency. I submit that a theory of political obligation is the proper venue to express the political dimension of this ideal. In addition, the same reasons that make voluntarism a crucial element of moral agency

imply that a truly voluntarist view of political obligation entails a commitment to democratic politics and government.

I have argued that a voluntarist theory of political obligation offers constructive insight into contemporary liberal democracy's distinctive dilemmas. Because voluntarist political obligation emphasizes the intersubjective dimension of political action, it yields valuable insight into the grounds of political responsibility, and the nature of democratic action-in-concert. As my account of political voluntarism shows, "political philosophy need not replace or displace democratic politics; rather, political philosophy can give us reason to engage in democratic politics" (Laden 2007, 217). Voluntarist political obligation sheds light both on the meaning of the democratic ideal, and how we should pursue it in practice. Analyzing political obligation also draws our attention to the *pitfalls* of democracy. The evidence from contemporary liberal democracies suggests that democracy's true dangers are precisely the opposite of what Aristotle feared: that citizens are perfectly willing to give up decision-making power to an untitled aristocracy of wealthy, socially connected – in a word, privileged – individuals. Growing economic inequality in industrial liberal-democracies, coupled with the well-known relationship between socioeconomic status and political participation, indicate that liberal-democratic political practice has strayed quite far from the democratic ideal of well-informed, actively engaged citizens with equal say in political decisions and government actions. If we value the ability to shape our own lives and the conditions under which we lead them, we cannot accept undemocratic government.

Further, democratic practice always involves conflict and disagreement over the allocation of public values. Unbounded democratic decision-making, I contend, is conceptually impossible. The democratic politics of voluntary action and obligation – the form of democratic

politics and government that encompasses self-government and voluntarily-assumed obligations – indicate how and why some substantive limits on democratic decision are consistent with the underlying commitment to self-government.

Voluntarist political obligation also has constructive implications for defending legitimacy claims. The foregoing analysis of law, obligation, and voluntary action suggest that obedience theories of obligation take the wrong approach to legitimacy. While obligation theorists contend that a general, comprehensive requirement to obey laws *because they are laws* is necessary and sufficient for legitimacy, this sets the threshold for legitimate authority impossibly high. A truly general obligation to obey all laws as they require rests on a fundamentally inaccurate view of law and state action, which cannot account for the practical stakes of obedience, nor explain how requirements to obey and legitimacy are connected. The requirements involved in exercising state power are importantly distinct from the claims laws make on ordinary citizens. Owing to the assumption that substantive obedience is sufficient for legitimacy, the prevailing approach to political obligation cannot recognize and grapple with the requirements involved in state action and power, nor distinguish them from the requirements of compliance on ordinary individuals). Thus, this approach cannot build a successful defense of obedience, or assess its relationship to legitimacy.

I am not convinced that legitimacy requires a successful defense of general, comprehensive obedience at all, rather than a conditional duty to obey grounded in a properly differentiated variety of (largely) non-voluntary moral principles. As we have seen, different types of laws aim at different ends. Civil law provides a legal framework for resolving interpersonal private disputes, criminal law aims at public safety, tax law establishes rules for raising government revenue through taxation, and so on. As the analysis in the first chapter

suggests, the reasons to require obedience to one type of law differ from the reasons for other types. A voluntarist justification of obedience might sometimes be appropriate, but it is certainly not the only possible ground, nor is it appropriate at all in some cases. A defensible content-dependent account of obedience, like the externally-justified moral requirements that anarchists admit sometimes align with legal requirements, will for ordinary individuals likely rest largely on non-voluntary principles.

A broader analysis of binding political requirements yields more substantial insight than a general, comprehensive requirement to obey into the nature of legitimacy and what legitimate political authority is due. Such analysis indicates that what matters is the *how* of authority. The way that officials discharge their obligations and fulfill whatever duties they have is important because it affects how ordinary citizens are required to behave, how individuals should act vis-à-vis the state and its coercive structures, and whether and why people should obey laws. Official obedience in producing, enforcing, and implementing laws is likely necessary (though not itself sufficient) for those laws to make legitimate claims on ordinary individuals.

In short, the prevailing obedience theory of political obligation fundamentally misunderstands the link between obedience requirements and legitimacy, and thus the normative stakes of obedience to law. The fact that people generally obey law suffices for the state to maintain order and stability, but does not imply anything about democratic legitimacy. Obedience theories are wrong about the reasons that make obedience to law an important issue, as well as the means by which they pursue a general, comprehensive requirement to obey. If reliable obedience to law is an intrinsically valuable goal, theorists would serve that goal more effectively by disaggregating requirements to obey. But if the real goal is to defend the liberal-democratic state's legitimacy, then the persistent pursuit of general, comprehensive obedience is

deeply misguided. To make headway on questions of liberal-democratic legitimacy, one's theoretical goals and approaches to those goals must be internally consistent. If legitimate authority is obedience theory's ultimate object, theorists would make far more progress toward that goal by jettisoning the goal of general, comprehensive obedience and focusing instead on what they actually care about: legitimacy.

The challenges we now face demand a more complex analysis of moral requirements in political life than obedience theories of political obligation can offer. Whereas the early-modern contract theories were concerned with founding a durable, capable state, at present the liberal-democratic state is quite well established. However, as Mill once pointed out, "success discloses faults and infirmities which failure might have concealed from observation" (Mill 2006, 7). In domesticating modern political subjectivity, the liberal-democratic state achieved stability, but liberal-democratic citizenship lost much of its vigor. Unlike 17th-century Europe, "late-modern societies cultivate capacities for self-rule at the same time that they dislocate the institutions through which these capacities might be realized" (Warren 2001, 7). Accordingly, contemporary theorists face different political problems than Hobbes and Locke. Rather than ensuring that individuals submit to authority, we must find ways to spur individuals to critically consider when they ought to resist. Liberal-democratic theories must address the challenges of founding a dispersed, horizontal form of political power.

A voluntarist theory of political obligation can address the practical challenges to self-governing action in contemporary liberal-democratic states because it evaluates opportunities for self-determined choice and the decisions that affect them. Voluntarist obligation distinguishes between one's structurally-determined options and how one actually exercises the capacity for voluntary action, but attends to and values both as necessary components of political freedom.

This silence on how individuals ought to act when faced with decision sets reflects a true commitment to voluntarism, because it allows individuals to decide exactly how to express themselves as free and equal moral agents. Crucially, political obligation lets us discuss the voluntary actions of officeholders *and* the obligations incurred by ordinary individuals, which grants substantial critical purchase on the decisions and decision-makers that shape the background conditions of political action. In sum, a voluntarist theory of political obligation is not only possible, it is essential for a full account of liberal-democratic political action.

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