Political Legitimacy – A Right to Rule or a Power to Command?

Abstract

What renders political authorities morally justified and how do they exercise their authority? This article engages with these questions and tries to show that the standard terminology of legitimate authorities as possessing the ‘right to rule’ is problematic: interpreting authorities as resting on a claim-right to obedience biases our discussion of political legitimacy in favour of democratic institutions. This is problematic in a world in which we have to solve many problems requiring global coordination but where there might never exist global democratic authorities. The article suggests that when thinking about legitimate authorities, instead of focusing on the interests of the holders of a right to rule, we should concentrate on the interests of those subject to political authorities. What becomes thus available is the idea of authority as based on moral powers to command, a notion enabling us to better approach the global problems we face today.

Keywords:
political legitimacy, Hohfeldian rights-incidents, right to rule, service conception, global justice

This paper pursues the question how we can best characterize the idea of political legitimacy. When we ask whether some political authority possesses legitimacy in the normative rather than the sociological sense we want to know two interrelated things, namely whether this political authority is permitted to enforce laws, authoritative directives, and rules in general, and whether the agents subject to the authority are under a binding moral duty to comply with these instructions.
In the contemporary philosophical literature on this topic, political legitimacy is often identified with a ‘right to rule, where this is understood as correlated with an obligation to obey on the part of those subject to the authority’ (Raz 1985, p. 3).\footnote{1} However, in the course of this essay we will see that there is a rarely noticed price to pay for accepting the right to rule as the basic or primary notion of political legitimacy. This price is that the right to rule conception of legitimacy tends to bias our thinking about legitimacy by focusing on the interests of the holders of this right. This notion therefore considerably constrains the range of possibly legitimate institutions, thereby unnecessarily limiting our discourse about the morally acceptable exercise of political power. I shall also argue that this limitation is regrettable since it makes many pressing problems of our time – such as the problem of global justice – more difficult to address than is necessary.

We can see the problem most clearly in formal terms. The shortcoming of the Right to Rule Approach is that it makes it impossible for us to hold jointly three claims, all of which seem \textit{prima facie} plausible. Thus, roughly stated, if we accept that

\begin{itemize}
  \item [(a)] The legitimate exercise of political authority rests on a right to rule
  \item [(b)] All rights are grounded in some interest of the right-holder,
  \item [(c)] There can be non-democratic political authorities that are nonetheless fully legitimate in that they are able to obligate their subjects.
\end{itemize}
The aim of this paper is to suggest a different understanding of the idea of political legitimacy. This alternative view sees the exercise of political authority as defensible primarily via appeal to a power to command. As we will see, we can justify such a power to command when we focus on the interests of the subjects of an authority instead of the holders of a right to rule. What we should ultimately accept is that the ‘Power to Command View’ of political legitimacy gives us a more plausible explanation of this idea than the currently dominant ‘Right to Rule View’.

The argument will proceed as follows. First we will look at what constitutes the Right to Rule View of political legitimacy and highlight the aspects which seem to make it an attractive defence of authority (I). We will then see that this approach is problematic in that it relies on claim (a), the right to rule justification of authority, and claim (b), the interest theory of rights, and thereby excludes claim (c), the possibility of legitimate non-democratic institutions) (II.). Next, we will consider and dismiss a reply that might make us think we can consistently hold the Right to Rule View and claim (c) at the same time (III.). However, it remains a problem for the Right to Rule View that it rejects claim (c). Fortunately, we will see that there is a plausible, alternative understanding of legitimate authority – the Power to Command View (IV -VI). This alternative interpretation avoids the problems facing the Right to Rule View, and is the primary and basic notion of political legitimacy. Finally, we will briefly see that the Power to Command View enables us to deal with certain pressing issues – most importantly, questions of global justice – in ways that the Right to Rule View cannot (VII).
1. The Right to Rule as the Standard View of Political Legitimacy

Before we scrutinize claims (b) and (c), we need to see why the Right to Rule View is such a popular characterization of the idea of political legitimacy.

Philosophers normally think about the justification of political authority in terms of the effects it has on people. In this respect, it is one of Joseph Raz’s central insights into political authority that the exercise of political authority in some way changes the normative situation of those subject to the authority (Raz 1986, p. 99). We can see why the right to rule presents is such an attractive way to understand political legitimacy when we consider Wesley Hohfeld’s (Hohfeld 1919) well-known explanation of the nature and functions of rights. According to Hohfeld, every right includes at least one of four legal or moral advantages. Furthermore, each of these advantages correlates with a disadvantage of another person, who is bound by that right. On Hohfeld’s view, then, we arrive at the following four ‘incidents’:

(1) If you possess a claim-right this gives me a regarding duty to respect or fulfill that claim.
(2) If you have a permission then this means that I have no right to hinder your exercise of this privilege.
(3) If you possess a power, then I am liable to having to follow your instructions.
(4) Finally, if you possess an immunity I have a correlative disability in this respect.

These four possible correlations seem to show that the advantage of having a claim-right causes the most severe disadvantage on the part of those bound by this right. If your right gives me a duty then I am not merely liable to be affected by the exercise of your right. I also am under the obligation to do or not do what the related duty
demands of me. It is this appearance of being binding on others which explains why the right to rule has become popular as a defense of coercive political authority. When it is justified by a right to rule we can defend the exercise of political power against familiar charges of philosophical anarchism: if it is possible for an authority to oblige us to follow its instructions, we cannot think that it is not justified in enforcing rules on us. The stronger the obligation that thus arises for us the more powerful this justification of political authority becomes. The frequent distinction between ‘the right to rule’ and what it means ‘to rule rightly’, on the other hand, is intended to reflect the thought that legitimate authority does not always have to be perfectly just to be justified. As John Rawls holds, ‘legitimacy is a weaker idea than justice and imposes weaker constraints on what can be done [...] [It] allows an indeterminate range of injustice that justice might not permit’ (Rawls 1993, p. 428).

For present purposes, it is of paramount importance that we are aware of and clarify a possible ambiguity of the term ‘right to rule’. According to Hohfeld, every advantage that has as its aim a regarding correlative disadvantage constitutes a right. Thus, we can speak not only of claim-rights but also of permissions, powers, and immunities in terms of Hohfeldian right-indicents. However, the Right to Rule View we are about to criticise rests on (1) the notion of the right to rule as a Hohfeldian claim-right that generates stringent duties of compliance, coupled with (2) a Hohfeldian permission-right to enforce rules. This Right to Rule View does not advocate a ‘weaker sense of the right to rule’ (Buchanan 2010, p. 81) which identifies this right with a privilege, power, or immunity advantage of the authority. So whenever we consider the Right to Rule View in this essay we are dealing with that interpretation which sees political authority as legitimate if it possesses a claim-right to the obedience its subjects that renders effective its permission to enforce rules on them. Furthermore, as will be explained later (see III.), the fact that Hohfeld thinks of
all four correlative incidents as rights does not contradict the validity of claim (b) that all rights are grounded in some interest of the right-holders.

In contrast, whenever there is talk about the Power to Command View is this paper, this phrase refers to authorities that possess (1) a moral power to create duties in their subjects (such as the duty to comply with authoritative instructions) as well as (2) a permission to enforce rules on them.

2. The Problem with the Right to Rule View

The problem with the Right to Rule View is that it biases our understanding of what kind of political institutions can possess legitimacy. This becomes apparent as soon as we combine the right to rule, which is exemplified by claim (a), with the widely-held position (b) that all claim rights are grounded in some interest of those holding that right. Of course, the interest theory of rights is not universally believed to be correct (Steiner 1998). However, it is not too bold a claim to point out that the interest theory, which asserts that ‘rights ground requirements for action in the interest of other beings,’ (Raz 1986, p. 180) presents the contemporary dominant interpretation of what is involved in the possession of rights. When we think of right-holders as the intended and entitled beneficiary of the duties of another person (Lyons 1969, p. 182) the interest theory of rights withstands many familiar criticisms (Hart 1955, p. 180). Despite the existence of critics, then, it is not unreasonable to believe claim (b) to be correct.

However, if we hold claim (b) alongside the idea (a) that justified political power depends on having a right to rule then we also have to accept that legitimate authority is democratic authority, a claim that leads to a denial of claim (c) that there can be fully legitimate non-democratic authorities. This becomes plausible once we consider who those people are that can be thought to (a) have a right to rule and (b) have an
interest in the exercise of political authority. One group of people who do not qualify in these respects are the persons holding public offices of government. Gone are the days when people thought that certain qualities of individual persons, such as their noble birth, naturally gave them a claim-right to exercise power. It is no more acceptable to think that our elected democratic representatives have personal interests in holding their offices in any normatively relevant sense which could justify a claim-right of theirs to rule. It is certainly the case that our legislators personally benefit from the salaries and pensions attached to their offices. They also might enjoy being able to give orders to others. But these advantages that are conferred on people that hold public positions are not the reasons why we maintain such offices in the first place. Instead, as democratic theorists like Thomas Christiano point out, in a democracy it is the citizens who have an interest in (and thus claim-right to) their equal moral standing being publicly expressed, and their political opinions respected. For this reason, the citizens vest their democratic assembly with the permission to enforce laws in their name so that they consequently owe it to each other to obey these rules (Christiano 2008, p. 252). Thus, Christiano explains, it is ‘because all citizens have rights to an equal say and because the democratic assembly is the institutional method by which these equal political rights are exercised, [that] the democratic assembly has a right to rule’ (Christiano 2008, p. 248). Our interest in having our equal moral status publicly expressed cannot be satisfied by just any political institutional arrangement. Rather, ‘democracy constitutes a unique public realization of equality in collective decision-making’ (Christiano 2008, p. 252).

This particular function of democratic authority tells us why holding claims (a) that political legitimacy depends on having a right to rule and (b) that all rights are grounded in some interest of the right-holders lead to a rejection of claim (c) that there can be fully legitimate non-democratic authorities. If our justification of the
exercise of political power centers on the interests of the holders of the right to rule then only democratic citizens are plausibly thought to possess such a right. By casting their vote in public elections they empower an assembly of people who officially represent them to rule in their name and stead. No king, class of people, or party could, morally speaking, have a similarly justified interest in exercising political power. As a result, on the standard interpretation of political legitimacy ‘the idea of a right to rule [...] seems to be the primary notion of legitimacy while [other accounts] are dim reflections of this primary notion. To inquire about the legitimacy of an authority is in the first instance to inquire into its right to make decisions for others’ (Christiano 2008, p. 241).

Is democratic authority thus the only justified way to exercise political power on the Right to Rule View? Democratic theorists like Christiano normally do not accept this strong claim. To them there also can be other forms of justified coercive authorities like the bureaucracy of democratic states or even hostile but justified occupational forces (Christiano 2008, p. 241). However, on the Right to Rule View the justification of these other forms of authority can only be understood against the background of the full legitimacy of a democratic authority. The latter is based on the interests of the citizens as the real holders of the right to rule. Other forms of justified political power, in contrast, can only be considered partially legitimate or justified in enforcing rules within limited respects. They do not possess a right to rule and must therefore be justified by reference to other aspects. In this sense, the bureaucracy of democratic states is justified because it helps to realize the decisions of the actual authority – the democratic assembly which is justified because it possesses the right to rule.
3. Why the Notion of Derivative Rights cannot prevent the Limitedness of the Right to Rule View

At this point some readers are likely to object that there is another sort of right that could explain why political authorities might possess a genuine claim-right to be obeyed after all. They might argue that, as those acting in the name of their subjects, officials possess a derivative claim-right to rule and to be obeyed. This seems implied by Raz point that ‘some rights are held by persons as the agents, or organs of others’ (Raz 1986, p. 180). We can think, for example, of cases in which a guardian acts on behalf of her ward. If such derivative rights could be shown to be authentic claim-rights that are not merely the transferred rights of original right-holders we might think that also non-democratic authorities can possess a right to rule. They could vicariously hold such a claim-right right to be obeyed for their subjects even if the latter are not organized as a democratic people. In this way, the notion of derivative rights could enable us to loosen the connection between democratic citizens as interested right-holders and coercive political authorities as justified in enforcing rules. Just as a ward is often not able to choose her guardian the subjects of non-democratic authorities as well could be thought to be obligated by the claim-right to be owed obedience of an authority they did not democratically authorize but which acts in their interest. We could then consistently hold claims (a), (b), and (c) at the same time and would not face the problem this essay tries to solve. But how germane is the talk of derivative but genuine claim-rights in the context of the exercise of political power? Can we really think of the authority that political institutions claim to have in terms of a genuine right to rule?

When we take a closer look at this question we find that the option of invoking a derivative right to rule and be obeyed is not a tenable one. As Raz points out,
derivative rights are not morally fundamental rights. The latter instead require justification ‘on the ground that it serves the right-holder’s interest in having that right inasmuch as that interest is considered to be of ultimate value, i.e. inasmuch as the value of that interest does not derive from some other interest of the right-holder or of other persons’ (Raz 1986, p. 192). Thus, the reason why we cannot conceive of derivative rights as genuine claim-rights is that we cannot think of them independently of the interests of others.

We can better appreciate this point by drawing on Leif Wenar’s critique of the interest theory of rights. In his article ‘The Nature of Rights’ (Wenar 2005) Wenar argues that what speaks against claim (b) that all rights are grounded on some interest of the right-holder is that this theory cannot account for the rights of ‘occupational roles’ (Wenar 2005, p. 241) like those of a judge. After all, Wenar claims, judges possess rights, such as the right to sentence criminals, which cannot be grasped by the interest theory of rights. However, Wenar adds to this that the supposed right of a judge is really a ‘power-right’ (Wenar 2005, p. 242) which comes with this office. Hereby Wenar already indicates that what we deal with here is not a genuine claim-right of the judge. This is to say that the notion of a right to be obeyed is not primary to our understanding of the mandate of the judge. We can draw the following comparison: I certainly can be said to have the right to a fair trial since this entitlement is supposed to directly benefit me. I might be convicted at the end of the trial but I benefit from the fairness of the trial in contrast to being subjected to a show trial. On the other hand, when we ask why (to use Wenar’s terms) the judge has the right to sentence a criminal it is not enough to refer to a regarding power vested in him. Instead, we furthermore need to know why the judge has this power in the first place to understand the characteristics and authority of this office. In case of the
judge the answer to this question seems connected to the fact that it benefits the society and its members to entertain a legal system which features authoritative office like that of a judge. In light of this comparison, we can see that talking about the authority of offices like guardians or judges does not add much to the discussion. At best, speaking of rights might highlight the fact that someone acts in the interest of another person. This, however, does not contradict but confirms the interest theory of rights. So, while public offices do not function on the basis of their own claim-rights they arguably work by means of the exercise of certain powers to change the normative situation of people.

This is not to say, though, that agents who act in the name of others cannot possess their own genuine claim-rights. When I, for instance, hire a real estate agent he then exercises my right to buy property on my behalf. Furthermore, the real estate agent possesses certain rights, such as the right to not be deceived by me or not to have his records manipulated by one of his competitors. And these rights, we can plainly see, are genuine claim-rights of the real estate agent who exercises a right of mine on my behalf. However, the justification of the agent’s claim rights is based on his own interest qua real estate agent and not on my interest to acquire property. And when we ask further why the position of real estate agent should come with these kinds of rights we will have to refer to the interest of all of us as members of our society to have the services of such a position available to us. This is why the fact that agents that exercise the rights of others can have genuine claim-rights of their own does not contradict the interest theory of rights, that is to say: claim (b) that all rights are based on some interest of the right holder. All rights incidents that come with offices are grounded in a second-order justification: the real estate agent possesses certain claim-rights because this office cannot properly function without certain protections. But the reason why we should think it to be valuable that offices like
those of a real estate agent, a judge, or even the President are protected in this way can only be found in the interest of all of us in benefiting from the services these offices provide for us. No one ever holds or exercises the rights of another and benefits directly from this exercise. If my money is lost by the real estate agent in a property scam that the agent was unable to foresee, then it is I, not him, who is in a position to sue the fraudsters. If, on the other hand, the records of my real estate agent are manipulated he, and not I, is entitled to take the one who harmed him to court. The rights we hold qua property buyer and qua real estate agent are thus separate and do not benefit the other person. They only protect their holders because they are based on our interests as right holders.

At this point, we can see why the fact that Hohfeld considers all four correlative incidents as instances of rights does not contradict claim (b) and the interest theory of rights. We cannot refer to the authority of judges or guardians in the same way we can to our rights as customers, citizens, or human beings. Instead, Hohfeldian power-advantages require reference to the interests of someone else other than the judge, the guardian, or in general the one possessing the power. It seems that we therefore have reasons not to think of the powers of public office holders as genuine rights in the standard sense of this idea. We should instead conceive of these powers as the exercise of moral or legal powers. To talk about the non-fundamental, derivative rights of office holders, on the other hand, leads to the following two problems. First, this kind of talk obscures what is really at work with respect to these forms of authority: the guardian’s or the judge’s authority has to be explained in terms of a moral power and not a claim-right. Second, we risk missing what ultimately justifies the exercise of authority: it is not the interest of the right-holder but some other consideration. To avoid confusion between claim-rights and powers, and between the
interests of right-holders and other justificatory reasons we should therefore not refer to this authority as a *right* to rule.

This means, though, that we cannot appeal to the notion of derivative rights to solve the problem that holding claims (a) and (b) must lead to a rejection of claim (c) that non-democratic authorities can still be fully legitimate. Since it is not correct to think that public officials derivatively hold genuine claim-rights to be obeyed that make effective their permission to instruct people, non-democratic authorities cannot possess a claim-right to rule. Such a right to rule instead presupposes the existence of a democratic people whose members have an interest in having their moral equality publicly realized, which gives them reasons to empower some persons to rule them. The relation between democratic citizens and their representatives is not that of a ward to her guardian. Rather democratic officials possess the right to rule insofar as their citizens by vote vest them with permissions to enforce rules they, as subjects, owe to each other to follow. In this way, ‘the democratic assembly pools the equal political [claim-] rights of all the citizens into one decision-making body’ (Christiano 2008, p. 247). Once we realize that there is this strong link between the right to rule as the justification of political authority and democratic authorization procedures we understand why this standard view biases our discourse about political legitimacy in a particular way. According to the Right to Rule View, non-democratic authorities cannot constitute primary instances of justified political power. They can never be as fully and inherently legitimate as democratic authorities, which operate on the basis of a right to rule and be obeyed that is grounded in *the interest of the citizens as the actual right-holders*. But this shaping of the discussion about political legitimacy is problematic for reasons we shall now discover.
4. The First Problem: the Denial of Legitimate Pre-Democratic Authority

We just saw that an acceptance of claims that (a) political legitimacy rests on a right to rule and (b) all rights are grounded in some interest of the right-holder bias our thinking about legitimate authority. This is because holding these two claims leads to a rejection of claim (c) that there can be fully legitimate non-democratic authorities.

The Right to Rule View presupposes a democratic people whose members actually possess such a claim-right. Non-democratic institutions, on the other hand, cannot vicariously hold a claim-right to rule and be obeyed because they do not embody the claim-rights of their subjects. Such institutions can therefore not be justified by reference to any normatively relevant interests – which alone can justify a right to rule. They do not realize the interest of people to have their moral equality publicly expressed. But why does the following rejection of claim (c) constitute a problem for the Right to Rule View? Could we not accept that the only fully legitimate authorities are democratic ones that possess the right to rule?

There are at least two considerations that count against thinking of democratic authority as the primary and uniquely inherent form of political legitimacy. The first problem is that a view that identifies the justified exercise of political authority with a claim-right to be obeyed rejects the very idea of fully legitimate non-democratic authorities. The problem with this position is that it commits us to saying that before the founding of the first real democracy there had never been any political authority that was legitimate in an unqualified sense. But if that was the case then previous authorities must have ruled on the basis of some less comprehensive and piecemeal notion of political legitimacy. As their subjects, we would therefore not have been under a comprehensive and general obligation to obey their instructions. As David Hume notices this is quite an odd thought. In his essay ‘On the Original Contract’
Hume aims to criticize the philosophical idea that makes obedience dependent on the subjects’ consent. He points out that throughout human history even without consent and democratic authorization procedures people have been obedient to the ruling authorities. Hume then goes on to say that it seems unlikely that all of these people were wrong to think that they ever were under a general duty to comply with the orders of their rulers. With respect to the supposed necessity of consent for the legitimate exercise of power, he notes that

> It is strange, that an act of mind, which every individual is supposed to have formed, and after he came to the use of reason too, otherwise it could have no authority; that this act, I say, should be so unknown to all of them, that, over the face of the whole earth, there scarcely remain any traces or memory of it (Hume 1994, p. 189).

Of course, from a moral perspective pre-democratic authorities were always liable to at least one criticism: they failed to express publicly the moral equality of their subjects and respect their opinions. This, though, is not the same as the claim that such non-democratic authorities were unable generally to obligate their subjects because they did not possess a claim-right to be obeyed.

If we reject claim (c) that also non-democratic authorities can be fully justified in instructing the ones they coerce, we would have to accept the following: prior to the existence of democracy it was always morally permissible for people both to refuse to surrender their judgement to their non-democratic rulers and to treat their rulers’ commands as authoritative. Such subjects could still have acted wrongly. However, the wrongness of their actions would have been due to errors in their judgment. They would not have been wrong merely by disobeying the instructions of their non-
democratic rulers. Thus, only threats of punishment, and not a moral duty to obey authoritative commands, gave the subjects in this pre-democratic age reasons to comply with prohibitions on murder, theft, and fraud.

Of course, the citizens of non-democratic states can also be thought to have authority-independent moral obligations to refrain from such acts. Still, the point here is that on the Right to Rule View authoritative directives of non-democratic authorities that disallow such offenses cannot be morally binding – which seems quite a counter-intuitive thought. So the first problem of the right to rule notion of political legitimacy is that a rejection of claim (c) commits us to the thought that fully legitimate and binding authority did not exist prior to the establishment of the first real democracy.

5. The Second Problem: Ruling out Service Conceptions of Authority

The second issue that the right to rule view causes by biasing the discussion of political legitimacy in favor of democratic authority is that it excludes from the start other highly plausible and relevant accounts of what makes the concept applicable. These alternative characterizations of legitimate authority ground the justification of the exercise of political power not in the interests of the right-holders but in the interests of those subject to an authority. What views like those of Joseph Raz establish is a ‘service conception’ (Raz 1986, p. 56) of political authority that is not based on a right to rule or democratic authorization procedures. It seems hard to deny that their explanations of political legitimacy offer us important insights about this concept. We can thus not simply dismiss these important aspects because they do not square nicely with the Right to Rule View.
Raz’s theory of legitimate authority has been influential and – despite the above quotation (in which Raz talks about political legitimacy in terms of a right to rule) – can be interpreted as not depending on construing legitimacy by appeal to the claim-right to rule and be obeyed. According to his normal justification thesis:

the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly (Raz 1986, p. 53).

Raz’s crucial thought here is his description of the way authorities change the normative situation of their subjects. The normal justification thesis, of course, does not sit well with the Right to Rule View since it makes no reference to the interests of right-holders which justify the authority. Instead, Raz’s thesis works by focusing on other needs of people, not primarily their interest in having their moral equality respected and publicly realized. This is reflected in Raz’s account of how authority functions. As an example we can think of a situation in which I suffer from a dangerous disease. However, the one physician, who is an expert in treating this disease and whose help is available to me, turns out to prioritize some of his other patients to whom he has close personal ties. Now, it is obvious that such a physician is liable to criticism for his biased way of treating his patients. Nonetheless, if he is the best hope I have to be saved from death then I have very important moral reasons to swallow my sense of indignation and to submit myself to his (biased) care.
According to Raz, authority works by giving us ‘content-independent reasons’ (Raz 1986, p. 35) for action. This means that the fact that the authority is the source of an instruction is a reason to comply with it irrespectively of the content of that order. We might, for instance, think that we have reasons to hide some of our money from the tax office to save it for the education of our children. However, since it is a legitimate government that instructs us to pay taxes, we ought to take the state’s instruction as giving us a sound reason to pay, and refrain from acting on the countervailing consideration. Raz summarizes this effect of the exercise of authority in his *pre-emptive thesis*. This holds that ‘the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them’ (Raz 1986, p. 47). Raz thinks that in this way authoritative instructions ought to replace our own reasoning about an issue.

A simultaneous, secondary feature of content-independent reasons is that they act as ‘exclusionary reason[s],’ (Raz 1990, p. 39) which is to say that they tell us to not act on other reasons we might have. As the *normal justification thesis* explains, the exclusionary and content-independent force of authoritative directives is ultimately justified by the fact that conformity with these instructions enables us to do better what we have reasons to do anyway.

Content-independent reasons, though, can take the form of exercising moral powers as they can play a role in invoking claim-rights. In general, we can note that Raz’s account tells us that an authority is usually justified in coercing its subjects because these instructions benefit them in some way. So on the characterization of authority that grounds its justification in the exercise of a moral power to command what counts is not that citizens exercise their rights to have their moral equality respected. Rather, on this alternative view, the exercise of such power is considered
legitimate because it helps realize more basic interests of those subject to the authority. The Power to Command View can thus accept claim (c) and explains why also subjects of non-democratic authorities are obliged to obey those rules that help to satisfy their fundamental needs.

What is central to the Power to Command View of political legitimacy is that authorities are justified if and because they solve important problems for us and thereby enable our collective social practices. Hume agrees with this explanation by asserting ‘if the reason be asked of that obedience, which we are bound to pay to government, I readily answer, because society could not otherwise subsist’ (Hume 1994, p. 197).

Since maintaining many social practices is a fundamental interest we all share political authorities that help us in performing these tasks are not merely instrumentally valuable. They are rather of constitutive value for our social lives since without their coordinating services complex social enterprises like human societies would not be possible. This enabling function of political authority also for Raz constitutes its primary justification. To him ‘a major, if not the main, factor in establishing the legitimacy of political authorities is their ability to secure coordination’ (Raz 2006, p. 1031). It seems therefore that the Power to Command View is less restrictive in its justification of authority than the standard Right to Rule View: we all have basic interests in sustaining our social practices regardless of whether the authority that enables them also publicly embodies our equal moral standing. So, the second problem the Right to Rule Account faces by rejecting claim (c) is that it ignores these important and basic considerations that can plausibly justify the exercise of political power.
6. The Need for a New Standard Characterization of Political Legitimacy

So what do the two shortcomings the right to rule view suffers from due to its rejection of claim (c) mean for our understanding of political legitimacy?

As we saw the denial of the thought that there can be fully legitimate but non-democratic authorities leads to serious problems. On the one hand, the Right to Rule View commits us to denying that before the creation of the first democracy anyone was comprehensively duty bound to obey the instructions of their rulers. Furthermore, the Right to Rule View rules out important considerations that can justify political authorities which fall short of publicly embodying the moral equality of their subjects. These problematic implications of the currently dominant interpretation of political legitimacy are reasons to change our understanding of what constitutes the primary notion of this concept. As we saw, the Power to Command View allows us to take into account various important justifications of political authority that the current standard view ignores. The Power to Command Account, on the other hand, does not commit us to a problematic rejection of claim (c). It thus constitutes a more plausible and superior interpretation of the idea of political legitimacy than the Right to Rule View.

However, it is important for us to note that the Power to Command Approach does not deny the validity of the claim that (a) there are democratic authorities that possess the right to rule. Instead it allows us to hold all three claims (a), (b), and (c) at a time. Democratic theorists do not have to give up on their claim that democratic authorities have particular value when they take up the Power to Command View. The only thing the latter denies is that authority is the primary notion of political legitimacy against the background of which all other forms of justified authority have to be measured. This latter role is the one that the power to command view assumes
itself. It tells us that in many cases we can and even ought to end up with democratically authorized political institutions. This approach, though, does not start out with this particular way of justifying the exercise of political power by appealing to power-holders’ interests. Instead, the approach that justifies political authority by focusing on the interests of the subjects claims that in order for us to make the right to rule a necessary condition of legitimate authority we need to refer to further normatively relevant factors. These further aspects will often depend on the context we are considering.

In this sense Allen Buchanan, for instance, argues that only ‘where democratic authorization is possible (and can be pursued without excessive risk to basic rights) it is necessary for political legitimacy’ (Buchanan 2004, p. 259). However, where such democratic procedures are not possible but morally important tasks have to be performed non-democratic authorities, too, can permissibly enforce rules to these ends. The most important aspect this paper hopes to show is that, while also powers are Hohfeldian right-incidents, they are justified in an importantly different way. They are based on the interests of the subjects, not the interests of the right-holders. In a nutshell, we should note that this essay provides some weighty considerations in favour of replacing the Right to Rule Notion with the Power to Command View as the standard picture of what constitutes the idea of political legitimacy.

7. The Power to Command View and Global Distributive Justice

Besides its greater theoretical coherence, what value is there in construing the idea of political legitimacy in terms of the exercise of a moral power? The short remainder of this essay is devoted to showing that the characterization of justified authority as resting on a power to command can be of considerable advantage when we try to
think about some pressing practical moral problems. One such prominent and urgent issue regards the question of how we ought to react to the poverty and the relative detrimental inequalities that exist throughout our world. As we will see, this problem presents a case in which the interpretation of legitimate authority as a moral power to enforce rules has some real bite.

Against the background of the view that sees authority as dependent on a claim-right to rule and be obeyed, the question of whether the poverty-related suffering in the world generates transnational distributive obligations poses a tremendous difficulty. Some philosophers, for instance, reject the very idea of global distributive justice because they think that the concept of distributive justice presupposes the existence of common political authorities that act in the name of their subjects. To these philosophers, the elimination of harmful interpersonal disparities is generally a side-effect of having to justify the use of coercive political institutions. Because such institutions enforce rules on their subjects, the price they have to pay to be allowed to do so is to treat them with equal concern – which must include giving subjects a democratic say in the collective decision-making process. But these philosophers often also hold that we are under no obligation to establish new, common authorities with people from other countries. Currently, there are no democratic international institutions that act in the name of all those they coerce. The supporters of the Right to Rule View thus conclude that only voluntarily accepted transnational obligations and humanitarian aid can count as morally justifiable attempts to combat poverty-related suffering. But if the legitimacy of international authorities depends on them having a right to rule, and global democracy is non-existent and not mandatory, then these pessimistic philosophers might be right in claiming that there are no sound principles of global distributive justice.
Advocates of the Right to Rule View encounter another difficulty when addressing the problem of existing harmful global inequalities. This difficulty is caused by some democratic theorists’ rejection of the very idea of global democracy. For these democratic thinkers, a global democracy is not only non-existent at present, it is also normatively undesirable. Their argument is that the current geopolitical and economic situation does not warrant the normative conditions for establishing global democratic institutions. For instance, not all human beings currently have equal stakes in those actual international practices that would require authoritative regulation (Christiano 2010, pp. 132, 133). But democracy is valuable because (and insofar as) it allows people, whose actions have profound effects on each other’s lives, to equally influence the determination of the public rules they all live by. There is little disagreement among political philosophers that the deep level of interdependency that we find in nation states is not reached in the global sphere. It would thus seem unjustifiable for us establish a global democracy that would give equal decision-making power to people with unequal stakes in decisions. The stakes people have in decisions on international rules are not even roughly equal, unlike the stakes citizens of one country have in decisions on national legislation. Furthermore, many democratic thinkers believe that the democratic decision-making model is the best one available to ensure the accountability of political authorities. These democratic theorists argue that this situation leaves us with a dilemma. On the one hand, they agree that we need to work toward the elimination of gross and extremely harmful global inequalities. On the other hand, though, internationally the normative conditions of the possibility of democratic global authority are not met. So although we require international institutions to combat the problem caused by global poverty, such institutions cannot be legitimate because they cannot be democratic. Thus the disturbing implication of the democratic account of political
legitimacy is that fighting global poverty must be left to voluntary agreements among states. All we can do to eliminate existing detrimental inequalities is to hope for the good will of the rich nations in this world. Unfortunately, a look into the recent history shows that in this case we should not be too optimistic.

So how exactly does power to command view of political legitimacy help us to make progress with respect to questions of global justice? It does so by morally allowing for non-democratic coercive global authorities whose job it is to enforce salient duties of justice in the international sphere. Such institutions would not have to amount to the creation of a world state. They could instead supplement the existing authority of states where the latters’ coordinating and enforcing abilities run out.7 Non-democratic coercive global institutions also do not have simply to brush aside worries about the absence of a global consensus on the details of social justice. That is to say: for the Power to Command View the fact that we do not internationally agree about what we owe each other within and across our existing states is not an insurmountable problem. Rather, on the Power View global governance institutions could enforce relatively uncontroversial general duties such as bans on aggressive wars, weapons trading, unfair terms and conditions of trade, the persecution of war criminals, and the exclusion of people from making use of a share of the world’s resources etc. The point here is not to argue for a detailed account of what such institutions would have to look like or what duties we have globally. What the present discussion aims to show us is that the Power to Rule Account of political authority (which rests on the exercise of moral powers and focuses on the interests of subjects instead of right-holders) can help us better to address pressing problems of our time in ways that are precluded by other theories of political legitimacy. The power to command view is, therefore, not only more coherent with an important set of theoretical convictions. At the level of application,
it also provides us with a more plausible account of justified political authority than those views that depend on a right to rule.

1 Raz (1985, p. 3). See also Allen Buchanan and Robert Keohane: ‘To say that an institution is legitimate in the normative sense is to assert that it has the right to rule—where ruling includes promulgating rules and attempting to secure compliance with them by attaching costs to noncompliance and/or benefits to compliance’ (Buchanan, Keohane 2006, p. 405) and John Tasioulas: ‘Legitimate authority [...] is the ‘right to rule’, the exercise of which ‘binds’ its subjects by imposing duties of obedience’ (Tasioulas 2010, pp. 97, 98).

2 Thanks to [...] for making me aware of this complication and to [...] for helpful conversations on this issue.

3 This is true irrespectively whether we think of interests as being necessary or merely sufficient for the justification of rights.

4 We should note that this does not mean that the service conception of authority cannot account for person’s interest to have their moral equality publicly realized. In this sense, Christiano acknowledges that the normal justification thesis can be understood to be at work in a non-instrumental way with respect to democratic authorization procedures: “It is worth noting here that Raz’s normal justification thesis could conceivably accommodate [the] conception of democratic authority [as a unique public realization of equality in collective decision-making]. For one might say that one acts better in accordance with the principle of equality by deferring to the decision of the democratic assembly than by trying to advance equality on one’s own” (Christiano 2008, p. 252, referring to Raz and Matthew Clayton).

5 This restrictive view is often attributed to Thomas Nagel (2005, pp. 113-147). However, it is possible to interpret Nagel’s argument in more charitable way. Nagel uses the term ‘justice’ in an idiosyncratic way to refer only to egalitarian justice. Thus,
on the charitable view of Nagel his restriction of duties of distributive justice to associations that are ruled by one and the same authority can be read as merely limiting the concern for *equality* to these associative contexts. This would leave open the possibility that Nagel endorses a sufficiency principle of global distributive justice and only rejects the idea of global egalitarian justice. It could then be the case that common non-democratic international institutions can give rise to non-egalitarian global distributive duties of justice. But even on the charitable view, two of Nagel’s claims cause him to conclude that, due to the way our world is right now, questions of distributive justice do not arise at all in the global sphere. This is because he thinks that common authorities are a necessary condition for the enforcement of any duties of distributive justice, and because he also thinks that current democratic states have no obligations to establish common international authorities (Nagel 2005, pp. 121, 140). Thus, even on the charitable interpretation, Nagel’s argument generates the following problem: while non-egalitarian duties of global distributive justice might be conceivable as a result of common non-democratic global institutions, the possibility of *egalitarian* duties of global distributive justice depends on the existence of a common *democratic* authority.

6 Thomas Christiano’s analysis of the current international situation can be interpreted as a case in point (Christiano 2010).

7 For a relevant argument, see Buchanan (2011).

**References**


