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THE PRACTICE ACCOUNT OF POLITICAL AUTHORITY

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THE MOST FUNDAMENTAL problem of political philosophy is to explain the authority of the state. This article presents a novel account: the practice account of political authority. The practice account belongs to the family of natural duty accounts, but in contrast to other such accounts, it highlights the role that rules of conventional practices can (and must) play in explaining political authority. The idea is that we have a natural right to participate in justifiable conventional practices that secure basic justice and peace, as well as a natural duty to respect this same right in others; that duty explains why the rules of such practices can confer political authority on the state.[1] Other natural duty accounts, the article shows, cannot explain political authority because they fail to provide a working mechanism that links people's natural duties to the authority of the state.

The article proceeds as follows: it introduces the concept of political authority (section 1), lays out the general form of natural duty accounts of political authority (section 2), and explains why natural duty accounts as they have been developed so far cannot explain political authority (section 3). It then introduces the practice account of political authority as an alternative natural duty account that explains political authority (section 4), and it responds to objections (section 5).

1. POLITICAL AUTHORITY

Let me start by clarifying what I mean by political authority, i.e., the *explanandum* of this article. Political authority is a bundle of rights held by the state.[2] I take the core of political authority to be the Hohfeldian power to impose

1 The basic idea (or something more or less close to it) can be found in Wendt, "Political Authority and the Minimal State," 115–16, although I dismissed it back then.

2 On Hohfeld's distinction between different types of rights (claim rights, liberty rights (or privileges), powers, and immunities) and their correlates (duties, no-rights, liabilities, and disabilities), see Hohfeld, *Fundamental Legal Conceptions As Applied in Judicial Reasoning*. See also Kramer, "Rights Without Trimmings"; and Wenar, "The Nature of Rights."

duties.[3] Political authority arguably also includes liberty rights to create and enforce laws, claim rights against interference with the creation and enforcement of laws, and perhaps more.[4] But the power to impose duties is my focus in this article. In Hohfeldian terms, the correlate of the state's power to impose duties on the side of citizens is not a duty to obey the law; it is a liability to have duties imposed by the state. (A duty to obey the law would be the correlate of the state's claim right to be obeyed.)

Political authority is a set of moral rights, not legal rights. That states have legal liberty rights to create and enforce laws and the legal power to impose legal duties is uncontroversial. What is controversial is whether states have the corresponding *moral* liberty rights to create and enforce laws and the *moral* power to impose moral duties (by exercising their legal power to impose legal duties). While it is the state that has political authority, more specific state institutions (parliaments, governments, the police, etc.) have more specific rights that form a part of the state's political authority. These institutions in turn come with positions that are to be held by particular persons. In the end, it is particular persons who have the rights of a prime minister, member of parliament, or police officer, for example.

Political authority, as I would like to conceive it, is *general*. It holds vis-à-vis everyone on the state's territory and all citizens. Political authority is not a patchwork notion that holds only vis-à-vis some people on the territory and some citizens, or for different citizens to different degrees.

Another important point is that the power of the state to impose duties is *content independent*. By enacting laws, states impose duties independently of the law's content. When the state says that you are to drive on the right side of the street, you have a duty to drive on the right side of the street; when it says that you are to drive on the left side, you have a duty to drive on the left side. Content independence does not imply that there are no moral limits regarding the content. Rather, within the range of what is morally permissible, agents

3 Cf. Copp, "The Idea of a Legitimate State"; Applbaum, "Legitimacy Without the Duty to Obey"; Perry, "Political Authority and Political Obligation"; and Enoch, "Authority and Reason-Giving." On Applbaum's view, more precisely, "legitimate authority has the moral power to author legal, institutional, or conventional rights and duties, powers, and liabilities, and create social facts and mechanisms of coordination that change the legal, institutional, and conventional situation or status of subjects" ("Legitimacy Without the Duty to Obey," 221), and whether the exercise of this moral power gives rise to moral duties or changes the subjects' moral situation in other ways is a separate question.

4 It probably also includes powers to alter people's rights in ways than cannot adequately be described as an imposition of duties. For example, a state could deprive people of their power to sell certain goods to sixteen-year-olds (Brinkmann, *An Instrumentalist Theory of Political Legitimacy*, 32).

with powers to impose duties can create duties independently from the duties' content. Accordingly, political authority is *not unlimited*. It is the moral right to make and enforce law within moral limits. To ascribe political authority and thus a power to impose duties to the state is perfectly compatible with a belief in limited government. As far as possible, I leave open here what these moral limits are.

I think that states need political authority—in particular, the power to impose duties on everyone on the territory and all citizens—if they are to count as legitimate.[5] This motivates my search for an account that can explain how states can come to have that power. But legitimacy is not my topic here. Even if states did not need political authority to be legitimate, it would be of interest, of course, if and when they have political authority.

2. NATURAL DUTY ACCOUNTS

Because political authority is general—it applies to all citizens and to everyone on the state's territory—voluntarist accounts have difficulties vindicating the state's political authority: if authority is to be based on voluntary consent, as in consent accounts, then states do not have authority over those who do not consent; if authority is to be based on the voluntary acceptance of benefits provided by the state, as in fair play accounts, then states do not have authority over those who do not voluntarily accept those benefits.[6] Likewise, associativist accounts have to deny that states have authority over those who do not associate with the political community in the required way.

The most promising accounts of political authority are therefore natural duty accounts. Natural duties are duties that persons have not in virtue

5 The main reason is that states must have the moral right to do what they are doing if they are to count as legitimate, and since states exercise a legal power to impose duties, they must have the corresponding moral power. Cf. Wendt, "Justice and Political Authority in Left-Libertarianism," 328–32, and *Authority*, 101–3.

6 Klosko's fair play account assumes that everyone *would* voluntarily accept indispensable goods *if* this were necessary to receive them (*The Principle of Fairness and Political Obligation*, ch. 2). Simmons suggests that Klosko's account ultimately relies on an unacknowledged natural duty to make indispensable goods available to everyone ("The Duty to Obey and Our Natural Moral Duties," 189–90; for a reply, see Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice"). Similarly, in Kavka's hypothetical consent account (*Hobbesian Moral and Political Theory*, ch. 10) and Estlund's normative consent account (*Democratic Authority*, ch. 7), it is arguably a natural duty that is ultimately to justify political authority, while the idea that people *would* or *ought to* give their consent to political authority is at best an intermediate step. Cf. Sreenivasan, "Oh, but You Should Have"; Koltonski, "Normative Consent and Authority"; Wendt, *Authority*, 29–33; and Zhu, "Content-Independence and Natural-Duty Theories of Political Obligation," 69–71.

of voluntary acts or contingent memberships but in virtue of their humanity. Jonathan Quong suggests the following principle to connect natural duties and authority:

> One way to establish that a person has legitimate authority over another person involves showing that the alleged subject is likely better to fulfil the duties of justice he is under if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to directly fulfil the duties he is under himself.[7]

The principle is inspired by Joseph Raz's normal justification thesis.[8] But while Raz's thesis claims that authority arises when by complying with someone's directives, people better comply with reasons that independently apply to them, Quong's principle is narrower: it claims that authority arises when by complying with someone's directives, people better fulfill their natural duties.

Quong illustrates his principle with an example in which a doctor and a person without medical expertise arrive at the scene of an accident.[9] Under these circumstances, the best way for the latter to fulfill their natural duty to help the victims is to follow the directives of the doctor. The doctor thus acquires a power to impose duties, and the other person incurs a liability to have duties imposed by the doctor. The explanation of political authority follows a similar path: people have certain natural duties, they best fulfill these duties by incurring a liability to have duties imposed by the state, and the state accordingly acquires a power to impose duties on them.

In one respect, the doctor example is misleading: people better comply with their natural duties by following the doctor's directives because the doctor has greater medical expertise. In the case of the state, it is doubtful that we can expect the state's representatives to have greater expertise in lawmaking; at least we do not have reliable means of identifying experts in this realm, while there are such means for medical expertise.[10] The reason the state is in the position to help people better fulfill their natural duties has arguably less to do with its expertise and more with the benefits it can provide as a central coercive agency that provides and enforces binding rules for everyone. It is the state's structural features, not epistemic ones. But what could be the underlying natural duty that grounds the state's political authority? Let me briefly introduce three natural

7 Quong, *Liberalism Without Perfection*, 128.

8 Raz, *The Morality of Freedom*, 53.

9 Quong, *Liberalism Without Perfection*, 127. See also Estlund, *Democratic Authority*, 124.

10 Zhu, "Content-Independence and Natural-Duty Theories of Political Obligation," 68–69.

duties that have been proposed: the natural duty of justice, the natural duty of rescue, and the natural duty not to harm others.

John Rawls assumes that persons have a natural duty of justice, which has two parts: "First, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves."[11] The first part is what matters for our context, since we are interested in how and why existing states have political authority.

For Rawls, this natural duty is to account for people's political obligations, in particular the obligation to comply with the law; but when we add the assumption that people do not have a right "not to be coerced to do what we have an obligation of justice to do," then we have an argument why just states at least have a liberty right to enact and coercively enforce laws.[12] This still does not amount to political authority, though, since political authority contains more than that liberty right. It also includes a power to impose duties. But Quong's principle is to help take the final step to political authority: in order to fulfill their natural duty of justice to comply with and to do their share in just institutions when they exist and apply to them, people incur a liability to have duties imposed by the state, and the state gets a power to impose duties on them.

Since hardly any state is perfectly just, one may think that Rawls's duty of justice is a nonstarter: it does not apply to any state that actually exists. But one need not read the natural duty of justice as a duty to comply only with perfectly just institutions—one can (and should) read it as a duty to comply with institutions that are "reasonably just."[13]

And another modification seems necessary. There are potentially many reasonably just institutions that "apply to us" in some sense, and we are certainly not under a duty to comply with all of them. The NAACP may be said to "apply" to all people of color, and it may further the cause of justice, but it certainly does not have a power to impose duties.[14] A more plausible duty of justice requires us to comply with institutions that apply to us and are *necessary* to establish

11 Rawls, *A Theory of Justice*, 334 (cf. 115). Other philosophers conceptualize the natural duty of justice differently (e.g., Buchanan, "Political Legitimacy and Democracy," 703; Lefkowitz, "Simmons' Critique of Natural Duty Approaches to the Duty to Obey the Law," 10–11; Christiano, *The Constitution of Equality*, 249; Stilz, *Liberal Loyalty*, 54; and Layman, "Rights, Respect, and Equality," 98, 108, 111–12). I am not able to go into the details of these accounts; I think the problem of natural duty accounts to explain political authority that I describe in the next section applies to all of them.

12 Buchanan, "Political Legitimacy and Democracy," 703.

13 Quong, *Liberalism Without Perfection*, 132–35.

14 Simmons, "The Duty to Obey and our Natural Moral Duties," 162.

and maintain justice because compliance with those institutions is necessary to discharge our natural duty of justice to a sufficient degree. Institutions that apply to us and are necessary to establish and maintain justice thus acquire a power to impose duties on us, and we incur a liability to have duties imposed by them. Relatedly, institutions do not have authority if people "likely better" fulfill their natural duties of justice by submitting to the authority of the state, as Quong puts it in the quote above; rather, institutions have authority if people *must* submit to their authority if they are to fulfill their natural duties of justice.

Christopher Wellman appeals to a natural duty of rescue, not a natural duty of justice. The natural duty of rescue is a natural duty to save others from peril when we can do so without unreasonable costs for ourselves and when our help is necessary.[15] This duty applies to accidents as in the example above; but according to Wellman, the Hobbesian state of nature is also something we have a natural duty to rescue each other from. Since the state is necessary to keep us out of the Hobbesian state of nature, we discharge our duty to rescue each other from the state of nature (at least) by letting the state do its job, and the state has the liberty right to exercise the coercion that is necessary to save us from the Hobbesian state of nature.[16]

This liberty right does not amount to political authority since, again, political authority also contains the power to impose duties. But while Wellman does not do so (more on this below), one could try to link the natural duty of rescue to the state's power to impose duties: like the only way to sufficiently discharge one's natural duty of rescue is to follow the directives of the doctor in the above example, the only way to sufficiently discharge one's natural duty of rescue is to follow the directives of the state, and that is why the state has the authority to impose duties on persons by making law and, on the flip side, why persons have a liability to have duties imposed by the state.

Massimo Renzo's account works with neither a natural duty of justice, nor a natural duty of rescue; rather, he relies on a natural duty not to harm others.[17] Unlike the duty of justice and the duty of rescue, the duty not to harm is conceptualized as a purely negative duty. Renzo does intend that duty to explain proper political authority, including the power to impose duties. Because the state is necessary to save us from the perils of the state of nature, one harms

15 Wellman, "Liberalism, Samaritanism, and Political Legitimacy," 215, "Toward a Liberal Theory of Political Obligation," 744–45, and "Samaritanism and the Duty to Obey the Law," 21–23.

16 Wellman, "Liberalism, Samaritanism, and Political Legitimacy," 216–19, 223, "Toward a Liberal Theory of Political Obligation," 745–48, and "Samaritanism and the Duty to Obey the Law," 23.

17 Renzo, "State Legitimacy and Self-Defence."

others—one poses an unjust threat to those who are nearby—by not subjugating to the authority of the state.[18] To discharge one's natural duty not to harm others, one therefore incurs a liability to have duties imposed by the state, and the state gets the power to impose duties.

3. The Failure to Explain Political Authority

In the previous section, I explained how natural duty accounts of political authority are supposed to work, and I introduced the natural duty of justice, natural duty of rescue, and natural duty not to harm others as three natural duties that have been invoked by different philosophers. As we saw, for states to have political authority, it must be the case that because the state is necessary to provide justice and peace, people cannot discharge their natural duties (of justice or of rescue or not to harm others) without a liability to have duties imposed by the state. In other words, natural duty accounts of political authority must claim that "in order for a state to be able to carry out its proper functions . . . , it must have authority over everyone living on its territory."[19]

But it is actually doubtful that this is the case.[20] What the state needs to properly function and provide justice and peace is, at best, to be able to impose duties on a critical number of people—but not on everyone. As long as a sufficient number of people obey the law, the rest may discharge their natural duties to a sufficient degree by not disrupting the operations of the state and by complying with the law whenever they deem appropriate. The proposed mechanism that is to generate political authority does not work.

In response, Renzo argues that instability would result if the state did not have a power to impose duties on everyone, but only a power to impose duties on some:

> The point is that in this scenario nobody could rely on the fact that independents [who are not subject to the state's authority] would be acting in accordance with what the law says (even when they would have moral or prudential reasons to do so), for everyone would know

18 Renzo, "State Legitimacy and Self-Defence," 585–86.

19 Renzo, "State Legitimacy and Self-Defence," 586.

20 Cf. Buchanan, "Political Legitimacy and Democracy," 695–96; Simmons, "The Duty to Obey and Our Natural Moral Duties," 168–69, 175–77, 182, 187–88, and *Boundaries of Authority*, 84; Adams, "Institutional Legitimacy," 98–100; Zhu, "Farewell to Political Obligation," 459–60, and "Content-Independence and Natural-Duty Theories of Political Obligation," 72–73, 75–76.

> that how independents are going to act will ultimately depend on their fallible individual judgement.[21]

In the end, though, he concedes that this instability might not be severe enough to undermine the state's ability to perform its vitally important functions. He thus concedes that states may have authority only over the number of people that is needed for the state to function.[22] This of course is not proper political authority.

Wellman does not claim that natural duties could ground political authority. For him, they underly only the state's liberty right to do what is necessary to keep us out of the Hobbesian state of nature. Not even political obligations can be fully explained in terms of natural duties, according to him, because the state does not need universal compliance to do its job. Wellman appeals to a principle of fair play to account for people's political obligations: it would be unfair to claim the discretion to decide how to discharge one's natural duty of rescue for oneself when we could not escape the Hobbesian state of nature if everyone kept this discretion.[23] Could one make a similar argument to account for the state's power to impose duties and thus its political authority? The argument could be that to properly function, the state needs to be able to impose duties on *some*, and it would be unfair if only some would have a liability to have duties imposed by the state, while others are off the hook.

But in reply, one can doubt that the state actually needs a power to impose duties on *anyone* to properly do its job. What the state needs in order to properly function is that a sufficient number of people comply with the law, but this does not require a liability to have duties imposed by the state. People can comply with the law for all kinds of reasons: they can comply to avoid punishment, they can comply because they are lazy, or they can comply for moral reasons (for example, because they judge the law to be congruent with moral demands or because they value stability and do not want to disrupt the state's operations). People may thus be perfectly able to sufficiently discharge their natural duties by complying with the law for any of these reasons, without a liability to have duties imposed by the state. And if the state does not need a power to impose duties on anyone in order to properly function, then no issues of fairness and unfairness arise either.

21 Renzo, "State Legitimacy and Self-Defence," 594.

22 Renzo, "State Legitimacy and Self-Defence," 595.

23 Wellman, "Toward a Liberal Theory of Political Obligation," 749–51, and "Samaritanism and the Duty to Obey the Law," ch. 2.

4. THE PRACTICE ACCOUNT

Natural duty accounts as they have been developed so far cannot explain political authority, as we saw in the previous section: people can sufficiently discharge their natural duties of justice or duties of rescue or duties not to harm others without incurring a liability to have duties imposed by the state.

Understanding the role that rules of conventional practices can play in generating authority is, I think, crucial to develop a more potent natural duty account. That rules in cooperative schemes can create authority relations has been suggested by H. L. A. Hart and, more recently, Justin Tosi.[24] Hart writes:

> [When] a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience and make further rules, and this will create a structure of legal rights and duties, but the moral obligation to obey the rules in such circumstances is *due to* the co-operating members of the society, and they have the correlative moral right to obedience.[25]

Hart and Tosi take the rules of cooperative schemes to create authority relations against the background of fair play obligations to comply with the rules. They do so, explains Tosi, because they specify the terms of cooperation.[26] As indicated above, I do not think everyone has fair play obligations, because some will not voluntarily accept the benefits provided by the state, and so I do not think a fair play account can explain political authority if political authority is to apply to everyone on the territory and to all citizens.

The idea, then, is to combine Hart's and Tosi's insight about the role of rules with a natural duty account. Because of the role that conventional practices and their rules play in generating authority on this account, I call it *the practice account of political authority*, but I still take it to be a member of the family of natural duty accounts of political authority.[27]

24 Hart, "Are There Any Natural Rights?"; and Tosi, "The Possibility of a Fair Play Account of Legitimacy."

25 Hart, "Are There Any Natural Rights?" 185.

26 Tosi, "The Possibility of a Fair Play Account of Legitimacy," 94–95.

27 Melenovsky distinguishes five types of reasons that, depending on the context, can justify following the rules of conventional practices ("The Reasons to Follow Conventional Practices"). My proposal here invokes a reason that "specifies how to respect a preexisting right, responsibility, or duty" (720).

From the perspective of a natural duty account, rules that confer authority are not taken to specify the terms of a cooperative scheme that cooperators have fair play obligations to comply with. Instead, the rules that confer authority are conceived as part of a conventional scheme that people have a natural duty to respect. More precisely, I picture the following argument:

1. Persons have a natural right to participate in justifiable conventional practices that secure basic justice and peace (in short, a "natural right of basic justice and peace"). Among other things, this natural right includes a moral power to acquire new moral claim rights, liberty rights, and powers in line with the rules of such practices.
2. Persons have a natural duty to respect other persons' natural right to participate in justifiable conventional practices that secure basic justice and peace (in short, a "natural duty of basic justice and peace"). Among other things, this natural duty includes a moral liability to have one's claim rights and liberty rights changed when others acquire and exercise new moral claim rights, liberty rights, and powers in line with the rules of such practices.
3. The rules of justifiable conventional practices that secure basic justice and peace can confer authority on state institutions, including a content-independent power to impose duties on everyone on the territory and all citizens.
4. If the rules of a justifiable conventional practice that secures basic justice and peace confer a content-independent power on state institutions to impose duties on everyone on the territory and all citizens, then the natural right of basic justice and peace allows persons to obtain positions within these institutions in accordance with the rules of the practice and to thereby acquire a content-independent power to impose duties on everyone on the territory and all citizens. (From 1 and 3)
5. If the rules of a justifiable conventional practice that secures basic justice and peace confer a content-independent power on state institutions to impose duties on everyone on the territory and all citizens, then the natural duty of basic justice and peace puts all citizens and everyone on the state's territory under a liability to have duties imposed on them by state institutions. (From 2 and 3)

Before commenting on each step in the argument, let me say a few words on how I understand the terms 'conventional practice', 'peace', and 'basic justice'. This article is not to contribute to debates about what conventions, peace, and justice are, and the argument of the article is supposed to work for a variety

of conceptions of what they are. But roughly, a conventional practice can be understood as a set of primary rules that is to guide people's behavior, sometimes combined with secondary rules that determine how primary rules can be changed, and these rules must be widely accepted and internalized within some social group. For the purposes of this article, one should think of legal systems and social norms as relevant conventional practices. Peace, on the most commonsense conception that I endorse here, is the relatively stable absence of violence in a particular geographical region. By basic justice, I mean those elements of justice that are uncontroversial—that everyone's physical integrity and personal property are to be respected, that conflicts are to be solved in fair ways, that punishment is to be proportional to the crime, and so on. Conventional practices that secure and maintain peace and basic justice can involve lawmaking institutions like parliaments combined with state police, military, and courts; but they can also center around nonstate equivalents—for example, private protection companies or religious courts.

Let me now comment on the separate steps in the argument. The first premise introduces the natural right of basic justice and peace, which is a natural right to participate in justifiable conventional practices that secure basic justice and peace. This natural right is to be conceived as a bundle of rights that, among other things, comprises a Hohfeldian claim right against being excluded from such practices, a liberty right to participate in them, and a power to acquire new claim rights, liberty rights, and powers in ways delineated by those practices. The latter power is what matters for our context. It means, for example, that one can acquire the rights associated with citizenship, as determined by the rules of the practice, and that one can become a member of parliament with the rights this position involves, when this is something that the practice allows.

All these rights are to be understood as *moral* rights. Conventional practices of course allow people to acquire legal (or otherwise conventional) claim rights, liberty rights, and powers, first of all. But that persons have a natural right to acquire rights in line with such practices means that these rights are morally validated: people who acquire them also acquire the corresponding moral rights. Compare a different case. In soccer games, coaches have the power to substitute players, which implies the power to impose duties on players to leave the field. This power and these duties are, first of all, purely conventional. But if soccer coaches have the moral right to do what they do, then they also have the corresponding moral power to substitute players and thereby to impose duties on players to leave the field (or, if you prefer, the moral liberty right to exercise their conventional power to impose duties on players to leave the field). And if coaches have this moral power (or liberty right), then likewise, players incur not just a conventional but also a moral duty to leave the field when coaches tell them to.

Importantly, the natural right of basic justice and peace is a right to participate in *justifiable* practices. To be justifiable, a practice does not have to be morally perfect. It has to meet some threshold of moral justifiability, and whether a practice actually secures and maintains peace and basic justice to a sufficient degree is part of what determines that threshold. Beyond that, I want to leave open what the justifiability standard amounts to and thus keep the practice account compatible with as many views in moral and political philosophy as possible. The point of this article is not to defend a particular standard of justifiability but to propose a mechanism that explains how states can acquire political authority against the background of *some* standard of justifiability.

Two more points are worth mentioning. One is that what counts as justifiable is probably relative to what is feasible given the circumstances of a particular time and place. The other is that one can distinguish between the justifiability of a practice *tout court* and the justifiability of a practice relative to a particular individual. The natural right of basic justice and peace appeals to justifiability *tout court*. It is possible of course to hold that a practice is justifiable *tout court* only if it is justifiable relative to each and every individual. But, again, I stay agnostic on what the justifiability standard requires.

The second premise moves from natural rights to natural duties. The natural right of basic justice and peace does not correlate with a natural duty to bring justifiable conventional practices into existence. (Who would have that duty?) Like the natural right of basic justice and peace, it is a bundle of Hohfeldian incidents—namely, the duties, no-rights, and liabilities that correlate with the rights that constitute the natural right of basic justice and peace. Thus the natural duty of basic justice and peace, the natural duty to respect other persons' natural right to participate in justifiable conventional practices that secure basic justice and peace, includes a duty not to exclude anyone from such practices, a no-right that others do not participate in such practices, and a liability to have one's claim rights and liberty rights changed when others acquire and exercise powers in line with them. This liability is key to explaining political authority. I have a few more things to say in defense of this natural duty of basic justice and peace in response to the third objection below.

The third premise says that the rules of justifiable conventional practices that secure peace and basic justice can confer the bundle of rights that constitutes political authority on the state (or, more precisely, on particular institutions that together constitute the state), including a content-independent power to impose duties on everyone on the territory and all citizens. For example, the rules of a conventional practice can determine that there is an institution such as a parliament that is equipped with certain rights, including the power to impose duties, and it can determine how one can become a member of

parliament. As explained above, these rights are, first of all, legal rights; but if people have a natural right of basic justice and peace that allows them to acquire new claim rights, liberty rights, and powers in ways delineated by conventional practices that secure peace justice and peace, then these rights are morally validated: people who acquire them also acquire the corresponding moral rights.[28] Together, the rules of conventional practices can thus confer the moral rights that constitute political authority on institutions that together constitute a state.

In contrast to other natural duty accounts, the practice account need not claim that states are *necessary* to provide basic justice and peace. As explained above, accounts based on a natural duty of justice have to claim that institutions acquire political authority only when compliance is necessary to discharge one's natural duty of justice because otherwise justice-promoting institutions like, for example, Amnesty International would implausibly acquire political authority as well. The practice account can avoid ascribing political authority to such institutions because first, the rules that govern these institutions in fact do not confer political authority on them, and, second, they arguably would not be justifiable if they did. Accounts based on a natural duty of rescue have to claim that states are necessary to provide peace because otherwise the duty of rescue does not apply. The natural duty of basic justice and peace, on the other hand, applies to *all* practices that are justifiable and secure and maintain basic justice and peace, no matter if there are alternative practices that could do the job as well.

In other words, then, the practice account needs to claim only that justifiable conventional schemes can confer authority on states because this is *one way* to provide basic justice and peace. When the (justifiable) conventional practice that provides basic justice and peace for you involves state institutions, then you have a natural right to participate in *that* practice; when the (justifiable) conventional practice that provides basic justice and peace for you does not involve state institutions, then you have a natural right to participate in *that* practice. That the practice account can remain agnostic regarding the necessity of the state is an advantage, I think, in the absence of empirical evidence about the viability of ordered anarchy and given the maybe optimistic but reasonable

28 On the fair play account of political authority sketched above, the principle of fair play explains why the legal powers (and other legal rights) assigned by legal rules are morally validated. As Tosi puts it, "when people become subject to fair play schemes . . . , the rules of the scheme specify the terms of their cooperation. . . . In this way the principle of fair play turns the rules of the scheme (and the rights they specify) into moral requirements" ("The Possibility of a Fair Play Account of Legitimacy," 95). On the account proposed here, it is the natural duty and natural right of basic justice and peace that explain why the legal powers (and other legal rights) accorded by legal rules are morally validated.

arguments of anarchists.[29] Note that the claim that the state is *necessary* to provide basic justice and peace would be false even if states were much better than stateless societies in maintaining peace and justice, as long as the latter are *able* to maintain basic justice and peace.

The fourth step draws the conclusion that persons can acquire the rights associated with political authority, e.g., the rights of members of parliament, when these rights are conferred by the rules of a justifiable practice. The fifth step draws the mirroring conclusion that all citizens and everyone on a state's territory have a liability to have duties imposed by state institutions when the rules of a justifiable practice confer these rights on state institutions.

This, in a nutshell, is the practice account of political authority. On the natural duty accounts discussed above, the state has the authority to impose duties on persons because this allows persons to discharge their natural duties. On the practice account, in contrast, the state has the authority to impose duties on persons because this authority is conferred on the state by legal rules that persons have natural duties to respect.

5. OBJECTIONS

The previous section introduces the practice account of political authority, which, unlike other natural duty accounts, offers a working mechanism that explains how and why states can realistically acquire political authority. I now discuss seven objections to the practice account. Replying to them gives me the chance to further clarify, defend, and elaborate the practice account.

5.1 The Practice Account Disregards the Distinction Between Justifiability and Legitimacy

The practice account disregards A. John Simmons's distinction between justifiability and legitimacy, according to a first objection: it is one thing to assess the moral qualities of an organization (i.e., its justifiability); it is another to assess which rights it has over me and others (i.e., its legitimacy).[30] This is of course a worry that is not peculiar to the practice account; it holds for all natural duty accounts of political authority. But it deserves a (brief) reply.

29 E.g., Friedman, *The Machinery of Freedom*; and Huemer, *The Problem of Political Authority*, part 2. Kantian functionalist accounts try to establish *a priori* that the state is necessary to realize justice. See Stilz, *Liberal Loyalty*, ch. 2; Ripstein, *Force and Freedom*, ch. 6; and Layman, "Rights, Respect, and Equality," 79–91. For recent criticism, see Christmas, "Against Kantian Statism."

30 Simmons, "Justification and Legitimacy" and "The Duty to Obey and Our Natural Moral Duties," 148–49.

Simmons is right that in general, one should distinguish between the moral virtues of an organization and the rights it has. But this is different for institutions that secure basic justice and peace, if the practice account is correct. The practice account indeed claims that if a state is justifiable—if it is part of a justifiable conventional practice that secures basic justice and peace—then the state also has the rights that constitute political authority.[31] And the natural duty of basic justice and peace is to explain why this is so. Of course, one may doubt that people actually have this natural duty of basic justice and peace. But that points to a different set of objections, which I get to next.

5.2. The Natural Duty of Basic Justice and Peace Is Implausibly Costly

Natural duties that require more than noninterference typically apply only when the costs of fulfilling them are reasonable.[32] Duties of rescue, for example, do not arise in scenarios where one would have to risk one's own life in order to have a chance to save someone else. Because this is so, it has been argued that one cannot ground a duty to obey the law in a natural duty of rescue because obedience to the law would be an unreasonable cost. Wellman replies that while the costs of obedience can be considerable, the benefits states provide are considerable too, such that the *net* costs of obedience are not unreasonable.[33] Against Wellman, Simmons and George Klosko point out that the benefits of the state are not causally linked to individual compliance and, for that reason, cannot be deducted from the costs.[34]

Applied to the practice account, the objection is that the natural duty of basic justice and peace needs a cost qualifier too if it is to be credible as a natural duty that involves more than noninterference. It should not make us respect other people's natural right of basic justice and peace no matter what, but only when this respect does not come with unreasonable costs. As such, it cannot contain an unqualified liability to have duties imposed when people acquire

31 From a different angle, one could suspect that there is a problematic circularity involved in my account: Can we even assess whether a state is justified without *presupposing* that it has political authority? I agree that states without political authority are deeply morally troublesome (Wendt, "Justice and Political Authority in Left-Libertarianism"). But I do not think this means that there is a circularity involved in my argument. Since on my account, states that are justified have political authority, we should not make political authority a *criterion* of justifiability.

32 Klosko, *Political Obligations*, 77, and "Fair Play, Reciprocity, and Natural Duties of Justice," 340–41.

33 Wellman, "Samaritanism and the Duty to Obey the Law."

34 Simmons, "The Duty to Obey and Our Natural Moral Duties," 182; and Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice," 347. See also Klosko, *Political Obligations*, 94–95.

and exercise powers in line with the rules of justifiable practices that secure and maintain basic justice and peace. At best, it may contain a liability to have duties imposed *except when* this is an unreasonable cost for a duty bearer.

But in reply, there are actually *two* cost qualifiers implicit in the natural duty of basic justice and peace. The first is that it applies only to *justifiable* practices. For example, if more-than-minimal or more-than-small states are taken to impose unreasonable costs, then only minimal or small states have political authority, because only they will be justifiable, and so the natural duty of basic justice and peace does not apply to more-than-minimal or more-than-small states. As indicated above, I here stay agnostic on the details of the justifiability standard.

The second implicit cost qualifier is that the content-independent power to impose duties is not without moral limits. When a law is deeply unjust, it transgresses these moral limits, even if the state is endowed with political authority, such that no one incurs a duty to comply with it. For what it is worth, I think that the moral limits of the power to impose duties cannot be so narrow that they rule out even *mildly* unjust law.[35] But not much depends on this for our context. If you think that it is an unreasonable cost to incur a duty to comply with mildly unjust law, you still do not have to reject the natural duty of basic justice and peace—you can simply advocate a very narrow conception of the moral limits of the content-independent power to impose duties. This leaves the core idea of the practice account intact.

The remaining liability to have duties imposed is not, it seems to me, an unreasonable cost. It is the bare mirror of the natural right of basic justice and peace. If the natural duty of basic justice and peace did not contain the liability to have duties imposed, if the rules of a justifiable practice allow for that, then the natural right of basic justice and peace could also not contain the moral power to acquire new powers in line with the rules of such practices.

5.3. The Natural Duty of Basic Justice and Peace Is a Philosophical Fantasy

That the natural duty of basic justice and peace is not unreasonably costly may not be enough to convince you of its existence. Unlike Wellman's natural duty of rescue and Renzo's duty not to harm others, the natural duty of basic justice and peace that I rely on here is not part of commonsense morality.[36] What I

35 That persons have a duty to comply with mildly unjust law does not mean that they have to comply *all things considered*, of course. All duties are *pro tanto* duties, and the duty to comply with a mildly unjust law can of course be outweighed by the law's injustice. For recent discussion, see Brennan, *When All Else Fails*; Viehoff, "Legitimate Injustice and Acting for Others"; and Wellman, "The Space Between Justice and Legitimacy."

36 Simmons argues that Wellman's duty of rescue is actually a "curious hybrid" between a duty of rescue and a duty of charity since the state of nature is not an emergency in the

have to offer in support of the natural duty of basic justice and peace are the following thoughts.

First of all, if the argument of this article is sound, then we have to claim that people have a natural duty of basic justice and peace *if* we are to explain political authority. The natural duty of basic justice and peace is a *theoretical postulate* in that sense. And the case for postulating its existence is even stronger if one thinks that states need political authority to count as legitimate (as I do). If states need political authority to be legitimate, then one can read this article as spelling out what natural duty we have to postulate if at least some states are to count as legitimate. The alternative is to embrace political anarchism.

For the purposes of this article, this should be good enough. But I do have some additional thoughts to support the natural duty of basic justice and peace. Recall that the Hohfeldian duties, no-rights, and liabilities in the natural duty of basic justice and peace correlate with the claim rights, liberty rights, and powers in the natural right of basic justice and peace. One way to defend the existence of natural rights is by appealing to important interests that all humans share. Given the importance of everyone's interest in living in a society that provides basic justice and peace, I hope and think that the natural right of basic justice and peace and the corresponding natural duty of basic justice and peace have at least some initial plausibility.[37]

Perhaps one could argue that while people may have an interest in living a society that provides basic justice and peace, they do not have an interest in *participating* in such a practice. And it is indeed the participation that is crucial for my argument to take off. But of course a practice can be sustained only if people participate in it. What does this show? Well, first of all, if people have an interest in living in a society that provides basic justice and peace, they must also be taken to have an interest that at least *some* people participate and thereby sustain such a practice. Second, if at least some people are to rightfully participate in such a practice, at least some people must be conceived as endowed with a natural right to participate in such a practice. Finally, if we assume that people have the same natural rights, then if some must be conceived as endowed with

same way as a drowning child in a pond is ("The Duty to Obey and Our Natural Moral Duties," 182–84).

37 As far as I can see, this interest is not what Owens describes as a normative interest, an interest in "shaping the normative landscape" (*Shaping the Normative Landscape*). (See also Raz, *The Morality of Freedom*, 173.) It is simply an interest to live in a society that secures basic justice and peace; that some offices come with powers to shape the normative landscape is instrumental in securing basic justice and peace.

a natural right to participate in such a practice, everyone must be conceived as endowed with a natural right to participate in such a practice.[38]

5.4. States Are Not Justifiable If They Are Not Necessary for Basic Justice and Peace

A fourth objection raises doubts whether states can count as justifiable if they are not necessary to provide basic justice and peace, as the practice account concedes. States, after all, seem to violate rights when they raise funds via taxation and when they maintain a monopoly on the use of force. In a stateless society, rights may get violated too, to be sure. But this is a contingent feature of stateless societies. States, on the other hand, necessarily violate rights: it is a defining characteristic of states that they coercively uphold a monopoly on the use of force and coercively fund their operations. Since the practice account does not rely on the assumption that states are necessary to provide basic justice and peace, only stateless conventional practices that secure basic justice and peace should count as justifiable.

In response, we can reject that justifiable states *impermissibly* infringe on rights when they use taxation and maintain a monopoly on the use of force. Eric Mack proposes the following principle:

> When working out the detailed specification of persons' rights, one is to avoid specifications that systematically preclude individuals from exercising their rights or from conducting their lives in ways that a specification of their rights is supposed to protect.[39]

If persons' rights cannot be adequately protected without the state, they have to be attenuated such that they allow taxation and the state's monopoly on the use of force.[40] A specification of persons' rights can attenuate them in basically

38 My account has some similarity to the account of political obligation recently proposed by Valentini, who argues that we have a content-independent duty to obey the law because we have a moral duty to respect people's commitment to the rule of law when this commitment is authentic, morally permissible, and respecting it is not too costly (*Morality and Socially Constructed Norms*, 150, 167–70). She takes this to be a special instance of a quite general moral duty to respect socially constructed norms when they are authentically endorsed and morally permissible and when respecting them is not too costly (97–101). My account also highlights the role of conventions, and it also postulates an antecedent ("natural") moral duty. But otherwise, it is quite different. What underlies my account is people's fundamental interest in basic justice and peace, not respect for people's commitments; and it is not a Hohfeldian duty but a Hohfeldian liability (one part of the bundle of Hohfeldian incidents that I call the natural duty of basic justice and peace) that is to do the explanatory work.

39 Mack, "Nozickian Arguments for the More-than-Minimal State," 112.

40 Mack, "Nozickian Arguments for the More-than-Minimal State," 113–14.

two ways: it can say that (some) rights are sometimes permissibly infringed, and it can say that (some) rights apply only conditionally, such that they are not even infringed when they do not apply. When it comes to taxation, Mack argues that rights are permissibly infringed; in other contexts, he specifies rights conditionally.[41]

Now, Mack here involves a claim about the necessity of the state, which the practice account tries to avoid. The practice account claims that states can have political authority even if a stateless society could provide basic justice and peace as well. I do not think this undermines the basic idea behind Mack's principle, though: when *justifiable* states use taxation and maintain a monopoly on the use of force, they permissibly infringe upon rights. This does not mean that all taxation is fine. If, for example, only small states should count as justifiable—maybe because more extensive states are not in line with the point of the practice of private property—then only taxation within small states does not classify as an impermissible rights violation.[42]

An objector may insist that states cannot be justifiable if they infringe upon rights and are not even necessary to provide basic justice and peace. In reply: this is not so. States (or rather, certain kinds of states) can still be justifiable for several reasons: we lack evidence whether (and how well) nonstate institutions could provide basic justice and peace; it seems reasonable to suspect that states probably tend to be better at providing basic justice and peace than nonstate institutions; and the transition to nonstate institutions currently seems infeasible and would come with considerable risks.

5.5. The Practice Account Is Incompatible with a Commitment to Moral Equality

That we are moral equals means, at least, that we have equal rights. When some persons have authority over others, this constitutes an inequality of rights. Voluntary transfers of rights could justify this inequality, but the practice account does not rely on voluntary transfers. It allows some to unilaterally acquire and exercise authority over others. How is this supposed to be compatible with a commitment to moral equality understood as an equality of rights?

To develop a response, it is instructive to compare the unilateral duty imposition that the practice account allows to the unilateral duty imposition that comes with the acquisition of private property. Bas van der Vossen argues that the power to impose duties that is involved in the acquisition of private property is an instance of duty *alteration* rather than duty *creation*, which is why it

41 For discussion, see Wendt, "Political Authority and the Minimal State," 101–7.

42 For discussion, see Wendt, "Taxation and the Moral Authority of Conventions."

is compatible with everyone's moral equality.[43] Everyone has a natural duty to respect everyone else's natural right to engage in proper acts of appropriation, and a particular appropriation merely triggers that natural duty.

Similarly, on the practice account, everyone has a natural duty to respect everyone else's natural right of basic justice and peace, and a particular acquisition or exercise of powers associated with a political office merely triggers that natural duty. In that sense, the state's power to impose duties is a power to impose *new* duties only in a limited sense, if political authority is grounded in natural duties.[44] Of course, the state's power to impose duties is content independent (within moral limits), while the power to impose duties that is associated with the acquisition of private property is not. That is an important difference, and it arguably makes the former more worrisome than the latter. But it does not change the more fundamental point that the exercise of both powers involves a duty alteration against the background of an equality of moral rights and duties.

There is one complication: the natural right to participate in justifiable conventional practices gives you a moral right to acquire and exercise powers to impose duties in line with the rules of justifiable conventional practices *only if* these rules actually give everyone the chance to acquire such powers. If the rules of a practice allow only white men to get into political offices, for example, there is obviously no moral equality. Arguably, all *justifiable* practices today come with political positions that are open to (at least) all law-abiding adult citizens.

5.6. The Practice Account Does Not Confer Proper Authority

On the flip side, that political authority arises against a background of moral equality also points at a disadvantage of natural duty accounts in general and the practice account in particular: William Edmundson suggests that the doctor in the accident example has mere "leadership," which comes with considerably less error tolerance than proper authority.[45] The same holds for the state when its power to impose duties is tied to people's natural duties.

Similarly, Matthias Brinkmann distinguishes two models of legitimacy. According to the authority model, legitimate entities can *directly* impose duties on persons. According to the transmission model, legitimate entities can merely *indirectly* impose duties on persons: they "change the empirical

43 Van der Vossen, "Imposing Duties and Original Appropriation," 72–76.

44 Cf. Wendt, "Political Authority and the Minimal State," 117–21, and *Authority*, 73–75.

45 Edmundson, "Consent and Its Cousins," 344–46. See also Edmundson, "Political Authority, Moral Powers and the Intrinsic Value of Obedience," 188–90.

situation in which we find ourselves—for example, by establishing a salient signal of coordination—and this in turn triggers changes in our duties and rights."[46] Like Edmundson's "leadership," the power to indirectly impose duties is defeasible and closely tied to performance, and for that reason, it does not amount to a proper power to impose duties.[47] Natural duty accounts allow states to change the world such that people's natural duties are triggered in a way that gives rise to a liability to have duties imposed by the state, and so they fit the transmission model, as far as I can see.

I agree with Edmundson and Brinkmann that on the practice account, political authority is tied to performance and that it is a power to indirectly impose duties. But I deny that this means that it is not a proper power to impose duties or is less than proper political authority. What matters is that it is a content-independent power. And the practice account, in contrast to other natural duty accounts, offers a specific mechanism that explains how and why the state can acquire a content-independent power to impose duties (within moral limits)—namely, by having it conferred by the rules of justifiable practices.

5.7. The Practice Account Does Not Meet the Particularity Requirement

The most notorious problem for natural duty accounts of political authority (and political obligation) is to satisfy the so-called particularity requirement that was introduced into the debate by Simmons.[48] It naturally faces the practice account as well. Natural duties are duties we have in virtue of our humanity, not as Americans or Germans or Liberians. So how can natural duties explain that we are bound to comply with the laws of particular states but not others, and that states have political authority over particular persons and particular territories but not others? In the example of the accident discussed above, the doctor has authority over those who happen to be at the site and are able to help. But no comparable criterion seems available when it comes to political authority. This is, at core, the problem of satisfying the particularity requirement.

The most straightforward and pragmatic answer that proponents of natural duty (and functionalist) accounts can give is: first, states need discrete territorial jurisdiction to be able to do what they are supposed to do—i.e., to maintain justice and peace; second, while the current territorial divisions are morally arbitrary, they are salient; and third, because of their salience, we should treat current territorial divisions as authoritative when it comes to particularized

46 Brinkmann, *An Instrumentalist Theory of Political Legitimacy*, 46.

47 Brinkmann, *An Instrumentalist Theory of Political Legitimacy*, 47–49.

48 Simmons, *Moral Principles and Political Obligations*, 147–56, and "The Duty to Obey and Our Natural Moral Duties," 162–79.

natural duties.[49] One can then say with Daniel Layman that "the power of a government is legitimate over all of the people for whom it performs this service [of rectifying the defects of the state of nature]."[50]

But this pragmatic answer takes us only so far. First, while it may explain why states have authority over particular territories, it does not explain why states have authority over expatriate citizens.[51] Layman points out that states provide services to expatriate citizens.[52] But in contrast to discrete territorial jurisdiction, this certainly is not a pragmatic necessity for the ability to maintain justice and peace.[53] Second, the pragmatic answer is hard to reconcile with the impact of historical criteria: incidents of wrongful annexation, for example, seem to affect the authority that a state has over the annexed territory, no matter if the new territorial boundaries are now salient or not.[54]

In any case, the practice account has the resources to deal with the particularity problem in a different way.[55] The pragmatic answer is, so to say, built into the natural duty of basic justice and peace that is at the heart of the practice account: since everyone has a natural duty to respect everyone else's natural right to participate in justifiable conventional practices that secure basic justice and peace, these conventional practices can particularize everyone's liabilities.[56] When conventional practices are legal systems embedded in international law and bilateral treaties, they determine states' territories as well as the extent of their authority over citizens abroad (e.g., when it comes to taxation).

49 Cf. Waldron, "Special Ties and Natural Duties," 22–27; and Wellman, "Samaritanism and the Duty to Obey the Law," 37–46. Sometimes this argument is underpinned by a Kantian story about how persons are greater threats to those who are near them in the state of nature (cf. Waldron, "Special Ties and Natural Duties," 14–15); but this, it seems to me, does not contribute much to the justification of present boundaries (cf. Simmons, "The Duty to Obey and Our Natural Moral Duties," 170–76, and *Boundaries of Authority*, 68–73; and Klosko, "Fair Play, Reciprocity, and Natural Duties of Justice," 348).

50 Layman, "Rights, Respect, and Equality," 95.

51 Mason, "Special Obligations to Compatriots," 437.

52 Layman, "Rights, Respect, and Equality," 95–96.

53 One can of course bite the bullet and deny that states have authority over citizens who are not on their territory. See Wellman, "Samaritanism and the Duty to Obey the Law," 46–52. See also Zhu, "Content-Independence and Natural-Duty Theories of Political Obligation," 62.

54 Simmons, "The Duty to Obey and Our Natural Moral Duties," 173–74, and *Boundaries of Authority*, 51–52, 71, 75–80, 85.

55 On how to incorporate historical concerns into natural duty (and functionalist) accounts of political authority, see Stilz, "Territorial Boundaries and History"; and Motchoulski, "Justice, Reciprocity, and the Boundaries of State Authority," 62–69.

56 Similarly, Nieswandt argues that the addressee of a duty is determined by the rules of the relevant practice ("What Is Conventionalism About Moral Rights and Duties?" 22).

This does not mean that conventional practices have carte blanche to determine these matters in any way, of course. The natural right of basic justice and peace and natural duty of basic justice and peace appeal to *justifiable* practices. All kinds of moral concerns can affect the justifiability of a practice. This includes historical concerns: instances of annexation, for example, can undermine the justifiability of a state and thereby also undermine its political authority.

There is another point to consider. The practice account can be developed in a geographically holistic or a nonholistic version. In a holistic version, a practice as a whole is to be evaluated as either justifiable or not, and if it is justifiable, then all institutions that are part of the practice have the rights that the rules of the practice confer on them. The problem with that approach is that practices can be geographically individuated in different ways and in fact often seem to be overlapping. For example, state law is embedded in federal law in the United States, and in some contexts, it makes sense to conceive of a state like Virginia as a practice of its own, while in other contexts it makes more sense to conceive of it as part of the practice that is the United States. For that reason, I think a nonholistic approach is more sensible. On that approach, conventional practices that are part of a larger practice can count as justifiable, even if the larger practice is not justifiable, and vice versa. Accordingly, then, the practice account may be able to regard a state as justifiable and endowed with authority with regard to its original territory but not with regard to a newly annexed territory.[57]

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