THE MEANING, VALUE, AND POSSIBILITY OF BEING AT HOME IN THE
SOCIAL WORLD

by

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ABSTRACT

Consider the following Hegelian idea: It is important that we be at home in the social world, and it is deeply problematic if we are not. In this dissertation, I employ concepts of contemporary vintage to specify the meaning of the Hegelian notions of the social world, being at home in the social world, and being alienated from it. I also explicate the value of being at home in one’s world and the conditions under which being at home in this manner is possible. This dissertation proceeds in six chapters. In the first chapter, I describe the social world as comprising social institutions and social roles. I argue that being at home in the social world entails identifying with one’s roles and institutions. In the second chapter, I argue that an agent realizes the values of meaning and self-determination through pursuing her social roles. Thus, the value of being at home in the social world is that when the world is a home and one perceives it to be such, one can realize the values of meaning and self-determination through participating in its institutions. Moreover, I argue that when one identifies with one’s role one thereby has a further weighty reason to conform to the duties that constitute the role—namely, by so doing one achieves the goods of meaning and self-determination. In chapters three through five, I consider whether it is possible to identify with and experience roles characterized by authority structures as homes. Chapters three and four specify the notion of an authority structure. In chapter five, I enumerate the conditions under which an agent can be at home in an authority-claiming institution. In short, I argue that the key conditions are that the institution’s authority is justified and that the agent identifies with the institution and her role within it. Finally, in chapter six I develop an implication of chapter four’s discussion of authority for the debate in analytic jurisprudence between the proponents of exclusive and inclusive legal positivism. In short, this discussion supports inclusive legal positivism and weighs against exclusive legal positivism.
INTRODUCTION

Consider the following Hegelian notion: We have a fundamental interest in being at home in the social world; conversely, finding the social world to be alienating rather than a home is deeply problematic. There are a number of reasons why we might reject this idea. First, it is obscure. Being at home in the social world is a metaphor, but for what exactly? What is a social world? What does it mean to be at home in it? Second, one might question the importance of being at home in the social world. It is a problem if we are not at home but rather alienated with respect to some things, one’s actual home for instance, but not others, say, the Antarctic desert, a dog kennel, or a battlefield. Given what these latter things are, we should not expect them to be homes for us nor should we desire that they be homes. We might question, then, whether the social world is the type of thing that should be a home for us. On one view, we are largely self-interested beings competing with another for scarce goods such as status and wealth. The point of the social world for beings like us is to tame and moderate conflict and to serve as a facility for limited and negotiated cooperation. As such, the social world is fundamentally a place of bounded conflict and struggle; it may be useful in this sense, but it is no home. On a yet more pessimistic view, the point of the institutions of the social world is to constrain conflict and facilitate cooperation in ways that systematically benefit some at the expense of others. The social world is a self-sustaining system of exploitative winners and exploited losers. This world, at least for the losers, is no home, and it is naïve to expect it to be otherwise.
This dissertation defends against these challenges to the Hegelian claim. I meet the first challenge—the claim that the being at home in the social world is obscure—directly: One is at home in the social world when (1) one identifies with some subset of social roles and the social institutions that house those roles and (2) the relevant social roles and institutions are worthy of one’s identification in the sense that they are ready facilities for the realization of meaning by those who identify with and participate in them. I specify meaning as a good that is realized when one organizes a significant swath of one’s life, both as a snapshot and over the course of one’s life, with respect to a sufficiently profound and moral value. One realizes this good when one appreciates the value of one’s life so organized and lived at both a cognitive and emotional level—i.e., when one reflectively affirms and feels its value.

This response to the first challenge points to the response to the second challenge, which questions the value and possibility of being at home in the social world. It is important to be at home in the social world because one thereby achieves meaning in one’s life. Conversely, being alienated from the social world is problematic because one is thereby deprived of a key opportunity for achieving meaning. Though I do not argue that the only way to achieve meaning in one’s life is to be at home in the social world, I suspect that this may be true or nearly so. As we shall see, various features of the social world (under the right conditions) socialize and dispose one in a way that facilitates the realization of meaning. Moreover, the social world enables the realization of weighty values that would be impossible to realize outside of the social world.
Completely responding to the second challenge requires explicating achievable conditions under which an agent is at home in the social world—i.e., describing the conditions under which the social world’s roles and institutions are such that their inhabitants can realize meaning by identifying with and participating in them. I leave for another occasion consideration of whether our institutions meet these conditions and whether it is possible for any social institution to meet them fully. Nonetheless, I think that the conditions I describe seem on their face to be achievable.

Authority structures pose a major challenge to the possibility of our world’s being a home for us. By their very nature, authorities impose binding requirements on their subjects. A likely and justified response in many cases is to take such requirements as alien impositions rather than to identify with them. Our social world is rife with such structures. The state, workplace management, professional organizations, and other authoritative bodies issue and enforce rules and directives that govern their respective domains. Such structures define many of the duties of our social roles and many of the rules of our institutions. Moreover, the subjects of social roles and institutions are liable to incur new duties at the behest of these structures and to experience changes in the rules that constitute their social institutions. Being at home in our social roles and institutions requires identifying with them, shaped and constituted as they are by authority structures. Moreover, being at home requires that such identification be merited. Much of the dissertation comprises a discussion of the nature of these authority structures and the conditions under which they can be part of a social world that merits our identification.
My discussion and defense of the meaning, value, and possibility of being at home in the social world proceeds in five chapters. The sixth chapter of the dissertation develops an implication that the discussion of authority in earlier chapters has for certain theories in the philosophy of law. In what follows, I briefly summarize each of these chapters.

In chapters one and two, I provide a specification of the social world and the state of being at home in it. To do this I make use of a number of contemporary views of society and practical reason. In chapter one I argue that we can understand an important part of our social world in terms of conventional duties and rights that define social roles and ultimately social institutions. For example, we associate a number of conventional duties and rights with the social roles of mother, lawyer, citizen of the state, and so on. I describe these duties and rights in terms of H.L.A. Hart’s notion of a social rule as a building block of these conventional duties.

Social roles are housed by social institutions that comprise a number of roles. The roles of an institution work together to discharge ends characteristic of the relevant social institution. For example, the various family members’ roles fit together in a way that conduces to the material and emotional needs of children and adult members of the family. The social world, then, is largely composed of the social institutions and the social roles that they house. To be at home in the social world is to be at home in these social institutions and roles.

To be at home in one’s social institutions and roles involves a subjective and objective element. One who is subjectively at home in her social roles and institutions
identifies with them. One is objectively at home in such roles and institutions when they merit such identification. To identify with one’s social role involves a number of elements. One who identifies with a social role has an end that leads her to conform generally with the requirements of the role. When she identifies with her role in a reflective way, the agent values the end of her role in two modes. First, she feels its value. She has a generally positive affective attitude toward her life as lived in pursuit of the role’s duties. Second, she appreciates the role’s value at a cognitive level. In sum, one who identifies with her role has the role’s end as her own and appreciates its intrinsic value at both an affective and cognitive level.

I do two things in chapter two. First, I introduce the objective aspect of being at home in the world. Second, I argue that when one identifies with a role that meets the objective aspect of being a home, one has particular reasons to conform to the requirements of the role; moreover, these reasons have a moral cast to them. Let us describe these two tasks of chapter two in turn.

The objective aspect of being a home is realized by a social world that facilitates its inhabitants’ realization of the good of meaning. For one to realize meaning in one’s life, it must have a structure of some sort. For this structure to be a source of meaning, it must comprehend a sizeable portion of one’s activity over a significant span of time. Moreover, the structure of a meaningful life revolves around a valuable point. Morality and non-triviality are conditions of the value of this point. Hence, a meaningful life is one organized on the basis of a value that is sufficiently profound and that meets a moral threshold. The good of meaning has an objective and subjective aspect. To the extent
one’s life is organized on the basis of a sufficiently profound and moral value, it realizes the objective aspect of meaning. The subjective aspect is the appreciation of such a life’s value by the person who leads the life. This subjective appreciation is realized in two modes: one cognitive and the other affective. One who achieves meaning in her life does not only judge that her life realizes an intrinsically valuable point, she also feels that the life is valuable.

Social roles are key facilitators of both the subjective and objective aspects of a meaningful life. Social institutions facilitate the objective aspect of meaning by providing ready-made structures for organizing one’s life in service of valuable and sufficiently moral ends. For example, being a doctor, a mother, a citizen in a just state and so on are all ways of organizing one’s life in this way. Social institutions and social roles play an important role in facilitating the realization of the subjective aspect of meaning by inculcating their inhabitants with moral categories and affective dispositions that favor the ends that social roles realize. To the extent that the institutions and roles of the social world facilitate the realization of meaning in its objective and subjective aspect, they meet the objective aspect of being a home for their inhabitants.

The second task of chapter two is to argue that an agent’s identification with a role provides her with reasons to conform to its requirements. The basic idea is that the agent who identifies with her role has a particularly weighty reason to perform the role’s requirements—namely, she achieves the good of meaning by doing so. By fulfilling the requirements of her role, the identifier constructs a meaningful life, a life that has a valuable point that she appreciates affectively and cognitively. A recurrent metaphor that
I employ in this chapter is the idea of a background sea of reasons or value. This metaphor presupposes a plurality of incommensurate values that an agent may choose to realize. This background sea of incommensurate values threatens to disorient and overwhelm the agent. It is hard to decide which of these eligible reasons to pursue at any particular moment. Organizing one’s life around a larger point helps with this problem. When one makes the point of one’s life some larger good such as teaching students, caring for children, or as little-league coach—in other words, when one identifies with these various social roles—a thread of reasons and values related to this larger goal stands out in this sea of reasons. One attends to the reasons related to this larger point and not others because it is through these reasons that one achieves a meaningful life.

Moreover, I argue that one who realizes meaning through discharging the duties of her role has a reason of a moral cast to conform to her role-duties. First, it has the structure of a Kantian duty in the sense that one has reason to conform to the role’s directives that normally outweigh conflicting desires or reasons. Second, one who realizes meaning through discharging the duties of her role comes to have reasons based in reciprocity to maintain the relevant social institutions of the society. One is benefited by these institutions and, hence one has a reason to maintain them. Given that these institutions are largely constituted by widespread participation in social rules that correspond to the institutions’ duties, one can help maintain such institutions by participating in them—by following the relevant rules and criticizing others for their failures to follow them. Thus, one who has achieved meaning through participation in her role has a reciprocity-based duty to continue to follow her institutional duties.
Chapters three through five address a particular problem with the possibility of being at home in one’s social roles and social institutions. I distinguish in chapter one between two kinds of duties of a social role. One is a role-duty proper. Role-duties are the duties associated with roles other than the second form of duty—authority-duties. An authority-duty is a duty associated with the role that requires conformity to the directives of an authority associated with the role. For example, the role of citizen includes a duty to obey the directives of the state, and the role of professor requires conforming to the directives of certain authoritative bodies within the university. Moreover, authorities associated with roles define in many respects the contours of the duties associated with roles. For example, the state defines the precise contours of the role of parent. It defines many of the minimal requirements of attention to the well-being of the parent’s children. It defines the conditions under which children will be taken away from their parents. It defines who can and cannot adopt children and so on. The contours of many roles are defined by the state and quasi-governmental bodies in this way. In short, contemporary roles are highly juridified. That is, their contours are in many cases defined by authorities.

I argue that to identify with a social role and, hence, to realize the subjective aspect of being at home in the role, one must have an intrinsically valuable end that is based on the role. For an end to be based on a role, it must lead one to conform for the most part to the duties of the role. Authority-duties pose a two-fold puzzle: How do the ends of social roles lead one to conform to the authority-duties associated with the role? Moreover, how do they do so in a way that facilitates one’s being at home in and not
alienated from the authority structure associated with the role? Chapters three through five describe the circumstances under which an end of a social role leads one to conform to the authority-duties associated with the role in a way that facilitates being at home in the authority-governed role.

In chapters three and four, I clarify the notion of an authority. Chapter three clarifies the notion of a content-independent reasons. On many views, a distinctive feature of institutional authorities is that they provide their subjects with content-independent reasons. Though many hold that the provision of content-independent reasons is a key element of authority, the notion of a content-independent reason is not well-defined. There are two basic ideas associated with this notion that are often conflated. The first holds that a content-independent reason is a reason to do an action irrespective of the content of the action. On this view, authoritative directives or commands are distinctive because they can be reasons to do most anything. If the authority commands X, then one has a reason to X. If it commands Y, then one has a reason to Y. One has a reason, then, to do whatever action the authority commands irrespective of the content of the action commanded.

However, as I argue in chapter three, if this is the proper conception of content-independent reasons, then it is a concept with few instantiations. The force of a command seems always conditioned by the content of the command. For example, an authority’s command oftentimes has reason-giving force only insofar as it does not violate certain requirements of morality. Similarly, authorities’ commands are oftentimes authoritative only over a certain domain of reasons. For example, though the authority of an
employer’s directives specifying who among her employees should answer the phones would be unexceptionable, in all but the most unusual circumstances, an employer’s directives specifying what religion to practice would not be authoritative. Thus, the authority of the employer’s commands seems to be conditioned by its content.

A second understanding of content-independence holds that a content-independent reason is a reason to do an action because some agent has prescribed that one perform the act. In chapter two I argue that this latter understanding of content-independent reason is the correct one. Moreover, I connect this understanding to Grice’s account of non-natural meaning. In short, content-independent reasons are the kinds of reasons distinctive of utterances of non-natural meaning. Finally, in this chapter, I enumerate a handful of conditions that enable agents as sources of content-independent reasons—i.e. conditions that an agent must realize for others to be justified in taking the agent’s prescriptions as reasons to perform the prescribed act.

For an agent to be an authority over a subject, it is not sufficient that the authority provide the subject with content-independent reason. To see this, consider that we often have reason to do as a friend requests because of his request. This request is a content-independent reason; it is a reason for doing the requested action because someone prescribes the action to us (in the form of a request). However, our friend in this case does not have authority over us. An authoritative directive provides its subject with content-independent reason and something further. In chapter four, I explicate two possibilities of what this something further must be: one specified by the Razian account of authority and the other specified by the moral conception of authority.
On Raz’s account, authoritative directives necessarily provide their subjects with content-independent and exclusionary reasons. An exclusionary reason is a second-order reason not to take otherwise relevant reasons into account when considering whether to act. Authoritative directives, on Raz’s account, provide this form of reason. For example, if a legitimately authoritative law requires that one pay $10 in taxes to the government, this law excludes from one’s deliberations the various reasons that otherwise would be relevant to one’s disposition of the $10, such as where the $10 could be put to best use. In this chapter, I also enumerate the main justificatory ground of this form of authority: the normal justification thesis.

I argue that Raz describes a form of authority but not the only form. I argue that there is also moral authority. Unlike Razian authority, moral authority does not entail the provision of exclusionary reasons. Rather, moral authority entails the authority’s moral right of obedience and the subject’s duty of obedience. I describe two main grounds of this form of authority: respect and the normal justification thesis when it holds over the domain of moral reasons.

In chapter five, I describe the conditions under which it is possible to be at home in a social institution governed by an authority structure. The key condition is that one identifies with the social institution that houses one’s social role. Any social institution houses a number of roles that serve some larger end. For example, a university might serve general ends such as research and education. This end is the end of the social institution. Identifying with such a social institution involves having and valuing the
social institution’s end and being committed to pursuing it as a member of the social institution.

   Coordinating agents are often necessary or highly conducive to the realization of the end of a social institution. A coordinating agent coordinates the efforts of the members of the social institution by issuing rules and directives that govern the actions of the institution’s members and serve the institution’s end. I canvass the various conditions under which the subjects of such an institution have reason to treat the coordinating agent’s directives as authoritative. In some cases, the authority is Razian, in others it is moral, and in some it is both. Moreover, I argue that one can be at home in a social institution governed by the authority structure if one identifies with the social institution’s end and the authority structure is a necessary or highly conducive coordinating agent with respect to the end.

   Finally, in chapter five I describe conditions under which identification is otiose as a ground of the duties of a role—namely, when the end of a role and its associated institution is morally incumbent. As an example, I suggest that giving each an equal say in the determination of the rules of the group may be such a morally incumbent end. One is bound by such an end and the role and institution necessary to discharge it irrespective of whether one identifies with such role and institution. Nonetheless, it remains important that one identify with the end and its associated institutions. If one does not, one fails to meet the subjective element of being at home in the social world. In this case, one should yet fails to identify with the institution and, hence, is not at home in the morally incumbent institution because of this failure.
Chapter six develops an implication of the discussion of the nature of authority found in chapters three and four. A form of legal positivism—Joseph Raz’s hard positivism—holds that only certain kinds of norms are eligible to be legal norms or, in other words, the laws of a legal system. Namely, only norms that legal officials can recognize without recourse to moral deliberation can be laws. The upshot of this stricture is that the mark of a law must be its pedigree in some source. For example, it is passed by the legislature, it is the custom of the land, or it is established by a court.

This hard positivist view of the law is based on a view of what the law essentially is. Essentially, laws purport to provide legal officials and citizens with authoritative guidance. They are authoritative. For Raz, to be authoritative is, among other things, to provide exclusionary reasons—second order reasons to exclude otherwise relevant reasons from one’s deliberations about how to decide a case or to act. Moreover, Raz holds that laws are strongly exclusionary. They exclude all reasons relevant to the formation of the law. On Raz’s view, they are exclusionary in this strong sense because the point of law is to serve its subjects conformity to the reasons that apply to them. It does this by removing the task of deliberating about relevant reasons from the subjects and, in effect, performing this task for them better than they could if left to their own lights.

We can see, then, why Raz holds that legal norms cannot be norms that are recognized through moral deliberation. Essentially, laws purport to serve their subjects by providing them with authoritative and, hence, exclusionary guidance. They serve legal officials and citizens by excluding from their deliberation considerations, including moral
considerations, and providing them with directives that enable the citizens and legal officials to better conform to these considerations than they could left to their own devices. Norms that citizens and legal officials must identify through moral deliberation regarding the worth of the law cannot purport to provide this authoritative, and hence, exclusionary guidance.

In chapter six, I agree that laws necessarily purport to provide their subjects with authoritative guidance. However, contra Raz and hard positivism, I argue that the provision of authoritative guidance does not necessarily entail the provision of exclusionary reasons. The basis of this argument is the observation in chapter four that there are a variety of forms of authority. One form is Razian authority. Razian authority entails exclusionary reason. A second form is moral authority, which does not entail exclusionary reason. Law, I argue, is a mixture of norms that are authoritative in either (sometimes both) of these senses. Thus, it does not follow from the claim that law is authoritative that it is exclusionary. It is not the case, then, that law, by its very nature, is the sort of thing that may not be identified by recourse to moral considerations. In other words, I argue that hard positivism, which holds that laws must not be identified by recourse to moral considerations, is false and that a form of soft positivism, which holds that moral deliberation may figure in the identification of a legal system’s laws, is true.
CHAPTER 1

BEING AT HOME IN THE SOCIAL WORLD

For Hegel, being at home in the social world is a fundamental value and failing to achieve this value, being alienated from the social world, is a fundamental disvalue.¹ On this point Marx agrees with Hegel. They disagree, however, regarding the possibility of being at home in (rather than alienated from) the modern liberal and capitalist world. Whereas Hegel is an optimist on this score, Marx is not.² Though I take it that this question remains as alive and pressing today as it was in 19th century Europe, I do not answer it here. Rather, I situate the contested notion in terms of contemporary philosophical theory to help us think about it as it applies to us in the 21st century. Moreover, I have no intent of capturing the full complexity of Marx’s and Hegel’s respective understandings of at-homeness and alienation. I more modestly attempt to capture an aspect of this set of ideas, trading grand scale for (hopefully) precision of terms and application. Note also that the complete notion of being at home in the social world entails a subjective relation and certain objective conditions. In this chapter, I

¹ G.W.F. Hegel (1991), § 4. See also the discussion of Hegel’s use of this notion in Hardimon (1994b). Thomas Christiano acknowledges the value of being at home in the social world in his argument that democracy furthers this value. See Christiano (2004), 273.
describe only its subjective aspect, leaving for the next chapter discussion of the objective conditions that the social world must meet to warrant appreciation as a home. 3

This chapter proceeds in two parts. In part one, I describe in detail an important aspect of the social world—namely, the duties that apply to us by virtue of the social roles that we occupy, such as the duties of a mother, a doctor, or a citizen of the state. Describing the duties of social roles requires describing social roles. In turn, describing social roles requires describing the social institutions that house these roles. Social institutions, roles, and duties are key elements of the social world that may or may not be a home for us. In part two of this chapter, I describe the subjective relationship that one has with these social roles and their attendant duties when at home in the social world—namely, one identifies with them.

A handful of contemporary authors have developed conceptions of identification. They employ this conception in service of a number of purposes other than providing an account of the subjective aspect of being at home in the world. Rather, these conceptions of identification figure in accounts of reasons, free will and moral responsibility. As we shall see, yet another use that these conceptions may have is as the basis of an account of being at home in the social world. In this part, I consider and reject accounts of being at home in the social world based on the conceptions of identification defended by Michael Hardimon, Harry Frankfurt, and R. Jay Wallace, respectively. I build on these accounts to develop an alternative conception of identification that works better than Hardimon’s,

3 For a discussion of the subjective and objective element of Hegel’s notion of being at home in the world, see Hardimon (1994b), 95ff.
Frankfurt’s and Wallace’s conceptions as a basis of the subjective aspect of being at home in the social world.

1 Social Duties, Roles, and Institutions

A few examples make clear that role-duties are a commonplace and pervasive feature of our everyday lives. Mothers and fathers must care for and support their children and spouses in various ways. Little League coaches must coach their players and keep the parents informed about various team-related matters along the way. Professors must teach, grade papers, do committee work, and research. Citizens must conform to the state’s directives and participate in the political process. Note that role-duties such as these fundamentally differ from moral duties in at least two ways. First, unlike moral duties, they are conventional. Second, role-duties apply only to occupants of social roles, whereas general moral duties apply to all moral agents. Let us consider each of these distinctions in turn. A few concepts from legal theory help illustrate this first distinction.

1.1 The Conventional Nature of Role-Duties

A particular stripe of contemporary legal positivist holds that the existence and content of each and every law in society can be determined with recourse to moral argument and evaluative considerations. On this kind of positivist’s view, the pronouncements of certain sources, such as the legislature, social customs, or courts, specify what the law is. Moreover, the customs of the society’s legal officials determine

\footnote{See Raz (1979), 46-47.}
the institutions that are sources of law for that society.\(^5\) Hence, to determine the existence and content of a society’s laws, one looks to these social facts. By contrast, to determine the requirements of morality, one engages in moral argumentation. On this picture, the norms of morality are not determined by social facts in the way that the society’s laws are. Irrespective of whether the legal positivist is correct about the law, this positivist picture applies to role-duties and distinguishes them from the duties of a moral agent. The existence and content of role-duties are determined by social facts. The duties of a moral agent are determined by moral considerations.

In his version of legal positivism, H.L.A. Hart describes the kind of social facts that constitute the legal norms in a society. In Hart’s parlance, these facts are social rules. Role-duties are a species of Hartian social rule.\(^6\) Hart’s account of a social rule comprises a number of elements. First, a social rule is constituted by a pattern of convergent behavior among a group. For example, members of a group must habitually remove their hats in church for it to be the case that there is a social rule within the group of removing one’s hat in church. Second, when a pattern of behavior is a social rule, deviations and

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\(^5\) See the seminal discussion of the custom, i.e., the rule of recognition, among a society’s legal officials that specifies the sources of a society’s laws in Hart (1994), 94ff.

\(^6\) Id., 55ff. Other scholars similarly describe the social facts that constitute role-duties and social institutions but with some modifications. I do not think the differences between Hart’s and these other authors’ accounts of these social phenomena affect my larger argument. In Tuomela (2002), Raimo Tuomela defines social institutions in terms of his concept of we-attitudes. Hart’s notion of a social rule can readily be characterized as a species of Tuomelian we-attitudes. In Miller (2001), Seumas Miller characterizes social action in terms of group action governed by norms that serve as informal solutions to coordination problems. Miller takes his characterization of these norms to be an improvement upon the account offered by David Lewis in Lewis (1969). In Searle (1995), John Searle describes social reality in terms of institutional facts constituted by widespread collective acceptance of the normative status of persons and offices.
threatened deviations from the pattern habitually meet with criticism from other members of the group. Moreover, group members generally take the criticism of such deviations to be justified. In other words, if there is a social rule, then the members of the group generally take a deviation from the pattern of behavior that constitutes the rule as a reason to criticize the deviant. Third, the members of the group must generally take the internal point of view with respect to the pattern of behavior. On Hart’s account, this means that the members of the group take the pattern of behavior to be a standard of behavior that each member ought to meet.

Role-duties are types of social rules. As such, their existence and content is determined by the social practices constitutive of a social role. The role-duties of professors, for example, are determined by the practices of professors, students, administrators, parents, etc. in society. The practice is that persons who meet the conditions of occupying the professor role typically act in certain ways—e.g., they grade papers, assign problem sets, write recommendations, research, and write. These acts are widely taken to be standards that the person occupying the role ought to meet. However, deviations by persons occupying the professor role are criticized and such deviations are widely taken to be a reason for criticism.7

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7 Another way of putting this point holds that for a pattern of behavior in a group to constitute a social rule, it must be guided by a norm. Peter Railton provides an account of normative guidance that I discuss below. I find two forms of normative guidance in Railton’s discussion though he explicitly describes only one form of such guidance. On Railton’s explicit account, one is guided by a norm when one generally conforms to it, notices one’s deviations from the norm, and is discomfited when one fails to conform. Note that reflective judgment of the value of the norm is not a part of this account. I venture that normative guidance via reflective judgment is a separate form of normative guidance. One conforms to the norm in light of one’s reflective judgment that the norm
Hart distinguishes a particular class of social rules—those he refers to as obligations. On this account, obligations entail a number of additional requirements. First, they concern matters that are taken to be of significant social importance. Second, there is insistent social pressure within society for conformity to the rule. Third, they are standards that may, but need not, deviate from the interests and desires of those whom they bind. For example, a mother’s interests and desires may largely be bound up in her successful realization of her role-duties; however, her duties to her child may, and likely will on occasion, diverge from some of her interests or desires. In sum, role-duties generally conform to Hart’s model of obligatory social rules. Their existence and content is determined by the convergent social practice of the sort described above that constitutes the role-duties. Moreover, these duties generally pertain to matters that are widely thought to be of great importance and, hence, are enforced by way of insistent social pressure. As such, role-duties are matters of social fact. Thus, there is a gap between the normative bindingness of the role-duties and their existence and content. To say that there is a role-duty in a society is not to say that persons have reasons to conform to the role-duty. However, it is to say that a sufficient number in the society believe that they do and that they, accordingly, bring insistent social pressure to bear to ensure conformity.

warrants following. The judgment-based form of normative guidance need not entail the affect of discomfiture characteristic of the form of normative guidance Railton describes. The pattern of norm-guided behavior that constitutes social rules and social duties may be guided in either or both of these ways. See Railton (2006) and the discussion in part II below.
One might offer a conventionalist objection to the claim that the duties of a moral agent are importantly different from role-duties. This objection denies that there are moral duties and considerations that are independent of the social facts that constitute social rules. On this view, all moral duties, e.g., not to deceive or to kill, are no more than social rules of the type described above. I note this point to register it and set it aside. At the very least, conventionalism about all moral duties is a contentious position for reasons that are beyond the scope of the present essay but have been rehearsed elsewhere. That said, it is true that moral duties have a conventionalist aspect. We can see this most clearly when we think of a purported moral requirement in a society that in fact is not morally binding. Grant the following for the sake of argument—abortion of a human zygote is not morally impermissible, yet there might be a possible society in which the population as a whole believes that abortion of a human zygote is wrong. In such a society, there would be a social rule to the effect that abortion of a human zygote is wrong. Even if, as we have stipulated, there is no moral duty against the abortion of human zygotes, there would be a conventional moral duty to this effect in the society we have described. This conventional moral duty, like a role-duty, fits the Hartian model of obligatory social rules. Moreover, we could say something similar with regard to the various correct moral rules that are widely recognized and embraced by society. Not lying and not killing have a conventional aspect. There is a social rule of not lying and not killing in the sense that there is a practice of not lying and killing, treating the norm

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8 Something like this seems to have been Hart’s view in Hart (1997), 55f. He later recanted this view. Id., 256.
9 For an overview of the debate regarding moral relativism, see Gowans (2004).
as a standard that ought to be followed, criticizing those who do, taking deviations from this norm to be grounds of criticism, etc. However, this social practice is separate from the moral duty not to lie or kill. Because the social rule not to lie or kill tracks the moral duty, it is justified.

We can say something similar about role-duties. Role-duties, like conventional moral duties, may or may not be justified. How then can we distinguish justified conventional moral duties (i.e., general moral duties) from justified role-duties? The key difference between the conventional moral duty not to abort a human zygote on the one hand and social rules not to lie or kill on the one hand and role-duties on the other is that the latter apply only to occupants of social roles whereas the former, per the relevant conventional practice, apply to all moral agents. Thus, to describe fully the distinction between role-duties and moral duties requires a few words about social roles.

1.2 Social Roles and Role-Duties

Social roles comprise two main features: application conditions and complexes of Hohfeldian elements.¹⁰ We have seen one of these Hohfeldian elements, duties. However, social roles are also constituted by characteristic claim-rights, liberties, powers, and immunities as well. For example, a parent has not only the duty to care for his children; he also has a claim-right. That is, he has a right to care for the children corresponding to a duty that others not interfere with his doing so. Similarly, occupants of roles tend to have characteristic powers to alter other persons’ Hohfeldian elements. For example, a parent

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¹⁰ See Hohfeld (1964). See also Edmunson (2004), ch. 5 for an informative discussion and critique of Hohfeld’s analysis of rights.
has a power to alter the profile of his children’s liberties and to authorize others, i.e., confer upon them certain rights, to care for his children. Application conditions are also a feature of role-duties. These are conditions that an agent must meet to be entitled the relevant complement of Hohfeldian elements.

The Hohfeldian elements and the application conditions that constitute a social role are, in turn, constituted by social rules just as the role-duties described above are. For example, the claim-right of a parent to care for his biological children are established by a convergent practice of criticizing those who violate the claim right, taking such violations as reasons for criticism, taking the claim-right as a standard that each member of the group should observe and so on. Similarly, the application conditions of any social role are established by a convergent practice of taking the Hohfeldian complex related to a social role as standards of behavior, grounds of criticism, etc. only with respect to persons who meet certain conditions.

Note the importance of the entire assortment of Hohfeldian elements in the case of the role of parent. The social role of parent is useful precisely because it enables persons to achieve a certain end—namely, caring for and maintaining the well-being of children. Achieving this end would not be possible absent coordination with others in society. For example, it would be very difficult, perhaps impossible, to care for a child were it not clear who has the complex of Hohfeldian elements that constitute authority over the child. There are many possible regimes. We might have a Spartan system in which boys are in the care of their biological parents for a limited time to be taken by the military at a young age. Or, perhaps, it might be the case that a handful of women, but not
all biological mothers, bear the responsibility for caring for the community’s children. Or, we might have a nuclear family of the present day, more or less, where the default is that biological parents care for their children. Whatever the regime, mutual recognition of who has what rights and duties relating to caring for the children is necessary for achieving this end.

We can think of social roles as roles in two different senses. In the first sense, roles are scripts. Social rules constitute the script of what the occupants of the respective roles characteristically do in much the same way that a screenplay scripts the roles of the various actors in the screenplay. In another sense, social roles serve a function in a larger whole, much like a liver or a kidney serves a function in a body. I need not decide here whether social roles are always to be understood in this latter way. Suffice it to say that they are typically found in larger complexes of roles that together fulfill some larger end. We can refer to this larger role as a social institution. For example, the social role of professor is found in a university. The professor fulfills a particular role within the university that together with other social roles in the university fulfills a larger end.

Note a few points about the ends of roles and social institutions. First, the end of a social role may be different from the end of the larger institution that houses it. A kidney’s end of purifying the body’s blood differs from the end of the system of organs as a whole—the survival of the organism. Similarly, the end of a doctor may be to care for one aspect of the health of a certain pool of patients, whereas the end of a hospital in which the doctor works might be to turn a profit and care for the health needs of a much larger community. Second, we need not commit to whether the end of a social institution
is an intention of any individual member or set of members within the social institution. At one extreme, we can take the end of a social institution to be like the telos of a dog’s body. Though none of the organs in a dog’s body has as its intention the telos of living a dog-life, we can still say of the dog’s body that living a dog-life is its telos. We can say something similar of many natural systems whose component parts are not capable of intention. For example, we might describe the telos of a market as the maximization of social wealth irrespective of whether the intention of the market participants is very different—namely, to maximize individual wealth. At the other extreme, it may be the case that a social institution has the telos it does because some, or perhaps all, the participants consciously share in that telos. For example, a family has the telos of caring for children and maintaining an emotional safe harbor for its members largely because this is the conscious end of its members. There is also an intermediate position. It may be the case that a social institution’s telos is not explicitly intended by any group member, but nonetheless comes about because it is the upshot of the desires and wishes of certain members of the institution. A Marxist might say something like this about capitalist forms of social organization. On this view, though the exploitation, immiseration, and subservience of the working class is not the explicit intention of the owners of property and wealth taken individually, such states constitute the end of the system because they serve the needs and interests of the property owners.

At this point, yet a further distinction between general moral duties and role-duties should be clear. Role-duties are parts of complexes of coordinated behavior within a society that service certain social ends, such as raising the society’s children, caring for
its sick, educating its members, etc. Different systems of role-duties and other Hohefeldian elements can more or less equally well service these ends. However, coordination with respect to these roles in the form of a minimal measure of respect for and conformity to the role requirements particular to one’s society is necessary to achieve these ends.\textsuperscript{11} Hence, role-duties are relativistic in a way that general moral duties, such as duties not to murder or deceive, are not. The content of role-duties varies across societies, depending upon the particular regime of duties regnant at that place and time. Moreover, the justification of role-duties varies across cultures. A Spartan parent might have sufficient reason to give up her child to the authorities at age six and might be acting wrongly by refusing to do so, whereas a parent today would not similarly have such sufficient reason barring unusual circumstances. By contrast, generally speaking the moral duties not to deceive or kill are universally justified across cultures.

1.3 Two Kinds of Duties

To complete our discussion of the duties of social roles, we should distinguish between two basic types of role-duties. The first kind is a proper role-duty.\textsuperscript{12} These are the various duties that one has as an occupant of a social role—e.g., the professor’s duties to grade papers, lecture, meet with students, etc. A second type of duty is a subtype of a proper role-duty. This is the duty to conform to the rules or directives of a relevant authority. Let us call this an authority-duty. There are a number of relevant authorities with respect to most roles. One kind of authority is tied directly to the social institution of

\textsuperscript{11} John Finnis makes a similar point about customs in Finnis (1980), 238ff.
\textsuperscript{12} See Tuomela (2002), 164ff for further discussion of this distinction.
which the role is a component part. For example, a professor has a duty to conform to the directives and rules laid down by her department or associated university, and a family member has a duty to conform similarly to the decisions of the family taken as a whole or, in patriarchal societies, the directives of the patriarch. A second kind of authority relevant to some roles is the professional organization. For example, an American doctor may have a duty to conform to various standards established by the American Medical Association. In such a case, the doctor will be required to respect the authority of his particular place of employment and the relevant professional organization. Finally, a third kind of relevant authority is the state. The state defines many detailed aspects of all social roles. For example, family law specifies the many of the duties of family members and the rules of marriage and divorce. Also, the state institutes various codes of professional responsibility that regulate the professions. Note, too, that the state is also the social institution that houses the role of citizen. The role of citizen entails an authority duty of the first type above in which the state is the authority.

2 Identification

2.1 Hardimon’s Conception of Identification

The foregoing discussion illustrates that social institutions, role and duties (and other Hohfeldian elements) are key features of the social world. Hence, being at home in the social world requires in large part being at home in the complex of duties and rights that constitute a society’s roles and institutions. What, then, is it to be at home in these social institutions and roles? As we have seen, the main building block of social
institutions, roles and duties are Hartian social rules. Social rules, in turn are constituted by convergent patterns of behavior and criticism of deviating behavior that flow from a widespread belief that those patterns of behavior are standards for action—i.e., that persons ought to conform to them. Being at home in the social world (that part which is constituted by social institutions) entails participating in this widespread belief. Michael Hardimon’s conception of identifying with a social world captures this basic idea.

If you identify with a role, its norms will function for you as reasons. If you are a judge who identifies with the role of judge, the fact that this is something judges do (in the normative sense) will give you a reason for doing it. (emphasis in the original)\footnote{Hardimon (1994a), 358.}

Thus, Hardimon holds that one who identifies with a role takes the fact that X is a duty of the role as a reason for doing X. This is right as far as it goes; however, this account of identification is overinclusive for it would apply to paradigmatic cases of persons alienated from their role. Consider, for example, an agent who does not intrinsically value her role-duties but nonetheless discharges them because she promised to do so or because she can keep her job only by doing so. Such a predicament is not, alas, unusual. For example, today, thousands of lawyers spend most of their waking hours working primarily for a large paycheck and despite the tedium of their jobs. 19\textsuperscript{th} century factory workers and many workers throughout the world do the same simply to subsist. Countless numbers of parents feel bound to perform their role-duties only because they know that others, their respective children and spouses, rely on their doing so but not because they find such tasks and relationships fulfilling in some way. These contractually-minded and instrumentally minded role-occupants take the fact that such
and such is a duty of their role to constitute a reason to do such and such irrespective of how satisfied they are with the role. In each of these cases, the respective role-occupants conform to Hardimon’s description of one who identifies with a role. However, it seems wrong to say that the housewife, factory worker and lawyer in our examples identify with their respective roles; rather they seem estranged or alienated from them. Hence, Hardimon’s account of identification requires further development. One who identifies with her role does not just take the duties of her role to provide her with reason. Rather, she takes them to provide her with reasons of a certain quality. Thus, we must look elsewhere for a complete account of identification. In what follows, I consider two well-known accounts of identification—those provided by Harry Frankfurt and R. Jay Wallace. I criticize these accounts and offer an alternative. The first two accounts describe identification as applied to desires and practical identities in general rather than social roles; however, as we shall see, they can be applied to social roles quite easily. Before considering these rival accounts, let us first say a few words about the concept of identification in order to orient our discussion of its proper conception.

Scholars, including Frankfurt himself, envision a variety of overlapping functions that Frankfurt’s conception of identification might fulfill. In Hart’s terminology, the conception of identification answers to a number of different concepts. Rawls makes use of this distinction between concept and conception when describing his account of justice. The concept of justice, according to Rawls, is about the appropriate distribution of burdens and benefits in a system of social cooperation. Rawls offers justice as fairness
as the conception that describes the appropriate distribution in this case.\textsuperscript{14} For Frankfurt, the concept of identification plays a key role in the explication of the concepts of personhood and freedom of the will. On this view, only agents with the capacity to identify with their desires are persons and enjoy freedom of the will.\textsuperscript{15} A second concept of identification relates to the necessary conditions of moral responsibility.\textsuperscript{16} According to this concept, agents are only morally responsible for performing actions with which they identify. On this view, the correct conception of identification must make this claim plausible. A third concept concerns reasons. One’s reasons are those desires with which one identifies.\textsuperscript{17} Yet a fourth concept of identification holds that an agent is autonomous only insofar as one acts in accordance with the desires with which one identifies.\textsuperscript{18} I consider here something along the lines of this fourth concept of identification. The concept of identification I develop here holds that the subjective element of being at home in the social world requires that one identify with the institutions and roles that constitute it. Being at home in the social world can be thought of as a kind of autonomy—namely, autonomy understood as self-expression or self-realization. By performing the requirements of the social world, one who is at home in it engages in self-realization and expression. In this sense, one at home in the social world self-legislates when she follows its normative requirements. The goal in what follows is to develop a

\textsuperscript{14} Rawls (1971), 5.
\textsuperscript{15} See Frankfurt (1971).
\textsuperscript{17} See Frankfurt (2004), 23ff and Christine Korsgaard’s related concept of a practical identity in Korsgaard (1996), 100ff.
conception of identification that answers to this concept rather than the other concepts described above; however, it would not be problematic if the present conception answered to these other concepts as well. Let us now consider how well Frankfurt’s conception of identification answers to the concept under consideration here.

2.2 Frankfurt’s Conception of Identification

Desires are the object of Frankfurt’s conception of identification. An agent identifies with desires. On his initial account, to identify with a desire requires having a second-order desire that the desire be effectual—that one act on the desire. Moreover, there must be no conflicting higher order desires nor even the prospect for such conflict.

When a person identifies himself decisively with one of his first-order desires, this commitment “resounds” throughout the potentially endless array of higher orders. 19

The basic idea is that one’s higher order desires constitute who one is. This includes one’s desires to have certain desires as well as desires to desire to have certain desires and so on. The finitude of the human mind limits the size of this hierarchy. On Frankfurt’s account, identification with a desire entails coherence amongst the hierarchy of higher order desires that ultimately reference the first-order desire. An agent whose higher order desires cohere in this way identifies with the target first-order desire. The agent in this case does not act on an alien desire; rather she expresses who she essentially is by acting on the desired desire. 20

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19 Frankfurt (1971), 71.
20 See Frankfurt 2004), 20ff, 48ff.
We can apply Frankfurt’s account of identification to social roles and duties. First, one who identifies with her social role has a first-order desire to fulfill the social role. She desires to be, say, a mother or a doctor or what have you, and, as such, she desires to perform the various motherly or doctorly duties. Second, one who identifies with her social role has a second-order desire that her desires to play a particular social role be effectual. Third, her higher order desires regarding the desires to be an occupant of the role must be sufficiently coherent. When these three elements are met, the agent identifies with her social role and expresses who she essentially is by acting on the social role’s requirements.

At this point, we are ready to describe our second account of what it is to be at home in the social world. It is to identify with one’s roles in the social world’s institutions, where identification involves both desiring to perform the tasks associated with one’s social roles and having a coherent complex of relevant higher order desires. The problem with this account is its monistic characterization of the self. On this account, the self is constituted by a unified complex of a particular kind of desires—namely, what

21 One might worry that the problem that plagues Hardimon’s account of identification is also a problem for Frankfurt. Consider an agent whose desire to be a doctor is wholly instrumental. Perhaps, she desires to be a doctor solely in order to gain wealth. It is conceivable that this doctor also has a coherent set of second-order desires with respect to her instrumental desire to be a doctor. This money-driven doctor could very well be largely alienated from the role. She might find its various tasks to be tedious and see little value in aiding others. She simply is not a very compassionate person. However, she has some skill as a doctor and, for her, it is her surest route to a very good living. In short, she seems alienated from the role of being a doctor. She performs these duties only because she must for the doctor’s salary. To forestall this problem, I assume that on Frankfurt’s account the desired object (in this case, to be a doctor) is desired (at the first order) for its own sake. For example, the doctor desires to realize various good that are internal to being a doctor (e.g., curing patients and maintaining their health) for their own sake and not merely for the sake of a good, such as wealth, that is external to the role.
Nagel refers to as unmotivated desires. Nagel distinguishes between unmotivated and motivated desires.\(^{22}\) Frankfurt’s conception of identification is constituted by desires of the former sort only. Hence, it is monistic and not dualistic. Before I can defend the claim that Frankfurt is committed to such a monistic account, I must say a few words about the distinction between motivated and unmotivated desires.

On Nagel’s account, a motivated desire is a desire grounded in a reason. For instance, one might desire to feed a cat because there is a reason to feed the cat. Namely, the cat is hungry. The reason, ultimately, is grounded in some good that the desired action will achieve. I desire to feed the cat because it will achieve the good of alleviating the cat’s hunger. Similarly, I might desire to go the museum in light of my explicit appreciation of the prospect of participating in certain aesthetic values. By contrast, there are unmotivated desires. Many of our most basic desires are of this sort. For instance, we often have an unmotivated desire for food. We often simply desire food. This is not to say that unmotivated desires are unconnected to reasons and judgment. Rather, it is to say that unmotivated desires relate differently to reasons than motivated desires do.

Thomas Scanlon discusses three categories of desires. The first is the most general. Desires are pro-attitudes, which are disposition to action.\(^{23}\) Scanlon also distinguishes between motivated and unmotivated desires but puts this distinction in terms of directed-attention desires and reason-based desires. For Scanlon, an unmotivated desire is the insistent presentation of a reason coupled with some form of affect. By contrast, a reason-based desire corresponds to Nagel’s motivated desire. As such, the

\(^{22}\) Nagel (1970), 29.
\(^{23}\) Scanlon (1998), 39ff.
motivated desire results from a judgment that there is sufficient reason to engage in some activity. In sum, both motivated and unmotivated desires are connected to reasons. The former proceeds from one’s judgment that there is a reason to act in a certain way. The latter is the insistent presentation that there is a reason to act in some way accompanied by an affect.

Our moral psychology is uniquely complex in the way Frankfurt imagines. Our reflective capacities with respect to our desires distinguish us as persons from other animals. We not only have desires. We also have second-order (and perhaps even higher order) desires with respect to those desires. Where Frankfurt goes wrong, I think, regards the nature of these higher order desires. Frankfurt is implausibly committed to the idea that the second-order desires that constitute identification are all unmotivated (directed-attention) desires rather than motivated (reason-based) desires. We can find evidence for this commitment in Frankfurt’s later work, where he equates identifying with some desire and its object with caring about the object.

Now suppose he wonders whether he has got it right. That is, suppose that somehow he becomes concerned about whether he really should care about the things that, as a matter of fact, he does care about. This is a concern about reason. In raising the question of whether he should conduct his life on the basis of what he actually cares about, he is asking whether there are reasons good enough to justify him in living that way.24

Frankfurt adds that posing this question is bound to discombobulate the questioner.

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The trouble is not that the question is too difficult. Asking the question tends to be disorienting, rather because it is inescapably self-referential and leads us into an endless circle.\textsuperscript{25}

Frankfurt argues here that one’s reasons are determined by what one cares about or, in other words, identifies with. On this view, one’s identifications supply one’s reasons, and one’s reasons do not prompt one’s identifications. Because one’s identifications supply one’s reasons and evaluative criteria, it is not possible to question whether one has reason to identify with something. This view of the relationship between one’s reasons and one’s identification has implications for the nature of the desires that constitute one’s identifications. If the desires that constitute one’s identifications were motivated, and hence reason-based, then one’s reasons would supply one’s identifications rather than the other way around. As we have seen, Frankfurt rejects the thought that one’s reasons are conceptually prior to one’s identifications. Hence, the second-order desires that constitute one’s identifications must be, on Frankfurt’s view, unmotivated desires.

Further evidence for thinking that Frankfurt’s moral psychology is monistic is the fact that were Frankfurt to include motivated desires in his account, the shape of the resulting moral psychology of identification would be quite different; it would not be hierarchical. On this alternative account, our higher-order desires are motivated by judgments about the requirements of the relevant reasons. For instance, we would say of a mother who identifies with her role of mother that she sees reason to act on the desires that would lead her to be a mother. By contrast, a smoker who does not identify with his addiction to smoking would have second-order desires that reject his first-order desire to

\textsuperscript{25} Id., 24.
smoke and that are motivated by his appreciation of the reasons for not smoking. However, if we think of second-order desires in this way, the second-order desires seem a less central element of our account of identification. What is central is the reason-based evaluation of the actions that are the object of the first-order desires. This reason-based evaluation of the action leads one to have a second-order desires that rejects or embraces one’s first order desires. However, we have in this account identification (or failure of identification) at the first-order. One fails to identify with one’s desires to the extent that one’s desires for objects do not conform to one’s evaluation of those objects. By contrast, one identifies with an object to the extent that one’s desires conform to one’s evaluation of those objects. The second-order desires motivated by one’s evaluations are not central to identification on this account, though they are derivative of and are likely attendants to it. These observations suggest the account of identification that Wallace refers to as the substantive model.

Identification is brought about not by taking a stand on the fact of my desiring to go to a movie [or the fact of my desiring whatever object], but by endorsing the content of that desire, accepting that it really would be good to do what, in virtue of my having the desire, it seems to me that it would be good to do.

On this model, the part of the person that is essential is her evaluative criteria and capacity for evaluative judgment. The agent identifies with an object when she judges the objects to be worthy. We will discuss and critique this alternative model below. However,

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26 Wallace puts this same point as follows: “[I]f we are allowed to help ourselves to evaluative judgments at the level of second-order reflection, the question arises why we cannot also appeal to them at the level of first-order thought about what to do.” Wallace (2000), 194.
27 Id., 193. For the seminal account of the substantive model, see Watson (1975).
before we do this, we should conclude our discussion of Frankfurt’s conception of identification.

2.3 Two Arguments Against Frankfurt

As we have seen, Frankfurt is committed to the view that the complex of desires that constitute identification are exclusively unmotivated (directed-attention) desires. There are at least two ways to argue against this view. The first argument makes the strong claim that second-order desires are never unmotivated. The second more modestly denies that second-order desires are in every or most cases unmotivated. Let us consider these arguments in turn. The first I will reject. The latter I will accept.

On the first argument, higher-order desires must be motivated or reason-based rather than unmotivated. The thought behind this argument is that unmotivated desires are necessarily primitive and basic desires, such as the desire for food or sex. Though one might have an insistent presentation of a reason and an accompanying affect regarding these basic needs, it is not plausible that one might have such attention-directed desires regarding one’s desires. To help with the response to this claim, we should consider the distinction between motivated and unmotivated desires from yet another perspective—namely, Peter Railton’s in his discussion of normative guidance. Railton holds:

Agent A’s conduct C is guided by norm N only if C is a manifestation of A’s disposition to act in a way conducive to compliance with N, such that N plays a regulative role in A’s C-ing, where this involves some disposition on A’s part to notice failures to comply with N, to feel discomfort when this occurs, and to exert effort to establish conformity
with N even when the departure from N is unsanctioned and non-consequential.  

On Railton’s account, an agent may be guided by a norm irrespective of whether he, upon reflection, would judge that the norm is justified. It is enough that one generally acts in accordance with the norm, notices when one has failed to follow the norm, and is disposed to feel discomfited when this happens. Moreover, it is possible that one might be guided by a norm in this second way despite the fact that were one made aware that one was being guided by the norm, one would upon reflection reject the norm. Railton gives as an example a philosophy professor who has radically egalitarian social views and who would reflectively reject certain hierarchical norms governing social interaction but nonetheless participates in such norms in his everyday social interactions with colleagues. For example, he liberally puts his hand on the shoulders of his social inferiors, e.g., his students and junior colleagues, and yet refrains from this behavior with respect to the department head and college dean. On Railton’s view of normative guidance, this professor is guided by norms despite his lack of explicit awareness that he is conforming to the norm. As Railton’s conception of normative guidance requires, the professor tends to conform to the norm and is prone to experience feelings of discomfiture upon noticing that he has not. Moreover, he tends conform to the norm precisely because he otherwise would experience such feelings. Such guidance can occur without the professor’s awareness of what exactly is going on. In addition, it very well may be that in the egalitarian professor’s case, the guidance by hierarchical norms must

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occur without his awareness because otherwise he would not act in this non-egalitarian way.

Railton’s discussion suggests a distinction between two modes of normative guidance—the first via reflective judgment and the second via a kind of internalization. Railton does not explicitly embrace the possibility of the reflective mode of normative guidance; his discussion only suggests its possibility. This mode of normative guidance proceeds from reflective acceptance and judgment of the worth of the norm. We might imagine that upon realizing the hierarchical nature of his actions, the professor in our example might cease to act in accordance with the norms and would follow instead socially egalitarian norms. In accordance with these egalitarian norms, he might refrain from interrupting his inferiors and be less deferential in his conversations with his department head and dean. In this case, we could say that his actions that accord with egalitarian norms proceed from reflective acceptance and judgment of the worth of the norm rather than guidance via an internalized norm.

Moreover, it is not unlikely that the professor in this case would endure a struggle between the norms he reflectively accepts and the internalized norms. The internalized norms may very well continue to exert pressure on his behavior despite his reflective rejection of their worth. He might continue to be discomfited each time he fails to observe the hierarchical norms. If so, he will only be able to conform to the egalitarian norms that he endorses through conscious effort of will. In sum, Railton’s discussion of normative guidance suggests two modes of such guidance. The first proceeds via

\[29\] *Id.*, 20ff.
reflective judgment of the norm’s worth. This second is characterized by a type of affect, discomfiture upon noticing failure to conform to the norm, and need not involve reflective acceptance and positive evaluation of the norm.

Railton’s internalized norms look very much like Scanlon’s directed-attention desires. We can see this when we consider the egalitarian professor’s reflective rejection of hierarchical social norms. Despite his reflective rejection, these norms insistently present themselves as worthy grounds of action to the egalitarian professor. It requires constant attention and a force of will on the professor’s part to refrain from acting on these internalized norms.

At this point, we can explain why the set of unmotivated desires or desires in the directed attention is not limited to primitive and basic desires. Through socialization and habituation persons can internalize complex sets of considerations as the example of our putatively egalitarian yet hierarchical in fact professor illustrates. Through a similar process of internalization of norms, we might imagine persons coming to have unmotivated second-order desires.

Consider the case of the disaffected 1950’s housewife depicted in the movie The Hours. Though the precise nature of the housewife’s moral psychology is unclear, it is safe to say that she is conflicted. On the one hand, she desires to perform the various tasks of caring for her husband and child that housewives of the era characteristically perform. On the other hand, she finds these tasks unfulfilling. This conflict pushes her to consider suicide. Ultimately, she leaves her husband and child and flees to Canada and lives out the rest of her life there.
It is plausible to imagine that upon first arriving in Canada that her internal conflict remains. She has been socialized to believe that being a housewife is a worthy and necessary occupation for someone such as herself. Though upon reflective judgment she rejects this belief, its internalized vestige remains. She might find that as she explores her new life free of the norms associated with being a housewife she feels discomfited and ashamed. She might continue to feel ashamed for some time, perhaps forever, of the complex of first-order desires that conflict with being a good housewife. Such feelings of shame come to her unbidden and insistently despite her reflective rejection of the thought that such desires are shameful. This sense of shame, among other things, marks a second-order unmotivated desire regarding her desires that are incompatible with being a housewife. Part of her conflict is that she also has a second-order motivated desire affirming these very same desires.

This example suggests that the strong argument against Frankfurt’s account of identification is unsound. Contra the strong argument, it is not implausible to think that second-order desires are in some cases unmotivated. However, this example supports rather than undermines the second argument against Frankfurt’s account of identification that holds that the second-order desires that constitute identification are in no case motivated. Recall, Frankfurt’s describes identification in terms of a coherent complex of first and second order unmotivated desires. The second argument rejects Frankfurt’s presupposition. As our foregoing discussion suggests, motivated first and higher order desires are generally plausible. Note in particular that our example above features both forms of desires. In sum, there is no obvious reason for thinking that there are no
motivated desires and that such desires are not elements of identification. Accordingly, we should reject Frankfurt’s model of identification because it fails to include motivated desires.

2.4 Wallace’s Conception of Identification

At this point, we might ask how exactly motivated desires figure into identification. Above, we described Wallace’s substantive model of identification. Like Frankfurt’s model of identification, the substantive account is implausibly monistic. Whereas Frankfurt holds that the identifying self is essentially a complex of higher order unmotivated desires, Wallace holds that the identifying self is essential one’s evaluative criteria and capacity for judgment. On the substantive model, identification is constituted by a match between an agent’s evaluative criteria and the agent’s desires. One identifies with some activity or object insofar as one, upon reflection, values it. Though this judgment, in turn, may motivate a first-order desire for the object and activity and perhaps a second-order desire as well affirming the desire for the activity, the central element of identification on this account is the positive evaluation of the desired object or activity.

A number of authors, including Watson, its original proponent, call the substantive model of identification into question. Watson asks the reader to imagine someone who, upon reflection, judges that some object or activity is not desirable but nonetheless has first-order desires to act upon it and does so without compunction and

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joyously. Fast-food restaurants, gambling halls, and TV room couches are just a few of the likely venues for this state of mind. Watson offers such a possibility to be a counterexample to the substantive model. On Watson’s view, though the actor in this example is perverse, she can best be described as identifying with the desired object or activity despite her negative evaluation of it. Hence, one’s evaluative judgments need play no role in one’s identification with an object or activity.

2.5 The Present Conception of Identification

Watson draws the wrong implications from his counterexample. The example illustrates that identification is not constituted entirely by one’s evaluative reflections; rather, it is only partly constituted. As Kant notes, we are a unity of two conflicting sources of motivation. Kant describes these sources as contingent empirical inclinations and reason. We are not mere animals (motivated solely by contingent inclination), nor are we angels (motivated solely by reason). Though we need not accept Kant’s account of the nature of reason, something like this is right. We are essentially complexes of motivated and unmotivated desires.

We can put this point in terms of autonomy understood as self-realization. To enjoy autonomy of this sort, there must be a self that is realized. However, in our case, if there is not sufficient unity between our motivated and unmotivated desires, there is no one self to realize. Perhaps, there are multiple selves or a hodge podge of conflicting motivations, but there is no single self. For autonomy to be possible, there must be a sufficient unity amongst our complex of desires. To say we have identified with some
object or activity is to say that we are sufficiently unified with respect to it and that there is one self at least with respect to that object or activity.

At this point, we can give a more complete account of identification with a social role. To identify with a social role is to have a sufficient degree of unity amongst one’s motivated and unmotivated desires with respect to the role. This unity comes in two basic forms—naïve and sophisticated. Sophisticated and naïve identification share one element in common. When an agent identifies with a role in either a naïve or sophisticated way, her complex of unmotivated desires (first-order and higher-order to the extent she has them) respecting the role and its duties for the most part favor performing the role. By virtue of this element, the agent who identifies with her role is generally attentive and responsive to the various considerations that favor acting as the role requires. For example, a mother is attentive and responsive to the needs of her child, a citizen is attentive to the requirements of the laws of her country, a lawyer is observant of the requirements of professional responsibility. Also by virtue of this element, the person who identifies does not feel shame or guilt when discharging her role’s duties, though she might to the extent she neglects them. Note, that this element does not require that each and every desire contained within the agent’s complex of unmotivated desires favor performing the role; rather, there need be no more than sufficient coherence amongst the body of unmotivated desires. Sophisticated and naïve identification differ in that the former entails an affirmative reflective judgment regarding the value of the role, whereas naïve identification entails the absence of any such judgment. The sophisticated identifier’s reflective affirmative judgment with respect to a role is complex. First, the
object of the reflective judgment is a perceived point (or tightly connected cluster of points) unifying the various considerations associated with the role. Second, the sophisticated identifier finds intrinsic value in this unifying point or set of points. Third, the sophisticated identifier has as a goal the realization of the unifying point or set of points that she takes to be valuable. Thus, the sophisticated identifier has a comprehensive goal constituted by the putatively intrinsically valuable point (or tightly connected set of points) that require her to attend to the various considerations that favor performing the duties of the relevant role.

In light of our discussion of naïve and sophisticated identification, we can see two different ways of being at home in the social world. Hegel holds that the at-homeness characteristic of the ancients was a nonreflective unity with one’s social world. Naïve identification with one’s social role seems to constitute at-homeness of this form. Hegel further holds that this unreflective form of at-homeness is not available to mature modern citizens. Rather, for the modern adult citizen, being at-home requires that one initially experience alienation from the social world and, as a result, question its value or point. The modern achieves unity and identification by coming to understand what is valuable about her social world and embracing it. Persons today experience both forms of at-homeness. A young adult or child naively identifies with her roles. As she matures and begins to question her social roles, she is alienated from them.\(^{31}\) This sets the stage for the possibility of finding intrinsic value in her roles that allows her to once again identify with them in a sophisticated way. Moreover, should she achieve this more sophisticated

\(^{31}\) See Schacht’s discussion of Hegel’s idea that becoming alienated from the social substance is a necessary preliminary to finding a home in it. Schacht (1971), 62ff.
level of identification, her understanding of her role’s value would not be static. As her life progresses she will continue to refine the understanding of the value of her roles and their requirements that informs her sophisticated identification with them.

Finally, note that neither naïve nor sophisticated identification entails complete concordance between the requirements of one’s social roles and one’s unmotivated desires; rather, they entail only a sufficient degree of concordance. Complete concordance would be an unrealistic expectation of human psychology. Moreover, it is not a desirable feature because it would bespeak an undue lack of receptivity to the plurality of value in the world and the possibility of improving one’s social roles.

3 Conclusion

At this point, we have clarified one thread of the notion of being at home in the social world and its contrary, being alienated from the social world. The aspect of the social world emphasized and described here is constituted by social roles, duties and institutions, which are, in turn, constituted by certain patterns of behavior and shared beliefs within society that these patterns must be met by the society’s members. To be at home in the social world is, in part, to share in that belief. However, it is also more. It is to identify with one’s role as defined by these standards. The sophisticated version of this identification entails intrinsically valuing a goal that requires one to perform the various duties of the role and being sufficiently disposed at an affective level to attend to the considerations that lead one to discharge the requirements of the role. Alienation, by contrast, is the experience of the social rules that constitute one’s social roles as
impositions that are necessary means to ends external to the role, such as earning a living or avoiding social sanction. Given the pervasiveness and demandingness of social institutions and roles, a life is severely diminished insofar as it is alienated from the roles that apply to it.

Note a final point about being at home in the world understood as sophisticated identification with one’s role. Recall that identification with one’s role constitutes only the subjective element of being at home in the world. The complete idea of at-homeness also comprises an objective element. To be fully at home in the world it is not enough that one perceives it to be a home, i.e., that one identifies with it; the social world must warrant such identification. One virtue of the present conception of sophisticated identification is that it helps us make sense of the relation between the subjective and objective aspect of at-homeness. As we have seen, sophisticated identification with a role entails, in part, finding intrinsic value in the end or ends of the role. This differs from Frankfurt’s conception of identification. On Frankfurt’s view, identification with a desire (including the desire to play a certain role in the social world) constitutes one’s reasons or values. One learns what is valuable by determining what it is that one identifies with.\textsuperscript{32}

One upshot of this view is that, as Frankfurt notes, there is no external perspective from

\textsuperscript{32} See also Korsgaard (1996) for a similar idea. She holds that having a practical identity, say as a doctor, a novelist, a brother, or what have you, is a necessary condition of having reasons. One’s reasons are those desires to do the various things characteristic of one’s practical identity. Korsgaard further argues that there is a necessary practical identity, the practical identity of having some practical identity or other. This necessary practical identity plays a regulative role with respect to the agent’s other practical identities. That is, it would be incoherent to have a practical identity that is incompatible with the necessary practical identity. There is much debate regarding whether the regulative practical identity provides much meaningful guidance regarding the proper contours of the contingent practical identities.
which one who identifies with a role may evaluate it. On Frankfurt’s account, the objects of one’s identification supply one with reasons and evaluative criteria. By contrast, the present account of identification presupposes that reasons and evaluative criteria are independent of the object of one’s identification. On this account, the sophisticated identifier takes the role to have intrinsic value. However, she may be mistaken about this. Moreover, if she is mistaken in this way, she has reason to abandon her identification with her role. We will say more about this in the next chapter. Suffice it to say for now that, given this feature of identification we can see at least one way in which the social world may fail to be a home for an agent despite the fact that the agent identifies with it. Namely, the sophisticated identifier may be wrong in her view that the ends of her role are intrinsically valuable. Frankfurt cannot say something similar because on his account, to identify with a role necessarily entails that the role is intrinsically valuable for the identifying agent.
CHAPTER 2

ROLE-DUTIES AND THE GROUND OF IDENTIFICATION

As discussed in the previous chapter, we live in a social world constituted in large part by a variety of social roles and associated social institutions. Each of us occupies a variety of social roles, such as mother, father, professor, Little League coach, and citizen. In turn, these roles are defined to a great extent by role-duties, a variety of purported requirements that those who occupy the respective roles must fulfill. I argued that the existence and shape of these role-duties are determined by regularities of practice and belief within society. Each role-duty that constitutes a role is generated and sustained by a practice of treating persons who occupy the role as being bound by such duties. Thus, society confronts those who occupy social roles with certain claims—namely, claims that the role-occupant must follow the duties that define the role. Because roles and their associated duties are both pervasive and demanding in our every day lives, it is a pressing question that asks whether these claims are justified and, if so, on what grounds.

Theorists have developed a number of possible grounds that justify our role-duties. A. John Simmons argues that there are two—and only two—possibilities. An agent might bind herself to her role-duties through an act of voluntary assumption, such as a promise to perform those duties or an act raising the justified expectation in others that she will do so. Alternatively, an agent might be bound to her role-duties by virtue of

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33 For a similar account of role-duties, see also Simmons (1979), 16-23 and Stocker (1970).
34 For a survey of possible grounds, see Jeske (2002). A. John Simmons describes his two-ground view in Simmons (1996), 95.
the application of a natural duty. Unlike duties incurred by voluntary assumption, natural duties are binding on all moral beings irrespective of any action they have taken.

Traditional examples are the duty of beneficence and the duty to support just institutions. Simmons holds that, on some occasions, the best way to discharge one of these natural duties might be by discharging one’s role-duties.

I argue here that Simmons’s typology of possible grounds of one’s role-duties is incomplete. We also can become bound by virtue of a third ground—namely, role identification. However, Simmons poses a general challenge to the claim that role identification can ground our normative bond to our roles. In part 1 below, I explicate this challenge. As we shall see, overcoming this challenge requires a more detailed account of role identification than the most recent defender of role identification, Michael Hardimon, provides. In part 2, I rehearse and augment somewhat the alternative to Hardimon’s conception of role identification developed in chapter one. With this conception in hand, I defend the claim that role identification provides decisive reason for generally conforming to one’s role-duties. I also argue in this part that role identification is an important addition to Simmons’s typology of grounds because it, unlike other possible grounds of our role-duties, ensures our wholehearted embrace of our role-duties, thereby precluding our alienation from them. When we identify with a role that merits

35 I distinguish in chapter one between sophisticated and naïve role identification. My thesis is that sophisticated role identification provides a ground of one’s role-duties. The default meaning in this chapter is sophisticated identification. It should be clear from context in this chapter when the intended meaning is not sophisticated identification but rather is identification in general or naïve identification.

36 Hardimon (1994a).
such identification we can achieve meaning through the pursuit of the role; moreover, we are at home in rather than alienated from the role.

The arguments in part 3 show that an agent who identifies with a role has a general normative connection to his role-duties; he has decisive reason to conform to them. In part 4, I further argue that this normative connection has a number of distinctively moral features. Namely, it parallels the structure of an obligation, it is other-regarding, and it is a duty owed to others.

1 Simmons’s Challenge to the Role-Identification Theorist

Hardimon holds that identifying with a role primarily entails conceiving of oneself as someone for whom the duties of the role function as reasons. On Simmons’s view, if we understand role identification in this way, it is not the sort of thing that could ground a normative requirement. Simmons distinguishes between operative reasons and moral requirements. Operative reasons are considerations that an agent takes to be reasons, but need not be. Operative reasons may be merely putative reasons. Moral requirements, by contrast, are actual rather than putative reasons. To say that the duties of a role function as reasons for an agent is merely to say that they are an agent’s operative reasons. The agent treats them as his reasons, but they need not be actual reasons. Thus,

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37 Hardimon (1994a), 358. The complete account of role identification also entails occupying the role and recognizing that one occupies it.
38 “Voluntarism is no more ‘defective’ for ‘leaving out’ the idea of role identification than it is defective for ‘leaving out’ the idea of financial incentives. It in fact ‘leaves out’ neither, since it is perfectly neutral on the subject of why people in fact perform their role obligation. It is instead only a theory about why (and when) people are morally bound to perform.” Simmons (1996), 97.
to say that an agent identifies with his role is to say that the agent treats his role-duties as reasons. For example, to say that a judge identifies with the judge-role is to say that the duties of a judge function as reasons for him. However, for Simmons, the question is: What justifies the fact that the judge’s duties function as reasons for him? That the judge identifies with his role is no answer to this question; rather, it is just another way of putting what we are seeking to justify—namely, that the judge’s duties function as reasons for him.

In sum, Simmons’s general challenge to Hardimon (or anyone else arguing that role identification grounds a normative requirement) can be characterized as follows: Explain how a seeming fact about the motivational psychology of an agent—namely that the agent identifies with a role and hence takes its duties as his operative reasons—can ground a moral requirement binding on that agent to perform the role’s duties.

Hardimon cannot overcome Simmons’s challenge, but only because he has not fully characterized what it is to identify with a role. In the next section, I develop an alternative account of role identification—namely, that to identify with a role is to have a comprehensive goal based on the social role. Like Hardimon’s account of role identification, this account depicts role identification as a fact about the motivational psychology of an agent. It differs from Hardimon’s in that the cluster of considerations that constitute the agent’s comprehensive goal (rather than the role’s duties) function as reasons for the agent who identifies with her role. This more nuanced account of role identification enables us to argue for the claim that a fact about an agent’s motivational

psychology—that the agent identifies with a role—can be of normative consequence. The general outline of this argument is as follows:

An agent realizes the fundamental goods of meaning and self-determination through the pursuit of rational comprehensive goals. A comprehensive goal is rational if there is some reason to do as the comprehensive goal requires. (Examples of non-rational goals are torturer, mafioso, or slave owner.) However, to have some reason to do as a comprehensive goal requires is not to have decisive reason to do so. The agent who has a particular rational comprehensive goal comes to have decisive reason to do as the goal requires by virtue of the fact that such goal is her goal, and hence, a way that she realizes the goods of meaning and self-determination. When an agent identifies with a role, she pursues a comprehensive goal based on the role—that is, she pursues a comprehensive goal that generally requires that she conform to the role’s duties. If this comprehensive goal is rational, then she realizes the fundamental goods of meaning and self-determination through generally conforming to her role’s duties. Thus, the agent who identifies with a role can come to have decisive reason to conform generally to the role’s duties by virtue of the fact that she realizes the fundamental goods of meaning and self-determination by doing so.

We can overcome Simmons’s general challenge to the role-identification theorist by showing that one who identifies with a rational role thereby has decisive rather than merely putative reason to conform to the duties of the role. However, we must show more to overcome a second challenge that Simmons may have in mind. Simmons leaves unclear what he means by “moral requirement” in his denial that role identification can
ground a moral requirement. Simmons might hold that one has a moral requirement to phi if one has an actual rather than a putative reason to phi. If so, then his only challenge to the role-identification theorist would be the general challenge discussed above. However, he may mean something more specific and demanding by the term “moral requirement”—namely, a reason with distinctively moral characteristics. If so, then Simmons presents a second challenge to the role-identification theorist: Show how role identification can ground a distinctively moral reason for conforming to one’s role.

In the pages that follow, I argue that the role-identification theorist can overcome both of these challenges. Role identification can ground a decisive and, hence, actual (as opposed to a merely operative or effective) reason for conformity to one’s role. Moreover, role identification can ground a distinctively moral reason for such conformity. As noted above, the key to answering Simmons’s challenges is characterizing role identification with sufficient nuance. To this preliminary task, I now turn.

2 Comprehensive Goals and Role Identification

To set the stage for the argument that sophisticated identification with a role can generate reasons to perform the role’s duties, we must briefly rehearse and clarify the elements of sophisticated identification discussed in the previous chapter. Recall from chapter one that the agent who identifies with her role has a sufficiently coherent

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41 I borrow this term from Raz (1986), 300-13. My specification of a comprehensive goal differs from his, though it shares some of its elements. In the previous chapter I use the term “end” or “comprehensive end”. I use the terms “goals” and “ends” interchangeably.
complex of first-order and higher-order unmotivated desires that generally favor attending to the considerations associated with the comprehensive goal based on the role. Recall further the distinction between naïve and sophisticated identification. Unlike the naïve identifier, the sophisticated identifier has a comprehensive goal based on the role that she intrinsically values. Let us rehearse and augment somewhat this second element of sophisticated identification, paying special attention to the notion of an intrinsically valuable comprehensive goal.

To be comprehensive, a goal must account for a significant part of one’s activity over a substantial period of time. For example, the goal of winning a particular basketball game would not be a comprehensive goal, though perhaps the goal of being a basketball player would be. Persons usually have a number of comprehensive goals. For example, one person might have the goals of being a doctor, a citizen, a Little League coach, a parent, and a brother. Finally, some comprehensive goals are states to be achieved and some are ways of being to be maintained and developed. For example, the comprehensive goal of writing the great American novel involves a state to be achieved. Other comprehensive goals, however, are more open-ended, such as being a psychiatrist, a good Christian, or a novelist. With these general points about comprehensive goals out of the way, let us enumerate three particulars.

First, to have a comprehensive goal is to take a particular complex of considerations as supplying one with salient reasons. This involves seeing the complex of considerations as supplying one with reasons and hence as justifying certain courses of action. The complex of considerations comprises both goods to which one is attentive and
the circumstances that implicate those goods. For instance, the consideration that her child is hungry is a salient consideration for a mother. It is a consideration that justifies her feeding her child in light of the further consideration that doing so will realize the good of maintaining the child’s health. Further, to take a complex of considerations as supplying one with salient reasons is to see the supplied reasons as salient against the background of a sea of reasons. This involves not only being attentive to these reasons rather than others in the background; it also involves acting on them rather than the background reasons. For example, one might have reason to engage in any number of courses of actions, some of which are incompatible, including (1) caring for any number of children, (2) caring for some particular child, say, one’s biological child, or (3) doing things that have nothing to do with and preclude one from caring for any child. However, should one have the comprehensive goal of being a mother, the reasons supplied by a particular complex of considerations would stand out for one against the background of other reasons. In the case of the mother, some of the salient reasons relate to the wellbeing of a particular child—her child—and the circumstances that implicate her child’s wellbeing.

Second, a person with a comprehensive goal has some conception of the interconnectedness of the complex of considerations that she finds salient. She will see some considerations as hierarchically related and thus interconnected. For instance, a mother attentive to her child’s hunger and need for schoolbooks might view these considerations as connected to the same general good, e.g., her child’s wellbeing. However, one need not see all considerations relevant to a particular comprehensive goal
as connected in this way. Consider a citizen who takes the considerations that there is an election next Tuesday and that paying a certain amount in taxes is the law of the state as salient reasons for going to the polls next Tuesday and for paying that amount in taxes to the state. This citizen might not relate these two considerations to some general good common to both, but rather to two separate goods. Nonetheless, one with a comprehensive goal sees (to some degree at least) a point and purpose, or a closely connected set of points and purposes, underlying the complex of considerations that constitute her goal.

Third, an agent with a comprehensive goal that she takes to be intrinsically valuable values her life insofar as it is led in accordance with the complex of interconnected salient reasons constitutive of her goal.\textsuperscript{42} This valuing is fundamentally connected to the agent’s understanding of the points or purposes that she takes to underlie the complex of considerations constitutive of her goal. The agent not only has some idea of the point or purpose behind leading a life attendant to the relevant considerations; she also values her life in light of that purpose. Moreover she values her life in two different ways—namely, she sees and feels the value of the organizing point of her life. By seeing the value, I mean that she explicitly judges the point to be of value. By feeling the value, I mean that she has a positive affective response to the notion of realizing her life in service of the value.

\textsuperscript{42} This element of a comprehensive goal is borrowed from Korsgaard’s analogous element of a practical identity. Korsgaard (1996), 101. See also Raz’s discussion of a similar point with respect to comprehensive goals. Raz (1986), 300ff.
With a conception of an intrinsically valued comprehensive goal now in hand, we need only explicate what it is for such a goal to be based on a role to complete our account of sophisticated role identification. Paradigmatic instances of comprehensive goals based on social roles are being a mother, being a practitioner of some profession, being a member of some civic association (e.g., Little League coach), or being a citizen. In general, an agent has a goal based on a comprehensive goal if two conditions are met: First, the bearer of the comprehensive goal occupies and recognizes that she occupies a particular role. Second, having a comprehensive goal based on a social role entails being attentive to a complex of considerations that generally favors one’s acting in accordance with the duties of the relevant role. Note two points about comprehensive goals based on social roles so understood.

First, on this account of sophisticated role identification, one does not conform to the duties of the role simply because they are the duties of one’s role. This is unlike Hardimon’s account, at least under one interpretation, which holds that one who identifies with a role conforms to the role’s duties because they are its duties. Rather, on the present account, the agent who identifies with a role conforms to the relevant duties because she appreciates the complex of goods that her conformity promises to realize. We might mark these two different ways of relating to the norms of one’s role in terms of content-independent and content-dependent reasons. This distinction originates in the

43 See Hardimon (1994a), 358. “If you identify with a role, its norms will function for you as reasons. If you are a judge who identifies with the role of judge, the fact that this is something judges do (in the normative sense) will give you a reason for doing it.” (emphasis in the original)
philosophy of law. In general, when one has a reason to perform an action by virtue of being told to do it by an authority, one has content-independent reason to perform the action. By contrast, one’s ordinary reasons to perform an action, the reasons that are connected to the content of the action in some way, are content-dependent reasons.

On Hardimon’s account, the agent who identifies with a role seems to take the duties of his role as giving him content-independent reason to perform the actions that the duties specify. Her reason to perform the duties of the role are that performing these duties is what the role requires. By contrast, on the present account of role identification, the agent who identifies with a role takes himself to have content-dependent reasons to perform those actions. That is, one’s reasons to perform the duties of the role are that they serve an intrinsically valuable point or cluster of points. In sum, whereas on Hardimon’s account, the relevant role’s duties function as reasons for the agent who identifies with the role, they do not on the present account. Rather, on the present account, the agent’s reasons for conforming to his role-duties are separate from such duties; they are the complex of considerations constitutive of the comprehensive goal. These considerations, not the role-duties themselves, favor general conformity to the relevant role-duties.

The second point emphasizes the critical perspective available to one with a socially based goal. An agent who has a comprehensive goal based on a social role has some sense of the point or purpose that unifies the complex of considerations constitutive of the goal and that renders a life governed by such a complex valuable. This sense of a point or purpose underlying the relevant role enables one to assume a critical standpoint

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44 For a discussion of content-independence, see Shapiro (2002), 389.
with respect to the duties of her role. One who has a comprehensive goal based on a social role may criticize and resist those duties of the role that she believes are inconsistent with or irrelevant to the role’s underlying values. For example, one might choose as one’s life mate someone of the same sex despite the norm that spouses are of different sexes. However, even in this case, the bearer of the modified goal conforms to the other duties of the relevant role. For example, she might endeavor to pursue a lifelong monogamous relationship with her spouse and seek to raise children with her.45

3 The Three Theses Defended

With the present account of sophisticated role identification in hand, we are in a position to defend the three theses presented at the beginning of this paper: (1) The fact that someone identifies with a rational role provides decisive reason for generally conforming to the role’s duties; (2) Role identification is an important ground of our normative connection to our roles, and; (3) The reasons grounded by moral requirements have three features of a moral requirement. I defend theses one and two in this section before turning to the third thesis in part 4.

3.1 The First Thesis

A key premise in the defense of the claim that sophisticated identification with a rational role grounds decisive reason to conform generally to the role’s duties is as follows: An agent who identifies with a rational role realizes the fundamental goods of

45 In Raz (1986), 311-12, Raz gives a similar example in his discussion of comprehensive goals based on social roles.
meaning and self-determination by conforming to the role’s norms. In the next section, I explicate the conceptions of meaning and self-determination featured in this key premise and how they relate to comprehensive goals and role identification. In the sequel, I explicate the notion of a rational social role, also featured in this key premise. With these explications in hand, I then turn to the defense of our first thesis.

3.1.1 Meaning, Self-Determination, and Comprehensive Goals

Two components are essential to a meaningful life. First, a meaningful life is not one damn thing after another; rather, it has a structure. However, to have meaning in one’s life is not merely for it to be structured. Here, we come to a second element of a meaningful life—namely, valuing one’s life in light of its structure. With this understanding of meaning in mind, we can make a key claim about comprehensive goals. Namely, by pursuing comprehensive goals we can achieve meaning in our lives.

A life unmoored by comprehensive goals lacks the structure essential to a meaningful life. As noted above, in many cases, we act in the context of a sea of reasons. There are many things at any moment that one might rationally do. A comprehensive goal provides mooring in this sea. It entails taking a unified complex of considerations as supplying salient reasons. As such, the comprehensive goal enables one to structure one’s life in accordance with a coherent thread of reasons over time. The second element of a meaningful life is also realized through having a comprehensive goal. Recall that when

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46 This structure need not be very, as it were, structured. For example, Kierkegaard’s aesthete’s goal of pursuing a diverse and satisfying array of pleasures is a kind of structure. There is a further question relevant to the meaning of the life that asks whether a life so structured is thereby a valuable life.
one has a goal, one values the life in which one pursues the various reasons constitutive of the goal. That is, one sees and values the point and purpose of living one’s life attentive to the relevant complex of considerations.

An example might help illustrate how comprehensive goals enable one to achieve meaning in one’s life. Consider the professor, who qua professor, attends to various considerations, including the education needs of certain students, perhaps, the emotional needs of some of those students, the administrative needs of the relevant academic department, and certain opportunities for research. By attending to this complex of considerations rather than the virtual infinity of other possibilities in the sea of background considerations, the professor’s life has some structure. Moreover, she likely has, at least to some degree, a sense of the value, the point or purpose, of living her life attentive to this particular complex of considerations. For example, the professor might take such a life to be valuable because it furthers human self-understanding (albeit modestly) in a number of ways. First, it does so by educating particular students, equipping them to further develop their understanding of the world independently, and enabling them to teach others. Second, she might think that attending to this complex of reasons is important because it enables her to break new scholarly ground on her own. Moreover, she might see her own research as something that both furthered and is furthered by her teaching. Thus, having the comprehensive goal of professor enables the professor to achieve structure and value in her life and hence meaning. Recall also that when one identifies with a role in a sophisticated way, in addition to intrinsically valuing one’s comprehensive goal based on the role, one also appreciates the value of the role in
a less reflective way. One has a unified complex of first-order and higher-order unmotivated desires that generally favor performing the tasks associated with the role. In sum, one who identifies with a role in a sophisticated way appreciates the value of the role and its associated activities at the both a reflective and an affective level. In sum, to have a particular comprehensive goal entails having a life governed to a significant extent by a complex of unified considerations that one takes to be reasons. Moreover, it entails taking one’s life insofar as it is governed by this complex of putative reasons to be valuable and hence meaningful.

In addition to the fundamental good of meaning, we also realize an important form of self-determination through the pursuit of comprehensive goals. To see this, consider that the articulation of the three elements of one’s comprehensive goals admits of a wide degree of variance across persons and over the span of an individual life. At one extreme, we can imagine someone who only coarsely articulates these elements: (1) the complex of considerations that are his salient reasons, (2) the points and purposes that unify the complex of considerations, and (3) the value of the life governed by such a complex of considerations. At the other, we can imagine someone who articulates these elements in great detail and refinement. Moreover, among those who have refined articulations of their comprehensive goals, we can imagine a wide variance in the shading and contours of such articulations.

Over the course of a typical human life, at least some measure of refinement of one’s goals is nearly unavoidable. The innumerable particular circumstances and choices that one faces in the pursuit of one’s comprehensive goals spur this refinement.
Determining which choice or set of choices is best requires clarifying to oneself the points and purposes of one’s goal. Anyone who sets off on a career, say, that of a professor, should find familiar such growth in self-understanding. One begins the career with a certain conception of what being a professor involves. Over time, this understanding changes and develops. One comes to have a better idea of the sorts of things one does as a professor, what the point of doing them is, and how doing these things fits in with the rest of one’s life.

Through this process of maturation, one enjoys a good that involves both growth of self-understanding and self-determination. Self-understanding grows with articulation of the reasons that constitute one’s goals. One also determines oneself in the sense of self-creation or self-realization. Refining one’s goals is more than merely expressing something that is already there. Rather, it involves giving further form to coarse or inchoate reasons. Thus, refining the account of one’s goals actually adds content to them. Moreover, upon refining the reasons that constitute one’s goals, what one finds salient changes. Thus, one experiences and interacts with the world differently as a result of this process. Finally, the good of self-determination involves not only developing one’s self-understanding; it also involves actually acting on and realizing such self-understanding in the world.

Cf. Taylor (1985), chs. 1-3. In these chapters, Taylor traces the implications of his claim that humans have the distinctive capacity of creating and transforming themselves by reflecting upon and elaborating upon the cognitive aspect of their emotions and desires.
3.1.2 Rational Roles

Though having a comprehensive goal is a necessary condition for realizing the goods of meaning and self-determination, it is not sufficient. Pursuing a comprehensive goal entails only that one takes one’s life to be valuable insofar as it is governed by the relevant complex of considerations. However, the goods of meaning and self-determination have a subjective and an objective component. Realizing the good of meaning requires not only that one take one’s life to be valuable, one must be right on this score. The structure of one’s life as shaped by one’s comprehensive goal must actually be valuable. One can be wrong about this, just as an art or film critic might be wrong about the aesthetic value of a painting or a film. Similarly, realizing the good of self-determination requires more than the subjective feeling that one has come to better understand the value of one’s life; it involves actually improving one’s understanding. Thus, not all comprehensive goals can facilitate the realization of the goods of meaning and self-determination. Rather, a goal must be rational. That is, it must be constituted by a complex of considerations that actually are good reasons and that taken together actually confer value on the life that they structure.

This same point holds for comprehensive goals based on social roles. Consider the roles of slave owner and mafioso. Presumably, at least some slave owners and mafiosi have seen their lives as valuable by virtue of being governed by complexes of putative reasons—comprehensive goals—that favor their acting in conformity with the duties of their roles. The claim here is that these slave owners and mafiosi are mistaken. The complexes of putative salient reasons constitutive of these respective comprehensive
goals are pervaded by a lack of appropriate regard for the humanity of others. This lack of regard for the humanity of others infects and taints these complexes of reasons and the comprehensive goals that they constitute. Hence, the respective comprehensive goals and their constituent reasons are normatively invalid. They are not reason-giving, though they seem to be in the eyes of the slave owners and mafiosi. Similarly, a life so led is not valuable, and hence is not meaningful, irrespective of whether the slave owner or mafioso thinks that it is.

Thus, sophisticated identification with a social role is not sufficient to justify acting in accordance with a role’s duties. A further condition must be met. One way to describe this condition is that the social role must be *rational*. That is, there must be a non-empty set of rational comprehensive goals that favor general conformity to the duties of the role. Though some social roles do not meet this condition (e.g., the slave owner or mafioso), some, such as that of doctor, mother, parent, and, perhaps, citizen, potentially do.

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48 I use the term “rational” to echo Hegel’s notion of a rational institution. However, were I to defer to Thomas Scanlon rather than Hegel, it might be better to use the term “reasonable.” Scanlon distinguishes between irrational and unreasonable agents. See Scanlon (1998), ch. 1. The former are rational but act for bad reasons. Similarly, one might say that if there are only bad reasons for conforming to the norms of an institution, then that institution is unreasonable—or in my parlance, irrational. See also David Brink’s notion of the morally conditioned intrinsic value. On this account, a necessary conditions of an object’s intrinsic value is conformity to certain moral requirements. Brink (1989), 272.
3.1.3 Decisive Reasons

Before defending the thesis that sophisticated role identification is a ground of decisive reason to conform to the duties of a rational role, we must briefly clarify what a decisive reason is. In general, we have reason to perform some action or course of actions if doing so will realize some good. This understanding of a reason is meant to be compatible with deontological and consequentialist moral theories. For example, in a consequentialist vein, we might have reason to go for Chinese food because it promises to realize the good of the pleasant sensation of tasty won ton soup. In a deontological vein, we have reason to speak truthfully because doing so is necessary to realize the good of manifesting appropriate respect for the humanity of others. We can distinguish between having some reason and having decisive reason to do something. We have some reason to perform a course of actions when so doing promises to realize some good. However, performing some other incompatible course of action might promise to realize as much or more good. By contrast, we have decisive reason to perform a course of action if that course of action promises to realize more good than competing actions.

On this account of decisive reasons, one does not have decisive reason come what may. Rather, one has decisive reason given a particular set of circumstances. Counterfactually, in different circumstances, one might have decisive reason to do something entirely different. With this account of a decisive reason in hand, I can now fully state the first thesis to be defended: By virtue of the fact than an agent identifies with a rational role, she comes to have decisive reason in a significant set of
circumstances in which she otherwise would not have had decisive reason. Let us now turn to the defense of this thesis.

3.1.4 The Thesis Defended

When an agent identifies with a role, she has a comprehensive goal based on the role. If she identifies with the role in a rational way—that is, her comprehensive goal based on the role is rational—then she realizes the fundamental goods of meaning and self-determination through doing as the goal requires. A goal based on a role requires conforming generally to the duties of the role. Thus, the agent who identifies with a role in a rational way has reason to conform to the duties of her role that the agent who does not identify lacks. Namely, she realizes the goods of meaning and self-determination by conforming generally to the duties of her role.

To defend the claim that these goods are weighty goods, I can do little more than remind the reader of what these goods entail. Realizing the good of meaning involves a justified appreciation of the value of one’s life insofar as it is governed by a particular set of interconnected points and purposes. Self-determination involves furthering one’s understanding and appreciation of the value of such a life and acting in accordance with such appreciation. Intuitively, it seems that realizing these goods are of profound importance.

If we accept that the goods of meaning and self-determination are quite weighty, then we should also accept that role identification can ground decisive reason to conform generally to the duties of one’s role-duties. As we saw above, one who identifies with a
role (in a rational way) realizes the goods of meaning and self-determination through conforming generally to her duties. One who does not identify does not realize these goods in this way and, hence, has significantly less reason to conform to her duties than the agent who does identify. The idea, then, is that given the weight of the goods of meaning and self-determination, the agent who identifies with a role has decisive reason to conform to her role in many more circumstances than the agent who does not so identify. She does because she realizes the goods of meaning and self-determination through discharging her role-duties, whereas the agent who does not identify does not. Thus, the fact that an agent identifies with her role grounds decisive reason for her to conform generally to its duties. An example may help to illustrate this argument.

Imagine two professors, A and B. A is exclusively contractually minded with respect to his role. B identifies with hers. Now consider a handful of the duties that we commonly associate with this role, such as grading students’ papers, writing recommendation letters for deserving students, attending various committee meetings, and conducting research. We can further imagine a case where there is a significant gap between what A is contractually obligated to do (or has otherwise obligated himself in the course of voluntary assumption to do) and what we would expect him to do given that he is a professor. Perhaps, A has no contractual obligations to write recommendation letters for his students, to conduct more than a bare minimum of research, or to even spend much time preparing and conducting lectures. Moreover, A, being exclusively contractually minded has the attitude that his job is a necessary burden. It is a reasonably tolerable way to make a living, but that is it.
Nonetheless, we might be tempted to remind A that it is his duty as a professor to write some recommendation letters for his deserving students, to sit on some departmental committees, and to engage more fully in the tasks of teaching and evaluating his students. We can imagine the professor replying (perhaps, rightly) that he has some, but not decisive, reason to do these things. Doing them will achieve some good, but he can realize as much, an incommensurate amount, or perhaps more good doing other valuable things, such as writing crime novels or volunteering at food banks instead of discharging robustly his professorial duties.

B, we can imagine, has the same deal with her institution as A. Thus, she too has only minimal obligations based in voluntary assumption to discharge the duties of her role. Like with A, there is a gap between what B is obligated to do on the basis of her acts of voluntary assumption and the duties we commonly associate with being a professor. However, there is a crucial difference between the cases of A and B. Whereas A does not identify with his role, B does. She attends to a rational comprehensive goal based on the professor role. As such, she realizes the goods of meaning and self-determination through the pursuit of this comprehensive goal and hence, through general conformity to the role of professor. Thus, she has reason that A lacks to discharge her professorial duties. A has some, but not decisive reason, to write recommendation letters for his deserving students, to sit on departmental committees, and to engage more fully in the tasks of teaching and research. However, he also has some reason to spend the time he would have spent on these tasks volunteering at food banks or trying to write a novel. B, by contrast, realizes meaning and self-determination through discharging her professorial duties, and thus she
generally has decisive reason to discharge them rather than doing other things. In sum, this example illustrates how role identification elevates some reason to conform generally to one’s role to decisive reason for such conformity.

3.2 The Importance of Role Identification

Our second thesis holds that role identification provides an important normative connection to our roles. When we identify with a role, our normative relation to the role is different from, and in some sense superior to, the normative relation we have when our normative connection to the role is grounded in other ways, such as a promise or natural duty. In general, this difference has to do with alienation from the social role. Being alienated from something entails seeing it as an external imposition hostile to one’s fundamental interests. For example, Karl Marx’s laborer might see his duties as a factory worker inimical to his well-being and imposed upon him from some outside force—the owners of the factory. However, this is not how someone who identifies with a role sees the role’s duties.

As we have seen, one who identifies with a role pursues a comprehensive goal associated with the role. Through the pursuit of the goal associated with the relevant role, which includes generally conforming to its norms, the agent who identifies with the role does not labor under an external and hostile imposition; rather, she thereby defines herself and achieves meaning in her life, thereby realizing an important aspect of her well-being. Role identification, then, enables the agent to wholeheartedly embrace her role rather than being alienated from it.
Contrast the agent who identifies with her role with the agent who merely has a contractual relationship to the role. The latter is bound to conform to the norms of the role by virtue of contract and nothing else. This agent neither identifies with the role, nor is she under a natural duty to conform to its norms. Being contractually bound to a role does not preclude being alienated from it. For example, a worker in a 19th century factory might both be alienated from his role and contractually bound to it.

If one’s only relationship to one’s role is merely contractual, then one very likely will experience the duties of such a role as external and hostile impositions. To see this, consider a few examples. Imagine the parent who cares for his children only out of a sense of obligation incurred by virtue of past actions that have led his children and spouse to rely on him. Consider, also, the professor who researches, teaches class, and grades papers only because he has entered into a contract with the university to perform such tasks. If the parent and professor perform their respective duties merely out of a sense of contractual or quasi-contractual obligation, then it seems likely that they will to that extent be alienated from their roles (and correspondingly less effective in them).

The reason why an exclusively contractually minded agent will experience her duties as alienating is twofold. First, contractual relationships are instrumental. An agent enters into a contract in order to achieve some good external to the duties incurred by virtue of the contract. Second, a significant portion of an agent’s energy and time is required to perform the duties of any role. Thus, one who merely has a contractual relationship to her role spends a great deal of time and energy to achieve some good external to the performance of the duties of the role. For such a person, it cannot be said
that the journey rather than the goal is what is important and worthwhile. Only the goal is intrinsically worthwhile. Thus, the journey, the large portion of one’s time and energy allotted to performing the duties of one’s role, is only an expenditure. It is a cost to one’s well-being and freedom rather than a constituent component of one’s well-being and an exercise of one’s freedom.

By contrast, role identification, unlike contractual grounds of role-duties, grounds an agent’s role-duties in a way that enables the agent to be at home in her role rather than alienated from it. When one identifies with a role in a sophisticated way, one has a comprehensive goal that one takes to be intrinsically valuable that leads one to act in general conformity with the role’s requirements. Moreover, the identifier enjoys a complex of sufficiently coherent unmotivated first-order and higher order desires that generally favor performing the tasks associated with the role. As such, the identifier appreciates the value of her life at both a reflective an emotional level insofar as it is governed by the role. In short, she sees and feels the meaning of her life insofar as she lives it in accordance with her role’s duties.

4 Moral Requirements and the Reasons that Role Identification Grounds

As we saw above, Hardimon claims and Simmons denies that role identification grounds a moral requirement to conform to the duties of one’s role. Above, I argue that identification with a rational role can provide one with decisive reason to conform to one’s role-duties, but I do not argue that such reason amounts to a moral requirement. My

49 For similar reasons, I would argue that principles of voluntary assumption other than contract and natural duty do not preclude alienation from one’s role-duties.
hope is that showing that role identification can ground decisive reason to conform to one’s role-duties is interesting in its own right. Moreover, if we take Hardimon and Simmons to mean nothing more by the term “moral requirement” than an actual reason rather than a merely putative one, then I have shown that role identification grounds a moral requirement in this sense. Below I hazard an initial case for the claim that role identification grounds a distinctively moral requirement for conformity to the duties of one’s role—namely, this requirement has the structure of a moral obligation, it is other-regarding, and it is a duty owed to others.

4.1 The Structure of an Obligation

On a Kantian view, a moral obligation presupposes two sources of motivation, where one source is privileged with respect to the other. In Kant’s case, the privileged source of motivation is practical reason. The subordinate motivation is inclination. For Kant, obligation presupposes the possibility of conflict between sources of motivation. Because we are humans and not angels, it can be said of us that we are under an obligation to do as practical reason instructs irrespective of the potentially contrary pull of inclination. Angels, by contrast, have only one source of motivation, practical reason. Hence, we cannot say of angels that they are obligated to do as practical reason requires.

Like the Kantian agent, we can characterize the agent with a comprehensive goal as having two sources of motivation. On the one hand, the agent’s comprehensive goals provide her with reasons, and, hence motivation, to attend to the considerations

50 See Kant (1996), 66-8.
constitutive of her comprehensive goal. On the other hand, an agent will also be prone to attend to various considerations outside the ambit of any of her comprehensive goals and that potentially conflict with her goals.

Imagine a young professor who has embarked on an academic career, yet also feels the pull of joining in his father’s various business ventures. Though he is continually tempted to make common entrepreneurial cause with his father, he knows that he cannot do this and still do reasonably well as a professor. Moreover, he has chosen this latter comprehensive goal, and hence derives meaning and self-determination from this path. As such, this latter comprehensive goal is a privileged complex of reasons and motivation vis-à-vis the prospect of growing rich with his father. Thus, the comprehensive goal of being a professor is analogous to Kant’s practical reason. It is a source of obligation in the sense that it provides one with reasons and motivation that potentially come into conflict with and is privileged with respect to other sources of reasons and motivation. I submit that this same obligation-like structure is shared by many of our comprehensive goals.

4.2. Other-Regardingness

One might object that the reasons one has to perform one’s role-duties by virtue of identifying with the role are self-serving and hence, cannot, be species of moral obligation. The idea behind this objection is that moral obligations characteristically are based in a regard for others. However, on the present account, we generally have decisive reason to conform to the rational roles with which we identify because we realize the
good of meaning by doing so. It seems that in this case we conform to our role
obligations for our own benefit rather than the benefit of others. We conform in order to
realize the good of meaning. Thus, one might worry that the reason we have to conform
to our roles by virtue of role identification cannot be a moral requirement because it is not
sufficiently other-regarding.

The main response to this objection is to note that meaning is inherently other-
regarding. To illustrate this point, let us consider once again the example of a professor
who identifies with her role considering whether to write a recommendation for a
deserving student. The professor sees how it fits into and contributes to the structure of
her life, a structure that is valuable. In other words, the professor sees that writing the
recommendation is part of leading a meaningful life. So, she writes the recommendation.
When the professor reasons in this way, she is not acting on exclusively self-regarding
reasons. For, as we have seen, a meaningful life is one that is organized around the
realization of non-trivial goods and that meets certain moral requirements.

Recall the problem with the life of the slave owner and mafioso. Insofar as one’s
life is the life of a slave owner or mafioso it lacks value and hence meaning for failure to
respect the humanity of others. To wit, the organizing principle of the slave owner’s and
mafioso’s life involves treating other humans as property and coercing and terrorizing
one’s clients, respectively. Similarly, a life as a whole can lack value and hence meaning
if it fails with regard to what Kant would have called imperfect duties. A life that in no
case or rarely tends to the needs of others also fails to respect the humanity of one’s
fellows.
To return to our professor then, when the professor grades her students’ papers because it contributes to the meaning of his life, she grades the papers because it contributes to a life that is (1) organized around non-trivial goods, (2) does not violate any Kantian perfect duties (e.g., the slave owner or mafioso’s life, and (3) fits into a structure that is sufficiently attentive to the needs of others, i.e., a structure that conforms to Kantian imperfect duties. Relevant here as well is the important function played by many social roles. Namely, they provide a ready-made vehicle for discharging one’s imperfect duties. That is, they provide roles whose organizing principles involve in part meeting the needs of others (e.g., the parent’s task of tending to the well-being of his children, the Little League coach’s narrower version of this task, the professor’s task of tending to students’ educational needs, etc.). In sum, when one identifies with one’s various roles, one’s reason to conform to one’s duties is that they contribute to the realization of meaning, which in part entails discharging one’s moral duties to others.

4.3. A Duty Owed to Others

A final characteristically moral feature of role identification emerges in tandem with the principle of fair play.\[^{51}\] In the next section, I argue that an agent who identifies with a role makes use of certain social institutions to realize the fundamental goods of meaning and self-determination. As a result, he incurs a duty of fairness to maintain and

\[^{51}\text{For seminal discussions of the duty of fair play, see Rawls (1971) and Hart (1955). The principle of fair play likely serves by itself as a ground of our normative connection to our role-duties. Role identification does not collapse into an instance of this ground. Rather, role identification independently grounds a normative connection to our role-duties and also is a triggering condition of the principle of fair play.}\]
support those institutions. Moreover, this duty is owed specifically to his fellow participants in the institution. Thus, by virtue of identifying with a role, an agent incurs a duty of fairness to his fellow participants to maintain the social institutions that support the role. In the sequel to the next section, I argue that the way to maintain and support such a social institution is simply to do what he already has reason to do by virtue of identifying with the role—namely, to conform generally to the role’s duties and to critically assess and modify them as reason requires.

4.3.1 The Importance of Social Institutions and Social Roles

Social institutions and roles are features of our shared social world, much like various physical objects in this world, such as dams, buildings, and towns are. Just as with these physical objects, there is a sense in which we inhabit and make use of social institutions and roles. Social roles and social institutions facilitate our pursuit of comprehensive goals in various ways. As such, they facilitate our realization of the goods of self-determination and meaning that are uniquely available through the pursuit of comprehensive goals.

One way that social roles and institutions facilitate our pursuit of comprehensive goals is by equipping and disposing us to pursue particular comprehensive goals and to thereby achieving meaning. As a result of growing up within social institutions and being in constant contact with them as adults, we tend to internalize as our own the values and ways of life which we take to be embodied by these social institutions and their constituent roles. The social institutions equip us emotionally to pursue particular
comprehensive goals. Consider the first element of a comprehensive goal. It holds that to have a comprehensive goal is to take certain considerations as salient. A human agent would not find such a complex of considerations to be salient if she had only the cold cognition that certain goods were connected with those considerations. Rather, one must at least to some extent be drawn to such considerations on an emotional level. Even less plausible is an agent who could maintain her attentiveness to a complex of considerations that she found repulsive at an emotional level. Moreover, to achieve meaning through the pursuit of a comprehensive goal, an agent must be disposed to judge the underlying point of the role to be valuable and to feel such value. Socialization within social institutions facilitates both of these dispositions. In sum, social roles and institutions are important because they instill the values and emotional dispositions necessary for the pursuit of particular comprehensive goals and the capacity to thereby achieve meaning.

The second way that social roles facilitate the pursuit of comprehensive goals has to do with the good of recognition. Recognition from one’s fellows, in various ways, is necessary to sustain one’s pursuit of comprehensive goals and to sustain one’s sense that the pursuit of a particular comprehensive goal is meaningful. A healthy measure of self-regard is a necessary precondition for the sustained pursuit of any comprehensive goal. The lack of a healthy measure of self-regard is enervating. It is difficult to maintain

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I do not mean to suggest here that recognition is only an instrumental good. It likely is an intrinsic good as well. It is good intrinsically to win the recognition of one’s fellows. Rousseau provides a seminal discussion of this need, which he describes as *amour propre*, in his *Discourse on Inequality* and *Social Contract*. 
the requisite sense of self-regard unless others recognize the value of one’s pursuits. A felicitous feature of a socially based goal, i.e., a goal that leads one generally to conform to the norms of one’s role, is that one is praised by one’s fellows for pursuing it. Hence, the self-esteem of someone with a socially based comprehensive goal does not flag for failure of positive recognition from his fellows. By contrast, someone with comprehensive goals too far outside a society’s normal practices may have trouble maintaining the sense of self-esteem that, in turn, is necessary for the sustained pursuit of his comprehensive goals.

A third reason why social roles and institutions are important is that they provide the social coordination necessary for the pursuit of particularly complex, rich, and valuable comprehensive goals. For example, to enjoy the life of a parent, there must be a social practice of deference and support that makes it possible to be a parent. Particularly, social practices must settle who has custody of which children and who makes what set of decisions regarding their well-being for it to be possible for anyone to enjoy the life of a parent. Similarly, to enjoy the life of a doctor, lawyer, or a professor presupposes hospitals, law firms, medical schools, law schools, and universities. Moreover, it presupposes a set of social practices that generally settle who is authorized to pursue these comprehensive goals.

David Schmidtz similarly claims that a healthy measure of self-regard is a necessary precondition of the sustained pursuit of one’s final ends. He details various implications that this claim has for our choice of final end. Schmidtz (1995), 1-5. Perhaps Hegel has something like the idea that the recognition of others is a precondition of our self-regard in the master-slave dialectic of the Phenomenology of Spirit. Hegel (1977), sections 174-96.
4.3.2 The Principle of Fair Play

In sum, social roles and institutions are valuable because they perform a variety of functions necessary for our pursuit of comprehensive goals and, hence, for the realization of the fundamental goods of self-determination and meaning. When we identify with a role (pursue a comprehensive goal based on the role), we make use of a shared social institution, much like when we make use of other items in our shared social world, such as towns, public buildings, and roads, in our daily lives. In the latter case, we are bound by a certain duty of care. When we make use of buildings, towns, or city streets, we are duty-bound as a matter of fairness to others who use them to refrain as far as possible from damaging them and to participate at least to some extent in their maintenance. Thus, our duty to maintain these objects is not only based in our self-interest, though it is that too, it is a duty we owe to others.

Something similar can be said about our use of social institutions. When we identify with social roles, we make use of them to realize the goods of meaning and self-determination in our lives. As when we make use of physical objects in our shared social world, when we make use of social roles, we incur a duty to refrain from harming them and to some extent to participate in their maintenance. A key ground of this duty is that these roles are useful to others for the same reason that they are useful to us. Namely, they facilitate the realization of the fundamental goods of self-determination and meaning.

How, then, do we discharge this duty to refrain from harming and to maintain the roles with which we identify? As we have seen in chapter one, social roles and social
institutions are in large part constituted by norms that, in turn, are certain patterns of behavior and criticism. Maintaining these norms, and hence the social institutions that they constitute, involves generally following these patterns and praising and blaming others who conform and contravene to these norms. However, maintenance requires more than just slavish conformity. As we have seen above, meaning and self-determination can only be achieved in the context of rational institutions and social roles. Social roles and institutions, then, are only valuable insofar as they are rational. Hence, maintenance also requires trying to make sense of the patterns of the behavior that constitute the relevant social institutions, to uncover what one thinks is their point and purpose, to act in accordance with that underlying purpose, and to criticize the institutions to the extent that they run afoul of it. In short, then, we can discharge our duty to maintain our roles by doing what we already have reason to do by virtue of identifying with them—namely, by articulating, refining, and acting on the reasons constitutive of the comprehensive goal based on the relevant role. The important point, however, is that one’s duty to do this is not one owed only to oneself. It is owed also to one’s fellow creators and participants in these social institutions.

5 Conclusion

We began this essay by considering Simmons’s general challenge to the claim that role identification can ground a moral requirement to conform generally to one’s role-duties. Simmons challenges the proponent of role identification to explain how a psychological fact about an occupant of a role, namely that the agent identifies with the
role, can ground a moral requirement binding on the agent. I accept Simmons’s claim that the fact that an agent identifies with a role is a fact about her motivational psychology. Namely, she has a certain comprehensive goal. This psychological fact can make a normative difference if the comprehensive goal is rational. The reasons constitutive of a rational comprehensive goals are not just motivational reasons; they are actual reasons. However, these reasons are rarely in the first instance decisive reasons for conforming to the relevant role’s norms. Rather, it is only by virtue of the fact that a particular individual achieves the goods of self-determination and meaning by the pursuit of the particular complex of reasons constitutive of the relevant comprehensive goal that such reasons rise, for that individual, to the level of decisive reasons.

With this answer to Simmons’s challenge in hand, I make two further points about role identification. The first has to do with the importance of role identification. Recall that I began this essay with the question that asks whether we really our bound by the pervasive and demanding role-duties that confront us in our every day lives, and, if so, on what grounds. This question is important because how we relate to these duties depends on the nature of our normative connection to them. On the one hand, these duties may be little more than inescapable, yet burdensome, and, perhaps, alienating impositions. On the other hand, they may be necessary to the realization of our well-being. As we saw above, role identification is important because it makes clear that with regard to some roles, the rational ones with which we identify, our normative connection is of the latter rather than the former sort. Hence, recognizing that role identification is a possible ground of our
duties helps us see that our social institutions and their attendant duties need not be hostile and external impositions; on the contrary, some are essential to our well-being.

The second further point is that the decisive reason that role identification provides looks much like a moral requirement. First, it has the structure of an obligation. Second, this reason is inherently other-regarding. And, third, we have a duty to our fellow participants in these social institutions to act on this reason. By doing what is consonant with our best understanding of the point and purpose of the roles with which we identify, we do our part to maintain the social institutions that we share and that are crucially important to the well-being of our fellow participants in these institutions.
Imagine you are a ship’s mate and that your captain commands you to swab the deck. And so you swab the deck. As it turns out, the captain is quite progressive and concerned that the members of his crew be given days off. On your day off, you notice that the deck is once again dirty and in need of swabbing. Moreover, you think to yourself that you need some exercise and that swabbing the deck is great exercise. So, you swab the deck. On the first day, you swabbed the deck for a content-independent reason. Your reason to swab the deck was the captain’s command. On the second day, you swabbed the deck for content-dependent reasons: the deck is dirty, and swabbing the deck provides great exercise.

We can find content-independent reasons in contexts other than commands. Take the cases of a promise to meet a friend for lunch. Your content-independent reason to meet the friend for lunch is that you promised. The content-dependent reasons are considerations, such as your friend is a sparkling conversationalist and an excellent judge of restaurants. In addition to promises and commands, requests, threats, and advice are yet other speech acts thought to give rise to content-independent reasons.\(^{54}\)

One might think that the nature of the distinction between content-dependent and content-independent reasons is in the name. Content-independent reasons are reasons for an action that are independent of the content of the action. Content dependent reasons are

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reasons for an action that are dependent on the content of the action. The captain’s command to swab the deck is a reason to swab the deck that in some sense is independent of the content of the action of swabbing the deck. By contrast, the reasons “the deck is dirty” and “swabbing the deck is great exercise” are not independent in this way. However, the nature of the independence of content-independent reasons is elusive. I conclude that the grasped-for distinction between content-independent and -dependent reasons has little to do with reasons’ independence or dependence on the content of the action for which they are reasons. Nonetheless, this distinction is worth clarifying for a number of considerations.55

First, such a clarification would illuminate the seeming difference between the (content-independent) practical reasons that one has by virtue of a promise, command, request, threat, or piece of advice and ordinary (content-dependent) practical reasons. Second, such a specification might help remove the mystery about the normative force of content-independent reasons. One might wonder why the fact that someone commands, requests, or promises something provides a reason for doing the thing promised, commanded, or requested. Third, a clear conception of content-independence would help clarify the dominant account of political authority, which holds that the hallmark of a legitimate political authority is that it provides its subjects with content-independent and

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55 For ease of exposition and to mark the continuity of the present distinction with the distinction made by previous authors using these terms, I continue to use the terms “content-dependent” and “content-independent” despite my view that they are misnomers.
peremptory reasons for action.⁵⁶ Fourth, as we shall see in chapter six, a clear specification of content-independent reasons promises to have implications for theories in the philosophy of law that hold that a defining feature of legal norms is that they provide content-independent reasons. In sum, the distinction between content-dependent and content-independent reasons is intuitively compelling and promises to be of great importance in a full understanding of authority structures of various sorts.

In this first part of this chapter, I consider and reject a handful of attempted conceptions of content-independent reason. In the second half, I develop and defend an alternative conception—the intent-based conception of content-independent reason. The key idea that animates this conception is Grice’s distinction between expressions of natural and non-natural meaning.⁵⁷ On Grice’s view, we use the term “mean” in its natural sense when we utter sentences, such as “Those thunderclouds mean rain” or “Those spots mean measles.” By contrast, the non-natural sense of “mean” entails communication. “The fire in the lookout tower means that the city of Gondor is under attack.” “The statement ‘I am angry’ means that I am angry.” In the foregoing statements, the term “mean” points to reasons for adopting a belief—i.e., the child has measles or the city of Gondor is under attack. Grice finds a similar distinction regarding

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⁵⁶ The dominant account of political authority can be understood as a development and extension of the correlativity thesis, which holds that fundamental to legitimate authority is not only the right to rule on the part of the authority but also a correlative duty to obey on the part of the authority’s subjects. Several authors who subscribe to the dominant account describe the correlative duty to obey in terms of a content-independent and preemptory reason to conform to the authority’s directives. See Hart (1982), ch. 10; Raz (1986), chs. 2–4; Green (1988), and; Shapiro (2002). Those theorists who reject the correlativity thesis reject the dominant account of political authority. See, e.g., Ladenson (1980); Edmunson (1998), and; Hurd (1991).

⁵⁷ Grice (1957).
statements that point to reasons for action, though the use of the term “mean” is a bit strained in this context. For example, we might strain to use the natural sense of “mean” in the statement “The fact that a legion of orcs is marching on Gondor means that we must march to aid Gondor.” Similarly, we might use the non-natural sense of “mean” in the statement “The king’s command ‘March to Gondor’ means we must march to Gondor.”

Grice’s careful analysis of statements of non-natural meaning illuminates a number of differences between these statements and statements of natural meaning. One of the key differences is of use to us here—namely, the difference in the kinds of reasons for adopting a belief or taking an action that are implied by the respective senses of “mean”. I argue in part two that these different kinds of reasons are content-independent and content-dependent reasons. Content-independent reasons are characteristic of statements of non-natural meaning. Hence, content-independent reasons are considerations that favor the adoption of a belief or performance of an action of the following form: A speaker intends that the agent so believe or act. By contrast, content-dependent reasons are characteristic of statements of natural meaning. They are considerations that favor the adoption of a belief or performance of an action other than considerations of the form “some agent has expressed the intent that the agent so believe or act.”

In the third part of this chapter, I apply the Gricean account of content-independence to determine whether certain kinds of speech acts are, in fact, sources of content-independent reasons. As we shall see, commands, requests and promises are.
Advice in one sense is and in another is not. Demands backed by threats, however, are difficult to categorize.

1 The Insufficiency of Current Conceptions of Content-Independence

Above, we considered an ostensive account of content-independence. On this account, content-independent reasons are the reasons an agent has by virtue of a valid command, promise, request, threat, or piece of advice. Though the foregoing paradigmatic account of content-independent reasons gives us a general idea of what is meant by a content-independent reason, a clear articulation of this concept would mark an improvement over the ostensive conception on a number of counts.

First, an ostensive account only identifies the various sources of content-independent reasons (i.e., commands, promises, demands, requests, and advice). It does not explain what feature these sources have in common that renders them sources of content-independent reasons and distinguishes them from ordinary content-dependent reasons. An adequate conception of content-independence would identify this feature.

Second, an ostensive account of content-independent reasons leaves mysterious why a content-independent reason is a reason at all. One might ask what it is about the fact that something has been commanded that makes it a reason for doing what has been commanded. An adequate conception of content-independent reasons would provide the framework for answering this question.

A third point relates to the fact that not all commands, requests, or pieces of advice provide content-independent reasons. Ostensive accounts provide no guidance in
sorting out those that do from those that do not. An adequate conception of content-independence would provide a framework for distinguishing those directives that count from those that do not. For example, an adequate conception would help us distinguish putative but invalid content-independent reasons, e.g., my crazy Aunt Sally told me to spike the eggnog with ammonia, from valid ones, e.g., the captain told the sailor to swab the deck.

In sum, unlike the ostensive conception of content-independence, an adequate conception of content-independence should (1) identify the feature that various acts traditionally held to be sources of content-independent reasons share (promises, demands, commands, requests, and advice), (2) remove the mystery as to why content-independent reasons are reasons, and (3) provide the framework for determining whether a given consideration is a valid or merely putative content-independent reason for performing some action. Moreover, a satisfactory conception of content-independence should satisfy a fourth criterion: (4) It should sustain the distinction between paradigmatic instances of content-independent and content-dependent reasons. That is, an adequate conception should categorize paradigmatically content-independent reasons (e.g., valid commands and promises) as content-independent and paradigmatically content-dependent reasons as content-dependent.

With these criteria in mind, I consider a number of accounts of the distinction between these two types of reasons and defend an alternative intent-based account. As we shall see, each of these accounts and my proposed alternative echo different aspects of
Hart’s seminal discussion in chapter X in his *Essays on Bentham*, which I quote here in full:

Content-independence of commands lies in the fact that a commander may issue many different commands to the same or to different people and the actions commanded may have nothing in common, yet in the case of all of them the commander intends his expressions of intention to be taken as a reason for doing them. It is therefore intended to function as a reason independently of the nature or character of the actions to be done. In this case of course it differs strikingly from the standard paradigmatic cases of reasons for action where between the reason and the action there is a connection of content: there the reason may be some valued or desired consequence to which the action is a means, (my reason for shutting the window was to keep out the cold) or it may be some circumstance given which the action functions as a means to such a desired consequence (my reason for shutting the window was that I felt cold.)

Hart’s discussion mentions a feature of content-independent reasons that I argue is the key distinctive feature of such reasons—namely, they are reasons one has by virtue of an agent’s intention that one act in a certain way. Though he mentions this feature, he nowhere explicitly holds that it is a defining feature of content-independence as I do here. Before developing and defending such an intent-based view of content-independence, I consider and criticize a number accounts of this notion that emphasize and develop other elements of Hart’s seminal discussion. As we shall see, my proposed intent-based conception of content-independence better meets the four criteria of an adequate conception of content-independence than do these other authors’ conceptions.

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59 Raz also notices that the speaker’s intention is a reason for the hearer’s action in his discussion of speech acts that typically provide content-independent reasons. However, Raz does not explicitly claim, as I do claim here, that content-independent reasons are essentially intentions that favor actions or beliefs. See Raz (1986), 37.
1.1 Contrastive Conceptions of Content-Independence

One way of moving beyond an ostensive account of content-independence is by way of contrast with content-dependence. The idea is that with a clear specification of content-dependence in hand, a clear specification of content-independence is readily available. Namely, content-independent reasons are reasons that are not content-dependent. Below, I consider Joseph Raz’s and Scott Shapiro’s attempts at this approach. As we shall see, the problem in both cases is that their respective accounts fail to preserve the intuitive distinction between content-independent and content-dependent reasons.

Raz holds that “a reason is content-independent if there is no direct connection between the reason and the action for which it is a reason.” Implicit in this conception is the notion that a reason is content-dependent if there is a direct connection between the reason and the action for which it is a reason. Thus, on this account, the distinction between content-independent and content-dependent reasons turns on the directness of the connection between the action commanded and the reason. A content-dependent reason has a direct connection to the action for which it is a reason and a content-independent reason does not. Accordingly, let us refer to this as the “directness” conception of content-dependence.

The problem with the “directness” conception is that it classifies paradigmatic instances of content-independent reasons as content-dependent ones. Consider the content-independent reason that the captain commands that I swab the deck. This reason is in no obvious way less directly connected to the action “swabbing the deck” than are

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60 Raz (1986), 35.
content-dependent reasons, such as “the deck smells”, “I feel like swabbing the deck”, or “fairness requires I take my turn swabbing the deck”. Moreover, we can imagine many considerations that seem to be content-dependent yet, in a natural sense of indirect, are indirectly connected to the action. For example, our 19th century sailor on a vessel sailing Antipodean waters might swab the deck in order to spite his mother back in England. That is, he swabs the deck as part of a plan to gain the favor of his captain and win a promotion to ship’s mate, thereby increasing his prestige and income and making him a socially acceptable match for a lower middle class English woman, the likes of which his mother has repeatedly told him is beyond his social reach.

Perhaps, there is some sense of the term “direct” that is sufficiently fine-grained so that we could say that content-dependent reasons are directly connected to the actions for which they are reasons and content-independent reasons are not. However, Raz fails to explicate this sense. And, no sufficiently fine-grained sense comes readily to mind.

Scott Shapiro’s account of content-dependence holds:

[A] content-dependent reason is a reason for conforming to a directive because the directive has a certain content.61

To paraphrase Shapiro, a content-dependent reason is a consideration that favors performing a certain action (is a reason for conforming to a directive) because the action has a certain content. What he must mean is that a content-dependent reason is a consideration that favors performing actions with certain contents but not any content. For example, that the deck is dirty is a reason for performing certain actions, such as “staying away from the deck” or “swabbing the deck” but not other actions, such as

“driving to Reno” or “playing the bass drum”. Implicitly, the contrast is with content-independent reasons which presumably are reasons for any action—e.g., a captain’s command may be a reason for staying away from the deck, swabbing the deck, driving to Reno or playing the bass drum.

If this is the correct interpretation of Shapiro’s account of content-dependent reasons, then his is an overly inclusive account. Consider the paradigmatic content-independent reason for swabbing the deck: The captain commands that I swab the deck. This consideration falls within Shapiro’s account. It is a consideration that favors only actions with certain contents, the most obvious being the action “swabbing the deck”. It is not a reason for actions with other contents, such as filling the cannon with cannonballs or hoisting the mast. Hence, this paradigmatic content-independent reason appears, by Shapiro’s reckoning, to be content-dependent.

In sum, Shapiro’s and Raz’s respective conceptions of content-dependence fail to distinguish paradigmatically content-dependent reasons from content-independent ones. Thus, they fail to satisfy our fourth criterion of an adequate conception of content-independence.

1.2 Two Non-Ostensive and Positive Conceptions of Content-Independence

Leslie Green and H.P. Markwick have offered non-ostensive and positive (rather than contrastive) conceptions of content-independence.\(^{62}\) Positive conceptions of content-independence reverse the order of conceptual priority found in contrastive conceptions. A

positive conception specifies content-independent reasons first and describes content-dependent reasons as reasons that are not content-independent. Before trying my hand at this form of an account, I consider and reject those put forward by Green and Markwick, both of which are inspired by Hart’s claim that the mark of a content-independent reason is that it can be a reason to perform many actions irrespective of the content of those actions.\(^63\)

Green holds with respect to content-independent reasons that “[t]he mark of their content-independence is that their force does not depend on the nature or merits of the action they require.”\(^64\) The main problem with this account is that it is either incoherent or simply pushes back the question of the distinction between content-independent and content-dependent reasons. Let us take the horns of this dilemma in turn.

Consider an action, say, swabbing the deck. Imagine, once again, that the captain commands this action. We might query the nature or merit of the action “swab the deck”. In light of the fact that the captain has commanded the action “swab the deck”, part of the nature or merit of the action “swab the deck” is, arguably, that it responds to the captain’s command. Something similar is arguably true of any consideration that is a reason for an action. That is, a merit of or part of the nature of any action for which there are reasons is its responsiveness to those reasons. However, if this is so, then Green’s claim that content-independent reasons are reasons whose force does not depend on the nature or merit of the action they recommend is incoherent. For on this account, it is necessarily and trivially true that the force of any reason depends on the nature or merit

\(^63\) Hart (1982).
\(^64\) Green (2004).
of the action it recommends. Namely, the force of any given reason for an action depends on the action’s particular merit or nature of being responsive to that very same reason. The force of the reason “the captain commands that I swab the deck” depends on a particular merit or nature of the action “swabbing the deck” for which it is a reason. The reason “the captain commands that I swab the deck” is a reason to swab the deck only if part of the nature or merit of swabbing the deck is that it is responsive to the reason “the captain commands that I swab the deck.” In sum, Green’s claim that content-independent reasons are reasons whose force does not depend on the nature or merit of the actions for which they are reasons seems incoherent. It seems incoherent because it is trivially and necessarily true that all reasons are reasons whose force depends on the nature or merit of the actions for which they are reasons.

Green might object to this argument by conceding that an action’s responsiveness to content-dependent reasons is part of its merit or nature, yet denying that an action’s responsiveness to content-independent reasons is. However, such an objection would not be convincing absent an explanation of why an action’s responsiveness to content-independent reasons is not part of its nature or merit, whereas responsiveness to content-dependent reasons are. In sum, Green’s account of content-independence faces a dilemma. On the one horn of the dilemma, if Green denies that an action’s responsiveness to content-independent reasons is a merit or part of the nature of an action, then he still must explain how these reasons differ from content-dependent reasons in this respect. In other words, his account leaves undone the hard work of distinguishing between content-
independent and -dependent reasons. On the other horn, if he does not deny this claim, his account seems incoherent.

Another way of reading Green’s account is as an attempt to develop Hart’s general notion that content-independent reasons are all-purpose reasons.\(^{65}\) Intuitively, we can see this idea when we think of the sorts of things a captain might command. A captain might command me to swab the deck, fill the cannon with cannon balls, march to Gondor, etc. His command can be a reason for any of these things. Note, however, that this is only true if we think in terms of reason-types and not reason-tokens. The captain’s command that I swab the deck is not in any obvious way a reason for me to do any of these things, save swab the deck. However, Green’s idea might be to define content-independent reasons in terms of reason-types with a certain distinctive feature. Let us describe this distinctive feature in terms of a particular reason-type, say, that “the captain commands that one phi”. The distinctive feature of such a content-independent reason-type is that all of its tokens have normative force irrespective of the action-type substituted in place of phi. Whatever the captain commands, one has reason to do. Content-independent reasons, on this view, are reason-tokens that are instances of reason-types that bear this distinctive property. For example, the state commands phi, God commands phi, and one’s friend requests that one phi are possible reason-types of this sort. Markwick rigorously formulates something very close to this interpretation of Green’s account:

\(^{65}\) Hart (1982).
If phi-ing’s F-ness is a reason to phi, this reason is content-independent if and only if, for any other act-type psi, there would be reason to psi if F were a property of psi-ing.66

This kind of an account of content-independence suffers from over- and under-inclusivity. To see the former problem, consider the reason-type “phi maximizes utility and contravenes no deontological restraint.” This reason-type is a paradigmatic instance of a content-dependent reason for phi-ing. Nonetheless, it is a content-independent reason according to Markwick’s account. In this case, let us say the act-type is “swabbing the deck”. The reason to swab the deck is that swabbing the deck maximizes utility and contravenes no deontological restraint. In Markwick’s terms, the F-ness of swabbing the deck is that it maximizes utility and contravenes no deontological restraint. Per Markwick’s account of content-independent reason, with regard to any other act-type (say filling the cannon with cannonballs, hoisting the mast, etc.), there would be a reason to do that act-type if it were the case that F—maximizing utility and not contravening any deontological restraint—is a property of that act-type. Thus, it seems that the reason-type “maximizes utility and contravenes no deontological restraint” is content-independent though it is paradigmatically a content-dependent reason.

To see the problem of under-inclusivity, imagine the paradigmatically content-independent reason-type “that the captain commands that one phi”. That the captain commands that I swab the deck is a reason for me to swab the deck. Moreover, it is a paradigmatically content-independent reason. Unfortunately, according to Markwick’s account, this reason is not content-independent. We can see this when we, per

Markwick’s specification, imagine another act-type that the captain also commands yet for which the captain’s command is not a reason. For example, consider the captain’s command to fire a torpedo at a recreational cruiseliner. In this case, the fact that the captain commands the sailor gives the sailor no reason for conforming to the command because the content of the command is deeply immoral. Thus, this paradigmatic content-independent reason does not satisfy Markwick’s rigorous specification. It appears, then, that Markwick’s (and the second reading of Green’s) conception should be rejected for failure to distinguish between paradigmatic content-independent and content-dependent reasons.

In sum, the positive conceptions of content-independence canvassed above fail to meet our fourth criterion of an adequate account of content-independence—namely, they fail to distinguish between paradigmatic content-independent and content-dependent reasons. Moreover, they also fail to meet the first, second and third criteria. That is, they do not identify the distinctive feature of content-independent reasons, they do not shed light on why it is that content-independent reasons are reasons, and they fail to help us

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Promises similarly fail to satisfy Markwick’s and Green’s accounts of content-independence. My promise to meet you for lunch tomorrow would have normative force, though my promise to steal your neighbor’s car would not. It appears, then, that the force of the content-independent reasons that promises and commands provide varies with the nature or the merits of the action commanded. Moreover, in the light of the problem that any reason-type is likely to have to be a reason for an immoral actions, Markwick’s specification of content-independent reason threatens to have no instantiations save perhaps the reasons supplied by the commands of a voluntarist’s God. The voluntarist holds that the actions that God commands (e.g, making a human sacrifice of one’s son) are necessarily permissible and required by virtue of the fact that God commands them irrespective of their content.
distinguish valid content-independent reasons from merely seeming content-independent reasons.

2 Hart’s Gricean Analysis of Commands

It appears, then, that even if the distinction between content-independent and -dependent reasons is intuitively plausible and theoretically useful, it is frustratingly difficult to specify. Thus, despite receiving at least passing attention from a number of theorists, content-independence remains poorly understood. We seem to have only a general and largely intuitive grasp of the idea that advice, requests, commands, demands, and promises give reasons fundamentally different from ordinary content-dependent reasons. In the following, I argue that an element of H.P. Grice’s distinction between non-natural and natural meaning parallels the distinction between content-independent and content-dependent reason. To prevent confusion, note in advance that if we distinguish between content-independent and -dependent reason in the way I suggest, then the terms “content-independent” and “content-dependent” are not apt descriptions of the distinction. Nonetheless, I submit that the conception I advance here captures the distinction that the authors who have historically employed these terms seek. Moreover, out of deference to this tradition, I will continue to employ these terms though they may no longer be descriptively apt.
2.1 Grice on Natural and Non-Natural Meaning

According to Grice, examples of natural meaning are “The geese flying south mean that winter is coming” or “Those spots mean measles”. By contrast, examples of non-natural meaning are “Those three rings of the bell mean that the bus is full” or “My gentle nudge on your back means that you should leave”. Grice’s analysis of non-natural meaning is as follows: “A meantNN something by x” is (roughly) equivalent to “A intended the utterance of x to produce some effect in an audience by means of the recognition of this intention.”\textsuperscript{68} Grice adds that “for x to have meaningNN, the intended effect must be something which in some sense is within the control of the audience, or that in some sense of ‘reason’ the recognition of the intention behind x for the audience is a reason and not merely a cause.”\textsuperscript{69}

Thus, on Grice’s analysis, for a speaker to meanNN something by an expression, three conditions must be met: (1) the speaker must utter the expression with the intention of eliciting a particular response in the hearer; (2) the speaker must intend that the hearer recognize the speaker’s intention to elicit a particular response in the hearer; and (3) the speaker must intend that the hearer’s recognition of her intent described in (1) be at least part of the speaker’s reason for exhibiting that response.\textsuperscript{70} Let us consider a concrete example of an expression that Grice would characterize as non-natural to illustrate Grice’s analysis.

\textsuperscript{68} Grice (1957), 385.
\textsuperscript{69} Id.
\textsuperscript{70} This account of Grice borrows from Rovane (1998), 149.
Imagine that you are at a party and your friend tells you “There is a beer in the fridge.” Note that the utterer of this statement makes this statement with the intent of eliciting a response in you—namely, the adoption of the belief that there is a beer in the fridge. This satisfies Grice’s first condition. When the speaker says “There is a beer in the fridge” she intends that you recognize that her intent is to elicit this belief on your part. Thus, Grice’s second condition is satisfied. Finally, she intends that your recognition of her intent that you believe that there is a beer in the fridge functions as a reason for you to adopt this belief. Hence, all three Gricean conditions are satisfied by your friend’s expression “There is a beer in the fridge.” As such, this expression is a non-natural expression of meaning.

A key element in non-natural meaning is a certain kind of reason—namely, a reason for an agent to believe some proposition or do some act by virtue of the fact that someone intends that she so act or believe. When a statement or act means something, the hearer of the statement has a particular putative reason to adopt a belief or perform an action—namely, the utterer of the statement intends that she adopt such belief or perform such act. This contrasts with cases of natural meaning where the agent’s reasons for believing or acting do not arise out of the fact that someone intends that the agent so act or believe (e.g., the reason that red spots on my face give you for believing that I have measles or the reasons that geese flying south give you for believing that winter is coming.)

Grice’s analysis of non-natural meaning suggests two kinds of reasons for acting in some way or believing some proposition. On the one hand, we might so act or believe
for the reason that someone intends that we believe or act in that way. This is the kind of reason at play in expressions of non-natural meaning. Or, we might adopt a belief or act in a certain way for ordinary reasons. Using our example from above, rather than coming to believe that there is a beer in the fridge for the reason that my friend intends that I adopt that belief, I might adopt this belief because I see the beer in the fridge or because I know my friend’s habits. In what follows, I develop the idea that the difference between these two types reasons marks the difference between content-dependent (natural) and content-independent (non-natural) reasons.

2.2 Hart on Commands and Content-Independent Reasons

Hart’s analysis of a command self-consciously borrows from Grice’s analysis of non-natural expression. On Hart’s analysis, commands are a species of non-natural expression. To wit, Hart holds that when a speaker commands a hearer to do something, “the speaker not only speaks with the intention of getting his hearer to act but also intends that the hearer shall recognize that this is the speaker’s intention and that this recognition should function as at least part of the hearer’s reason for acting.” Hence, we have a three-part analysis of a command that tracks Grice’s analysis of non-natural meaning. When an authority issues a command, the following three conditions are met: (1) the speaker intends to get the hearer to act in a certain way; (2) the speaker intends for the hearer to recognize that the speaker intends for the hearer to act in that way; and (3) the

71 See Hart (1982), 251. Here, Hart cites to Grice’s analysis of non-natural meaning.
72 Id.
speaker intends for the hearer’s recognition of the speaker’s intent in (1) to function as the hearer’s reason for acting as the speaker intends.

As we have seen, a key feature of Grice’s analysis is that the hearer acts or believes as the speaker intends for a particular reason—namely, that the speaker intends for the hearer to act or believe in a certain way. Similarly, a key feature of Hart’s analysis of commands is that the hearer acts for particular reason—namely, that the speaker intends that the hearer act in that way. Moreover, elsewhere Hart holds that a key characteristic of commands is that they provide their subjects with content-independent reasons. Though Hart makes these two different claims about the reasons characteristic of commands, he never connects them. He never holds that content-independent reasons are the reasons characteristic of Gricean non-natural expressions. Rather, when explicitly discussing the nature of content-independent reasons he describes them in much the same way that Raz, Shapiro, and Green do. Nonetheless, this connection provides a promising analysis of content-independent reasons. That is, content-independent reasons are considerations that favor the adoption of a belief or performance of an action of the following form: A person has the intent that the agent so believe or act. By contrast, content-dependent reasons are considerations that favor the adoption of a belief or performance of an action other than considerations of the form “some person has the intent that the agent so believe or act.”

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73 Hart (1982), 254.
74 Note that I broadly construe the term “intent” that informs the present conception of content-independent reasons. One might narrowly take “intent” to refer to a mental state that only natural persons are capable of having. However, under a broader construal, we can attribute intent to both persons and non-natural persons. For example, a legislature
2.3 The Puzzle About Content-Independent Reasons

The foregoing account of content-independent reasons is not quite complete. To see this, imagine cases of speaker-intent that clearly would not justify the hearer’s acting in some way or having some belief. To take an earlier example, crazy Aunt Sally’s expression of her intent that the hearer spike the eggnog with ammonia does not provide the hearer with a reason to spike the eggnog. Similarly, Aunt Sally’s intent that the hearer believe that space aliens visit Mount Lemmon does not provide the hearer with a reason for believing that space aliens visit Mount Lemmon. The lone fact that someone intends for me to do or believe something is not sufficient to justify my so acting or believing. In addition, certain enabling conditions must be in place for an expression of intention to function as a reason. These conditions enable the relevant consideration, the intention, as a reason.\(^{75}\)

In some cases, the necessary enabling conditions of a content-independent reason are the sincerity or reliability of the speaker.\(^{76}\) A speaker is sincere insofar as she is disposed to convey to the hearer what the hearer takes to be true rather than false.
information. The speaker’s reliability concerns whether she knows of what she speaks. Moreover, this second component has a comparative element. Relevant information about reliability is comparative reliability. It is not just that the speaker knows of what she speaks that justifies the hearer in taking her intention that the hearer believe something as a reason for believing that thing; rather, the speaker is better placed than the hearer with respect to knowledge of the thing that the speaker intends for the hearer to believe.

The sincerity and reliability of the speaker are only two among several enabling conditions. Two others have to do with moral considerations and concerns with coordination of group endeavors. Arguably, one has a moral reason to believe the reports of one’s friend or close relations by virtue of their status as a friend or relative. Imagine a case where a mother has been accused of some wrongdoing and where some of the available evidence suggests her guilt. Further imagine that she vociferously denies her guilt. In some cases, the mother’s adult child would be justified in believing in her innocence; moreover, in some case, it might even be inappropriate for the adult child not to believe in his mother’s innocence. It would be inappropriate because the child owes it to his mother, given that she is his mother, to take seriously her reports of her innocence.

A second non-epistemic consideration relates to coordination. Imagine a group of people endeavoring together to accomplish some goal. Moreover, imagine that this group employs a process of gathering information relevant to the goal. In some cases, it would be more important for the purposes of the joint endeavor that all members of the group be on the same page with respect to this information rather than be right about it. In those
cases, the relative merit of the centralized process as a source of beliefs is that it is better placed than the individual members of the group to coordinate the beliefs of all the members.

Conditions similar to those described above that enable content-independent reasons for belief enable content-independent reasons to perform an action. One such consideration is analogous to the epistemic considerations described above. The fact that one would do better with regard to one’s content-dependent reasons were one to conform to some source’s directives rather than conform to one’s own deliberations is a consideration that weighs in favor of conforming to that source’s directives. This fact is a content-independent reason that comes into play when a particular source, a source with comparatively superior practical competence, issues a directive.

Other conditions parallel the moral enablers described above. For example, the condition that one’s friend is worthy of a kind of respect enables the friend’s intentions expressed in the form of requests. Something similar may be true of the commands of the authority. The authority may warrant a kind of respect that enables her commands as reasons. Thus, respect is a potential enabling condition of the content-independent reasons that requests and commands provide.

We noted at the outset of this chapter that a criterion of an adequate account of content-independent reason is that it would help us better understand how to distinguish between speech acts, such as promises, commands, requests, etc., that provide their subjects with content-independent reason from those that do not. The key to this

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77 Raz’s normal justification thesis concerning the justification of practical authority is such an epistemic enabling condition. See Raz (1986), 53ff.
improved understanding lies with the notion of an enabling condition. The intents at the core of our various speech acts are in no case reasons unless the relevant enabling conditions are met. These conditions may be epistemic, moral, or perhaps yet other conditions not discussed here. To determine whether a particular instance of these speech acts provides its target with content-independent reasons, we need only determine what the relevant enabling conditions might be and whether they have been satisfied.

3 The Sources of Content-Independent Reasons

As noted above, there are a variety of speech acts that are described as sources of content-independent reasons. The paradigmatic sources are commands and promises. Other possibilities are requests, demands, and advice. We have said much about the connection between commands and content-independent reasons and need not say any more here. However, let us say a few words about whether promises, requests, demands, and advice are sources of content-independent reasons. As we shall see, each of these speech acts, save perhaps for threats, are potential sources of content-independent reasons. That is, each of these speech acts, save perhaps for threats, entails the expression of an intent that a hearer adopt a certain belief or perform a certain action.

3.1 Promises

Promises, like commands, are commonly taken to be paradigmatic sources of content-independent reasons. The idea is that a promise provides the promisor with a

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78 See id., 35.
content-independent reason to conform to the promise. However, it is not immediately apparent that the reasons promises provide satisfy the intent-based conception of content-independent reasons developed above.

The intent-based conception holds that a content-independent reason for an action is a consideration that favors the performance of an action of the following form: Some agent intends that one so act. The question in the case of promises is whether the promise supplies the promisor with a consideration of this form that favors acting as promised. In short, is the promisor’s reason to conform to her promise that some agent intends that she conform to the promise? If the answer to this question is in the affirmative, then the intent-based account of content-independent reasons captures this paradigmatic instance of content-independent reasons and help us explain the nature of the reasons that promises provide. If not, then the intent-based account fails in this respect.

If the intent-based account fails in this respect, the proponent of such an account could argue that promises and commands provide fundamentally different kinds of reasons. Commands provide intent-based reasons and promises provide something else entirely. One might count such a finding as a strike against the intent-based account for failing to capture a paradigmatic source of content-independent reason. Alternatively, one might count it as an insight that these two speech acts provide their targets with fundamentally different kinds of reasons despite the common view that they do not. However, we need not worry about the implications of such a finding for the intent-based conception because promises, like commands, provide their targets with reasons of the form specified by the intent-based conception of content-independence.
A key challenge to the claim that promises provide promisors with content-independent reasons arises from the fact that the utterer of the promise and the target of the resulting content-independent reason are one and the same. This differs from the case of commands in which the commander’s intent provides a reason for another agent, the subject of the command, to conform to the command. The challenge holds that under the intent-based conception, there must be two agents—one agent’s intention serves as a second agent’s reason. However, this claim is false. There is nothing in this conception that requires that one’s own intentions cannot provide one with reasons to act as intended. In this vein, Carol Rovane notes the similarity of the reasons an agent supplies to herself by forming a long-term intention and the reasons the hearer of a Gricean expression of non-natural meaning has.

As we have seen, Gricean expressions of non-natural meaning comprise three elements: (1) the speaker must utter the expression with the intention of eliciting a particular response in the hearer; (2) the speaker must intend that the hearer recognize the speaker’s intention to elicit a particular response in the hearer; and (3) the speaker must intend that the hearer’s recognition of her intent described in (1) be at least part of the speaker’s reason for exhibiting that response. The reason in (3) is a content-independent reason. Rovane notes that long-term intentions have basically the same three-part structure as Gricean expressions of non-natural meaning. On her account:

1. As someone engaged in long-term planning, I form intentions about what actions I will take in the future. So, by forming these intentions, I intend to *elicit a response in my future self*.
2. These intentions are formed with the anticipation that they will later be remembered. Or, if I anticipate forgetting, I must find a way of reminding myself of what they are. That is, I *intend that I will later recognize*—either
through memory or some other means—my earlier intention about what I am to do in the future.

(3) Insofar as I acknowledge my future agency, I ought to regard my present intentions as settling, in the sense of directly causing, my future actions. But nevertheless, these intentions can still be efficacious in the following sense: my later knowledge of them will lead me to carry them out. Insofar as I form long-term intention bearing this in mind, I intend that my later recognition of my present intentions will be my reason to do then what I now intend.79

Rovane’s basic idea, then, is that when one forms a long-term intention, one does so with a particular kind of intent: one intends that one’s future self act in accordance with the long-term intent for the reason that such was one’s past self’s original intent. To put this idea in the terms developed in this chapter, when the future self acts on this reason, the future self acts on a content-independent reason as specified by the intent-based account of content-independent reason—the consideration that favors her so acting is the intent of her past self. Thus, under the present intent-based account of content-independence, we would say that long-term intentions (when justified) provide the agents who form them with content-independent reasons for action.

One might argue that promises are sources of content-independent reasons because they are long-term intentions, and, as we have seen, long-term intentions are sources of content-independent reasons. However, promises are not kinds of long-term intentions. It is possible to make a promise without actually forming the long-term intention to act as promised. Nonetheless, even in such cases, there is a promise and one is bound by the reasons it provides (barring the various considerations that can defeat a promise).

79 Rovane (1998), 149.
Though promises are not long-term intentions, they are public representations that one has made a long-term intention. When one promises, one represents to the promisee that one has formed a long-term intention to conform to the promise. When conforming to a promise, an agent acts in accordance with a long-term intention she has publicly represented as her own. Her reason to conform is that she has publicly represented that the promise is her long-term intention. I think, in this case, we have a content-independent reason as defined by the intent-based conception. The consideration that favors the promisor acting in a certain way is an intention that the promisor act in a certain way. However, it is not the intention of an actual agent. Rather, it is the intention that the promisor publicly represents herself as having—namely, the intention to act as promised. The intention the promisor represents as her own is the promisor’s reason for acting as she has promised. As such, promises are species of content-independent reasons. When one promises, one has a reason of the following form: Some agent (the agent described in the promisor’s representation to the promisee) intends that the promisor act as promised.

3.2 Requests

Unlike promises, requests fit straightforwardly within the mode of content-independent reasons. In the typical case, the consideration that weighs in favor my granting a request is the intention of the person making the request. My recognition of the requestor’s intent is my reason for acting as requested. Thus requests are much like commands where the recognition of the commander’s intent is the reason for performing
the commanded action. The key difference between these forms of speech acts is to be found in other features of the reasons that they supply. For example, though commands and promises both supply their targets with content-independent reasons, the force of these reasons varies. We will say more about this in later chapters. Suffice it to say for now that commands generally provide weightier content-independent reasons than requests do.

3.3 Demands Backed by Threats

Demands backed by threats are a somewhat difficult case. Green and Raz hold that threats are content-independent reasons for a belief—namely the demandee’s belief that harm will result unless she complies with the demand.\(^8^0\) The demander tells the demandee that she will harm the demandee under certain conditions. If the demander is credible, the demandee takes the demander’s statements as a reason to believe that she will be harmed under those conditions. However, Green and Raz do not think that threats provide content-independent reasons for action. Whether they are right on this count is less certain. Typically, demanders do not merely express the intention that the hearer believe that she will suffer if she does not comply with a demand. The demander also expresses the intent that the hearer conform to the demand. The key question is whether such expression provides a reason for hearer to act as demanded. The answer to this question is not clear.

Recall the discussion of enabling conditions and their relation to the various sources of content-independent reasons. Recall that in the case of commands and requests, the conditions that enables the intent of the commander and requestor as reasons is that the respective speakers are worthy of a kind of respect. One might argue that the intent of the credible threatening demander is similarly enabled. On this view, the condition that the demander’s threat of harm is credible enables the intent the demander expresses through his demands. I have reason to do as the demander intends because the demander can and will harm me if I do not. So perhaps we should say that threats, like requests, commands, and promises, are sources of content-independent reasons.

On the other hand, there is an important difference between the reason one has in the case of a command, promise or request on the one hand and the reason one has in the case of demand backed by a credible threat. When one conforms to a command, promise, or request, one instantiates a certain value. In the cases of commands and requests, we have conjectured that this value is a kind of respect for the commander or requestor. To pay due respect to the commander or requestor is to conform to the content of the command or request. Conforming to the command or request in these cases instantiates the relevant value of respect. Something similar, I think, can be said about conforming to the content of a promise. Perhaps one’s conformity to the content of a promise instantiates the value of promise-keeping or honesty. By contrast, one conforms to a demand in order to avoid harm. Here, there is an instrumental relationship between the value, harm avoidance, and the conformity to the demander’s intent rather than a relationship of instantiation. One has no reason to comply with the particular content of
the demand if the threat is not credible. Here, I am tempted to say that one’s ultimate reason for acting as the demander intends is not a content-independent reason. Rather, one has content-dependent reason to avoid harm. The demander’s threat provides one with information about which of one’s actions will result in harm, and one acts accordingly.

3.4 Advice

We can react to advice in a number of ways. We might take a good piece of advice as a content-independent reason for belief, for acting, or for something completely different—namely, as providing deliberation-affecting reasons. Let us take these in turn. Some pieces of advice are advice about what to believe. Enron is the most likely high performing stock, Julia’s Bistro is a good restaurant, plaid does not go with polka dots, etc. The giver of such advice has the intent that we believe as he advises and expresses such intent by giving advice, but he does not intend for us to act in any particular way. If the advice comes from someone with the relevant expertise, then we have reason to believe as she intends for us to believe. In such a case, we have a content-independent reason for action. Other purveyors of advice do not merely intend for their advisees to adopt certain beliefs; rather, they intend for them to act in a certain way. A doctor advises his patient to quit smoking, a friend advises his buddy not to wear his favorite sleeveless t-shirt on a first date, a stockbroker advises his client to buy stock in Enron. In these cases, the advisee might have faith in the adviser’s expertise and, accordingly, take her expressions of intent, her advice, as a reason for conforming to the advice. Finally, there
is yet a third option. We might re-examine or alter our deliberations about what to do in light of this advice without taking it as a source of a content-independent reason. For example, if I have tentatively decided to go see a movie, and a friend whose taste in movies I generally trust advises me not to go, I might reexamine the reasons for and against going in light of his advice. In cases such as this, the advice is treated not as a content-independent reason for action or belief, but rather as a deliberation-affecting reason that weighs in favor of reexamining one’s understanding of the relevant content-dependent reasons.\footnote{Raz and Green hold that advice is a source of content-independent reasons for beliefs, but not, contra the discussion here, for actions as well. See Raz (1986), 35-36, 52-53 and Green (1988), 27ff.}

4 Conclusion: The Present Conception Assessed

At the outset of this essay, we identified four criteria that an adequate conception of content-independence should meet. First, it should help identify the feature that various acts traditionally considered to be sources of content-independent reasons (such as promises, demands backed by threats, commands, requests, and advice) share. Second, it should help us understand why a content-independent reason is a reason. Third, it should provide a framework for distinguishing between merely seemingly valid and valid content-independent reasons. Fourth, it should sustain the distinction between paradigmatic content-independent and -dependent reasons, a distinction which seems clear intuitively but that threatens to evaporate upon closer inspection. Let us consider these criteria in turn.
First, as we have seen, the present conception identifies what the various speech acts enumerated above (promises, requests, demands, commands, and advice) have in common. That is, they are all cases in which some agent expresses the intent that the subject perform a certain action. Moreover, under the right conditions, these expressions of intentions are reason for their subjects—content-independent reasons.

Second, the present conception helps us see why content-independent reasons are reasons. As we have seen, content-independent reasons are considerations that weigh in favor of performing an action that arise out of the fact that the source has expressed the intent that the subject perform the action. These reasons are no more mysterious than other sorts of reasons. In the case of the typical sound piece of advice, the relevant consideration is the metagood of well-serving the reasons that apply to one. In the case of a request, perhaps, the consideration of honoring the requestee, or giving him due respect, is the consideration that arises from the request. The negative good of avoiding harm to oneself or others is in play in the case of a demand backed by a threat.

The considerations that arise in the case of authoritative commands and promises are hard to discern and articulate, as evidenced by the quantity of ink spilled in the literature on authority and promises. Though this issue cannot be fully addressed here, perhaps the characteristic good at stake in following an authoritative order is manifesting proper respect for one’s fellow participants in a joint endeavor. At the very least, in the case of these more enigmatic sources of content-independent reasons, the present conception of content-independence helps us frame the question in a way that might help resolve the mystery of their normative force. That is, we should look for the
considerations in favor of conforming to a command or a promise that characteristically arise from the fact that a particular source expresses her intent (in the form of a command or a promise) that the subject perform the promised or commanded action.

It should be clear at this point how the present conception of content-independence helps us distinguish merely putative content-independent reasons from valid ones and, hence, satisfies the third criteria of an adequate conception of content-independence. As we have seen, the present conception of content-independence directs our attention to the conditions that characteristically enable the various speech acts as reasons. Insofar as these conditions are fulfilled, the speech acts provide the content-independent reasons they purport to provide. Insofar as the conditions are not satisfied, the relevant speech acts do not provide such reasons.

Finally, the present conception seems to meet the fourth criterion as well. Namely, it sustains the intuitive distinction between content-dependent and independent reasons. Under this conception, both promises and commands are classified as sources of content-independent reasons. They are such sources because they, under the right conditions, provide their subjects with reasons of the following form: some agent intends that the subject act in a certain way.
CHAPTER 4

TWO CONCEPTIONS OF CLAIM-RIGHT AUTHORITY

We can distinguish between two conceptions of practical authority: justification-right and claim-right authority. Under the former conception, a putative authority is legitimate insofar as its claim to a right to rule is justified. That is, whether a putative authority is legitimate depends on whether it has a right to issue directives to a subject population and coercively enforce them. A legitimate justification-right authority may be justified in issuing directives and punishing its subjects for failing to comply with them, yet its subjects may have no reason, save for fear of penalty, to follow the relevant authority’s rules. By contrast, under claim-right conception of authority, a legitimate authority provides its subjects with a particular kind of reason to conform to its directives—a duty to obey. There are also intermediate accounts of authority that describe practical authority in terms of a right to rule and a more limited duty on the part of the authority’s subject to refrain from interfering with the state’s exercise of this right.

It is unnecessary to argue that one of these approaches to the nature and justification of authority is best full stop. Rather, theorists should adopt the approach in light of the particular question at hand. The present question at hand queries the possibility of being at home in the social world. I assume that the state and other

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82 For a seminal discussion and defense of this conception of authority, see Ladenson (1980).
83 For discussion and defense of the conception of claim-right authority vis-à-vis the justification-right conception, see Raz (1985).
84 See, for example Edmunson (1998), chs. 1-3.
institutions that the contemporary social world comprises claim both justification-right and claim-right authority. On this assumption, many social institutions claim both to have the right to penalize their subjects should they fail to conform to the institution’s directives and to have a moral power to impose a duty on their subjects by enacting laws. Though I recognize that the question of the justification of an authority’s right to coercively enforce conformity to its directives is important, I bracket this issue in this and the following chapters and focus on claim-right authority. Thus, I query in this and the following chapters the conditions, if any, under which persons can be at home in a social world composed of claim-right authority claiming institutions.

In part one of this chapter, I discuss Raz’s dominant account of claim-right authority. In part two, I develop a complementary conception—moral authority. In part three, I enumerate a number of grounds of these forms of claim-right authority and explain some of the conditions under which these forms of authority overlap. As such, this chapter is a necessary preface to the discussion in the next chapter of whether we can be at home in a social world characterized by institutions that claim a right to obedience. That our social institutions’ claims to authority are justified is a necessary but not a sufficient condition of being at home in a social world composed of authority-claiming institutions. That is, it may be the case that we find ourselves in a social world characterized by social institutions whose claims to authority are justified but nonetheless are not a home for us. I leave to the next chapter the discussion of the further conditions that must be met for authority-claiming institutions to be not only justified but also a home for their subjects.
Razian Authority

Joseph Raz offers what is perhaps the dominant account of claim-right authority. This account has two main elements. The first we discussed in the previous chapter. Namely, an authority is legitimate only if it provides its subjects with content-independent reasons. The second element holds that an authority is legitimate only if it provides its subjects with exclusionary reasons. We will discuss this form of reason at length below. It suffices to say for now that an exclusionary reason is a second-order reason not to consider at least some otherwise relevant reasons in one’s deliberations about what to do.

On Raz’s account, the duty to obey reduces to a reason to treat the authority’s directives as a reason for acting and a reason to exclude other reasons (perhaps all other reasons) from one’s deliberations about whether to act as directed. In the simplest case, an authoritative directive clears the field of all competing reasons. The only reason that remains is the content-independent reason that favors acting as directed.

Here, I argue, contra Raz, that political authority and, more generally, social authority comes in at least one form other than Razian authority—namely, moral authority. Like a Razian authority, a moral authority provides its subjects with content-independent reasons; however, unlike a Razian authority, a moral authority need not

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85 See Raz (1985b), 13ff. In this work, Raz uses the term preemptive rather than exclusionary. In other works, he uses the term exclusionary to the same effect. See Raz (1975), 35ff. I use these terms interchangeably.

86 See Green (1988), 38ff for a discussion of exclusionary reasons and their relation to authority.
provide its subjects with exclusionary reasons. Again, unlike Razian authority, the moral conception of authority is not a reductive account of the duty to obey. Rather, on this account, the second element of legitimate moral authority is a moral duty to conform to the directives of the authority. Before turning to the development and defense of this complementary conception of authority, we must first clearly explicate Raz’s contrasting conception of authority: Razian authority. Razian authority is a relationship in which a putative authority purports that its directives provide its subjects with content-independent and exclusionary reasons. A putative authority is a de facto authority if its subjects habitually treat its directives as reasons of this sort. The putative authority is a legitimate authority if such treatment is justified, i.e., if the de facto authority’s subjects are justified in treating the directives as content-independent and exclusionary reasons. Hence, to understand fully Raz’s conception of legitimate authority, we must understand what he means by content-independent and exclusionary reasons. Let us take these two kinds of reasons in turn.

1.1 Content-Independent Reason

As we saw in the previous chapter, an agent has a content-independent reason to perform some action if and only if she has reason to perform the action by virtue of the fact that someone intends that she do the action. By contrast, a content-dependent reason is the reason one has to perform an act irrespective of whether someone intends one to so act. For example, a midshipman’s content-independent reason to swab the deck is that the captain commands that he swab it. His content-dependent reasons to swab the deck are all
the other reasons to swab the deck that apply to him irrespective of the captain’s command—for example, the deck is dirty, it is fair that he take his turn swabbing the deck, and he and his shipmates are more likely to injure themselves if the deck is not swabbed.

Note the role that certain conditions play in enabling content-independent reasons.\(^\text{87}\) These conditions figure in the discussions of the justification or grounding of content-independent reasons as well as authority more generally. The presence of such conditions is suggested when we compare the captain’s command that the midshipman swab the deck with the malaria-stricken crewmate’s feverish directive to that the midshipman abandon ship. The conditions that obtain and enable the captain as a source of content-independent reasons fail to obtain with respect to the delirious crewmate.

There are a number of different kinds of conditions that enable sources as sources of content-independent reasons. For now, let us distinguish two kinds of enabling conditions—moral and epistemic. These conditions are not mutually exclusive; both can obtain in a particular case.

An epistemic enabling condition is in play in the case of our captain and midshipman. The captain’s directives are a source of content-independent reasons because the captain is better than the midshipman at identifying and deliberating with respect to the content-dependent reasons that apply to the midshipman—at least the ones

\(^{87}\) For the seminal explication of the distinction between enabling conditions and reasons, see Dancy (2004), 38ff. For expository purposes, I sometimes refer to these enabling conditions as reasons. However, if Dancy is right, they are not a form of reasons. They enable reasons to be reasons, but they are not reasons themselves. Note also that many of these same conditions enable certain directives as exclusionary reasons and/or moral duties.
having to do with the operation of the ship. The captain’s relative epistemic superiority with respect to the relevant content-dependent reasons is a condition that enables the captain’s directives as content-independent reasons for the midshipman. The midshipman takes the captain’s directives as content-independent reasons for action because by doing so he does better with respect to the reasons that apply to him than he would were he to act directly on his deliberations with respect to those reasons.

An example of a moral enabling condition can be found in the case where a person’s directives are a source of content-independent reasons because that person merits a certain amount of respect. For example, a norm in some cultures is to pay a great deal of respect to one’s elder relatives. From the perspective of the members of this culture, both adults and children have reasons to conform to their elders’ directives. This consideration of respect enables the elders as sources of content-independent reason in such cultures. Within limits, this moral enabling condition of respect provides persons within such a culture with a reason to do as the elder prescribes irrespective of whether the prescribed action is actually the best thing to do in the circumstances. Hence, the moral enabling condition operates at least to some extent independently of the epistemic enabling conditions. I further elaborate upon these two kinds of enabling conditions below and discuss yet one other condition relating to a source’s capacity to serve as a coordinating agent with respect to valuable ends.
1.2 Exclusionary Reasons

As Hart notes, Hobbes is the original source of the idea that an authority preempts its subjects’ deliberations: “Command is when a man saith do this or do not do this yet without expecting any other reason than the will of him that saith it.”\(^88\) Hart incorporates Hobbes observation into his analysis of an authoritative command:

\[T\]he expression of a commander’s will that an act be done is intended to preclude or cut off any independent deliberation by the hearer of the merits pro and con of doing the act. The commander’s expression of will therefore is not intended to function within the hearer’s deliberation as a reason for doing the act, not even as the strongest or dominant reason, for that would presuppose that independent deliberation was to go on, whereas the commander intends to cut off or exclude it.\(^89\)

Thus, the commander’s will is peremptory insofar as it (1) cuts off or excludes the deliberation of the subject about whether to do as the commander instructs and (2) requires the subject to act as the commander instructs.

Raz employs the notion of exclusionary (or preemptive reason) in the same spirit as Hart employs the notion of a peremptory reason. However, Raz’s understanding of the former term differs somewhat from Hart’s understanding of the latter. First, Raz, unlike Hart, typically describes reasons rather than commands or directives as exclusionary.\(^90\) In Raz’s manner of speaking, a command gives the subject of the command an exclusionary reason. An exclusionary reason is a reason to exclude otherwise relevant reasons from one’s deliberations about how to act.\(^91\) An authoritative command, on Raz’s account, provides its subject with both content-independent and exclusionary reasons. The

\(^{88}\) Hobbes (1996), ch. 25, 176.
\(^{89}\) Hart (1982), 253.
\(^{90}\) Raz (1986), 59ff.
\(^{91}\) Raz (1975), 35ff.
command is exclusionary insofar as it excludes certain reasons from the subject’s deliberation. It is content-independent insofar as it provides reason to act as the directive commands. As such, an authoritative command both excludes and replaces considerations that otherwise figure in the subject’s deliberations.

[T]he 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 they do, but should exclude and take the place of some of them.\(^92\)

Thus, according to Raz, an authority’s directive is preemptive in the sense that it is not to be weighed against other relevant reasons, but rather is to exclude and take the place of at least some of them. The preemptive nature of the directive entails two components: the directive provides a content-independent reason and an exclusionary reason. An example may help illuminate Raz’s point.

Consider again the case of our captain and midshipman. The captain directs the midshipman to raise the main sail. The midshipman raises the sail because the captain, who knows better than the midshipman does with respect to such matters, told him to do so. The captain’s directive provides a reason that excludes rather than weighs against the other reasons that apply to the midshipman. The midshipman undoubtedly has some idea about the considerations that weigh for and against raising the sail. However, on the Razian account, these considerations should play no role in the midshipman’s deliberations about whether to raise the sail as the captain instructs. This is because the captain’s directive already reflects these considerations. Were the midshipman to raise the sail because the captain directed him to do so and because the various content-

\(^92\) Raz (1986), 46.
dependent reasons relevant to sail-raising weigh in favor of doing so (e.g., the wind is right, the ocean is calm, there is a need to set sail), he would be guilty of double-counting his reasons. The captain’s directive is a reason for the midshipman to raise the main sail that both excludes (insofar as it is an exclusionary reason) and takes the place (insofar as it a content-independent reason) of the content-dependent reasons that apply to the midshipman (at least those relating to the navigation of the ship). As such, the captain’s directive provides the midshipman with Razian content-independent and exclusionary reasons.

On one final illustrative note, contrast a command with the request of a friend. We might say that the friend’s request is a content-independent reason to conform to the request. However, the request does not give us a reason that excludes other reasons from our deliberation. Rather, the content-independent reason the request provides competes with and weighs against these competing reasons. Note also that the weight of this content-independent reason plays a role in our reasoning about requests. The better the friend, perhaps the greater the weight of the content-independent reason the request provides and the more likely we are to honor the request. By contrast, in the case of a command, the weight of the content-independent reason the command provides is not as important. The exclusionary aspect of the command excludes competing considerations. If the command’s exclusionary reason is highly exclusive and excludes all competing reasons, then the command’s content-independent reason would be the only remaining

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93 Raz (1986), 58.
reason. In this case, the command excludes and replaces the competing considerations rather than outweighs them.

2 Moral Authority

Below, I describe a paradigmatic instance of an authority. However, the authority described below does not give its subjects exclusionary reasons. That is, the authority’s directives in this case do not exclude and displace other reasons the subject might have; rather, they provide reasons that weigh against rather than exclude the subjects’ content-dependent reasons.

Imagine a family of three persons, say, a grandparent, a mother, and a stepfather who together engage in the joint endeavor of raising a child. These three work together to raise the child, make decisions about how to go about this, and allocate various responsibilities. As joint decision-makers, the three constitute a group that issues directives that apply to each member of the group. In cases where consensus cannot be reached, the members of the group do what two of the three think should be done.

In general, the individual members of the family have content-independent reasons (at least with regard to family matters) to do as the family, the three caregivers acting as one decision-making unit, prescribe. The enabling condition of such content-independent reason is respect for one’s partners in a common endeavor.94 In many cases,

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94 The authority exemplified by the family in this example is commonplace. It is liable to be found whenever a group organizes to pursue a goal and decides as a group how best to pursue the goal. I argue below that the democratic assembly is yet another instance of this kind of authority.
to fail to act in the way that the family as a decision-making unit prescribes would be to fail to manifest the proper respect for one’s partners in this endeavor.

Sometimes, the relevant content-dependent reasons that weigh against adopting the action prescribed by the group outweigh the content-independent reason enabled by considerations of respect. The family might advocate a plan of action that, unbeknownst to two of them but apparent to the third, is severely detrimental to the health of the child. In such a case, the third family member would not have all-things-considered reason to perform the action prescribed by the family. Rather, she would have an all-things-considered reason not to follow the directives of the family.

However, given the weight of the value of respect, we can expect a wide range of cases in which a member should follow the decision of the group even if the relevant content-dependent reasons would have been better served had the group decided things differently. Thus, the consideration of respect for one’s fellow family members carves out a space in which a member should act as the family directs even though she knows that the family’s decision could be improved upon. For example, the grandparent might think that the child would benefit from engaging with more sophisticated and challenging books, whereas the stepfather and mother of the child might think the child was not quite ready. In this case, we might imagine that out of respect for the considered viewpoint of her partners, the grandparent should not point the child in the direction of the family’s copy of *Catcher in the Rye* even if, as a matter of fact known to the grandparent, the child would benefit from the more sophisticated material.
If we accept that the family in our example is authoritative with respect to its members, then we must conclude that an authority need not meet the conditions set out in the Razian conception of authority. On my reconstruction of Raz’s conception of authority, Raz holds that A is authoritative with respect to S only if A’s directives provide S with content-independent and exclusionary reasons. As we have seen, the family’s directives provide the individual family members with content-independent reason to act that weigh against rather than replace and exclude the content-dependent reasons for acting as directed. It seems then, that though the family in our example is a paradigmatic instance of an authority, it fails to provide its subjects with Razian exclusionary reasons. Thus, our example demonstrates that an authority need not provide its subjects with exclusionary reasons.

3 Forms of Justification of Authority

It appears then that there is a type of authority that does not provide its subjects with exclusionary reason. In the following section, I further explicate this form of authority. As we shall see, a moral authority provides its subjects with content-independent reasons. Further, though a moral authority, unlike a Razian authority, need not provide its subjects with exclusionary reasons, it must provide its subject with a certain kind of reason—namely a moral duty corresponding to a moral right of the authority that its directives be followed. I say more about the kinds of consideration that can ground this sort of authority. In service of further specifying the conception of moral

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This reconstruction is also Leslie Green’s reconstruction in Green (1988), 39.
authority and explicating the considerations that might justify an authority of this kind, I explain the limited way in which the normal justification thesis, the normal ground of Razian authority, can play a role in grounding moral authority. Before doing this, however, we should clarify Raz’s normal justification thesis and its relation to Razian authority.

3.1 The Normal Justification Thesis and Razian Authority

Raz holds that there is a normal way to establish whether one person is an authority over another. As we shall see, this claim does not seem true with respect to the kind of authoritative relationship that our example of the family above features. Before we can explain why the normal justification thesis is largely irrelevant to the justification of this particular kind of authoritative relationship, we must first describe this thesis and how it relates to the justification of Razian authority.

Raz’s normal justification thesis is as follows:

[T]he 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.96

Thus, Raz holds that that the normal justification for taking the directives of another as authoritative is that one would do better with regard to the reasons that apply to one by following the directives rather than trying to follow those reasons directly. Raz’s basic idea is that if the conditions of normal justification obtain—i.e., one would do better with

96 Raz (1986), 53.
regard to the reasons that apply to one by following the directives rather than trying to follow those reasons directly—then one rationally should follow the directives rather than attend to the reasons that apply to one directly.

If the conditions of normal justification obtain, then the putative authority’s directives provide the authority’s subject with content-independent and exclusionary reasons and, as such, are authoritative. To use the terminology of enabling conditions mentioned above, the conditions described in the normal justification thesis are epistemic enabling conditions. If a subject would do better with respect to the reasons that apply to him by following a putative authority’s directives rather than his own deliberations, then the authority’s directives are a source of content-independent reasons for the subject. Moreover, if an agent would do better with respect to the reasons that apply to him by following a putative authority’s directives rather than his own deliberations, then the directives of the authority are exclusionary with respect to the agent’s deliberations. In this case, the authority’s directives are reasons for the subject to act as directed that exclude and replace, and hence are exclusionary in the Razian sense, with respect to reasons that would otherwise apply to the subject.

3.2 Normal Justification Is Not Necessary for Moral Authority

We have seen that on Raz’s account, if the conditions of normal justification obtain, then the directives of the putative authority provide its subjects with Razian exclusionary reasons. However, in the case of the authoritative family described above, we have authority without Razian preemption. The family’s directives do not displace
and exclude other relevant reasons that apply to the family members. Rather, the
directives provide reasons that weigh against the other relevant reasons. Thus, by *modus
tollens*[^97], we can conclude that the family’s authority is not justified by way of Razian normal justification.[^98]

We need not rely on *modus tollens* to argue that the authority of the family in our example is not justified by way of Razian normal justification; rather we can see directly that the conditions of normal justification do not apply. As we have seen, the normal way, according to Raz, to show that one person is an authority over another is to show that the latter will do better with respect to the reasons that apply to him by following the directives of the former rather than trying to follow the reasons that apply to him directly. However, we cannot show this with respect to the family members in the example of the authoritative family discussed above. Among the reasons that apply to the individual family members are both content-independent and content-dependent reasons to follow the directive that the family prescribes. For example, when deciding whether to conform to the family’s directives, the grandparent considers the content-independent reason to follow the directive based on respect for her family together with the content-dependent

[^97]: *Modus tollens* is the following principle of logic: If the conditional statement “If A then B” is true, and if it also the case that not B, then it must be the case that not A.

[^98]: The justificatory role of the normal justification thesis is complicated by the value of autonomy. This value may defeat the normal justification thesis. A subject who has, by virtue of the normal justification thesis, a reason not to act directly on the reasons that apply to him, may nonetheless have all-things-considered reason to act on his own deliberations rather than the directives of the relevant authority in the following case: considerations of the subjects’ autonomy might be more important in a particular instance. In other words, it may be more important in a particular case for a subject to act from his understanding of the reasons that apply to him rather than to get it right with respect to those reasons. My argument in this section presupposes that autonomy is not a defeater in the case of the family. See Raz (1986), 56-57.
reason relating to the best interests of the child. Thus, the normal justification thesis does not seem relevant here. When the family members follow the family’s directives it is not because they will do better with respect to the reasons that apply to them by doing so rather than acting on their own deliberations. Rather, they follow the directives only if the content-independent reasons based in respect for the family are not outweighed by countervailing content-dependent reasons.

In sum, we have established two points. First, there are cases in which A is authoritative with respect to S despite the fact that A’s directives fail to provide S with Razian exclusionary reasons. Second, we have shown that authority can be justified absent the application of the normal justification thesis. As we will see in the next subsection, not only is the normal justification thesis unnecessary for justification of certain forms of authority, it can play a role in justifying moral authority only in a limited set of circumstances and only with respect to certain kinds of moral authority. To see this last point, we must first specify fully the nature of moral authority. I do this in the next section. In the section following, I turn to the limited role that the normal justification thesis can play in justifying this form of authority.

3.3 Moral Authority and the Insufficiency of Normal Justification

Raz distinguishes authoritative commands from other sources of content-independent reasons, such as threats, requests, and advice, on the basis that commands provide their subjects with content-independent and Razian exclusionary reasons for action, whereas the threats, request, and advice generally only provide content-
independent reasons. For example, one may have a content-independent reason to comply with a friend’s request. One’s reason to do as the friend has requested is because the friend made the request. We may be able to say something similar about threats and advice. As noted above, a moral authority need not provide its subjects with Razian exclusionary reasons. This leaves us with a puzzle. If we cannot distinguish authoritative commands from other sources of content-independent reasons by reference to the fact that the former supply Razian exclusionary reasons whereas the latter do not, how then, are we to cast this distinction between moral authority on the one hand and threats, advice and requests on the other?

Though he does not seem to incorporate this consideration into his account of authority, Leslie Green puts his finger on what distinguishes a legitimate authority from a sound advisor, an effective blackmailer, or a worthy requestor. He does so by contrasting advice with authority, but he could just as well have made the same point by contrasting authority with demands or requests:

The distinction between advice and authority is revealed both in the intentions of its subjects and in their different reactions to non-compliance. One may regard someone who fails to act on good advice as imprudent, but not as insubordinate. An adequate view of authority must give some account of this distinction.

Hence, Green holds that for A to be a legitimate authority with respect to S, his directives must provide S with reasons of a certain quality—namely, a quality such that failing to comply with the directive would be an act of insubordination.

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With this thought in mind, we can fully characterize an authority in a way that distinguishes it from other sources of content-independent reason. Namely, A has authority with respect to S if and only if (1) A’s directives provide S with content-independent reasons and (2) A has a moral right that S follow A’s directives and S has a moral duty to follow them. Let us call this form of authority moral authority in recognition of the key role that moral right plays in this conception. To fully understand this conception, we should say a few words about the notion of moral right as contemplated by this conception of authority.

In general A’s having a moral right entails that A has some combination of Hohfeldian elements: claim-rights, powers, liberties, and immunities. A claim-right corresponds to a duty on the part of others. For X to have a claim-right against Y entails that Y has a duty of some sort to refrain from interfering with X in some way or to provide something to X. A liberty is the absence of a duty. To have a liberty to phi is to not have the duty to not-phi. A power is an ability to affect others’ possession of Hohfeldian elements. For example, an agent who has a moral power of this sort over others is able to make it the case that others have a moral duty to act in a certain way. A liberty is a moral freedom to act in certain ways. It is not the case that one ought not, morally speaking, act that way. An immunity is an immunity from others’ powers to modify one’s complement of Hohfeldian elements. On the present understanding, a right comprises some complex of these Hohfeldian elements. Different rights entail different

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101 There are many discussions of these Hohfeldian elements. E.g., Weinan (2005).
complexes. At a minimum, the moral right constitutive of moral authority is a power to bind others, morally speaking, to certain duties.

We can distinguish between a number of different kinds of moral powers. First, we can distinguish between a constitutive and an instrumental moral power. If A has a constitutive moral power, the failure to act as A obligates constitutes a moral offense to some agent. I cannot fully explain what a moral offense entails, but I can give a list of ways of giving moral offense. One might fail to treat A as an equal, interfere unduly with A’s autonomy, treat A unfairly, or treat A unjustly. By contrast if A has a purely instrumental moral power, then the act of failing to act as A obligates does not constitute a moral offense to some agent. Rather, it is to say that one should act as A obligates because by doing so one generally speaking will be less likely to commit a moral offense against another. To say that A has an instrumental moral power implies an instrumental justification of A’s moral right—namely, we should treat A as having the moral power because by doing so we will be less likely to cause certain kinds of moral offenses to others. Second, we can distinguish between an inherent and a derivative moral power. A has an inherent moral power if the moral power is protective of A’s interest in not being treated unjustly, unfairly, and so on. A has a derivative moral power if A’s moral power is protective of some other agent’s interest in not being treated unjustly, unfairly, and so on.

Raz’s normal justification thesis can play a role in grounding only some types of moral authority. Recall that Raz’s normal justification thesis holds that the normal ground of justifying A’s authority over S is that S would be more likely to comply with
the reasons that apply to him were he to accept the directives of the alleged authority as authoritatively binding and try to follow them rather than the reasons that apply to him directly. However, to show that one will do better with respect to the reasons that apply to one by following an agent’s directives is not necessarily to show that the agent has a moral right (corresponding to a moral duty) to follow the agent’s directive. To see this consider the following two examples:

First, imagine cases of authority where the authority’s domain canvasses non-moral reasons exclusively. For example, we might imagine a business enterprise in which one person knows a great deal about the relevant business. He tells his underlings what to do in service of their business-related reasons. And, in accordance with the normal justification thesis, they do better with respect to these business-related reasons by following his directives rather than their own deliberations with respect to these business-related reasons. As such, our businessman has limited Razian-authority with respect to his underlings. But, he does not have a moral right, nor do his underlings have a moral duty, that they follow his directives. Rather, the underlings have only prudential reasons to follow the businessman’s directives. The businessman does not have a moral power to obligate others in this case, because such a power would not protect anyone’s moral interests. Following the businessman’s directives does not constitute treating someone as an equal or fairly, nor does it tend to lead to such treatment. Thus, the businessman’s Razian-authority has no pretension to moral right in this case.

A second case demonstrates that when moral reasons are within the scope of the normal justification thesis, instrumental but not constitutive moral authority may thereby
be justified. Imagine that a wise tribal chieftain is better at balancing considerations of justice with respect to relations between his fellow tribe members. Moreover, let us suppose that with respect to these considerations our tribe members would do better with respect to the reasons that apply to them by simply following the chief’s directives rather than deliberating directly with respect to them. That is, the normal justification thesis is true with respect to the tribe members’ reasons of intratribal justice. Insofar as there is a moral reason to do whatever leads one to act best with respect to one’s moral reasons, the members of the tribe have a kind of moral reason to do as the chieftain directs. Moreover, we might conclude that this moral reason grounds a moral right on the part of the chieftain. On this account, the chieftain has a moral right that his directives be followed because his having this moral right tends to protect other person’s interests or rights. However, the chieftain in this case has neither an inherent nor a constitutive moral right. Rather, he has an derivative and instrumental moral right.

When one bears an inherent moral right, the right’s infringement constitutes or leads to a moral wrong against the right-bearer. Failure to follow the chieftain’s command under the circumstances described here does not constitute or lead to a wrong done to the chieftain; rather it leads to a wrong against one’s fellow tribe members. So it is a derivative rather than an inherent moral right. Moreover, the failure does not constitute a wrong against anyone. To be sure, such a failure may correlate with a wrong done to those implicated by the moral reasons over which the chieftain has expertise. Maybe, one is less just to some of one’s fellow tribe members by acting on one’s own deliberations about justice rather than following the wise chieftain’s commands.
However, one does not directly harm the chieftain or anyone by failing to follow his commands.

We might concede that one tends to do injustice to and, hence, wrongs the chieftain when one fails to follow his commands. The chieftain is better at balancing considerations of justice amongst the members of the tribe. He is one of the tribe members. So, perhaps one would less likely be just to the chieftain by following one’s own deliberations about justice than by following the chieftain’s commands. Note, however, the nature of this injustice. The injustice, and hence the moral wrong done to the chieftain is failing to act as the reasons of justice require; the injustice is not in failing to follow the chieftain’s commands per se. Hence, in this case, the chieftain would have instrumental and partly inherent moral authority. In sum, the normal justification thesis cannot justify constitutive moral authority though it can play a role in justifying other forms of instrumental moral authority.

3.4 Respect as a Justification of Moral Authority

Because the conditions described in the normal justification thesis do not play a role in the justification of constitutive moral authority, we must look to other grounds of this form of authority. Let us say more about one such ground—respect. We have discussed this ground in our example of the family above. Recall that the family members work together to raise a child and that each family member has a content-independent reason to follow the decisions of the family as a group regarding the child’s upbringing. Recall further that the ground of this content-independent reason is respect. Failure to
conform to the family’s decisions would constitute a failure to show proper respect for one’s fellow family members. It is to deny them a voice in the project of the family as a whole. In such a case, the family member has content-independent reasons to conform to the directive issued by the family by virtue of the respect that one owes to one’s family members and the family as a whole. Failure to follow the family’s directives would constitute a kind of moral wrong done to the family; it would be a failure to give due respect to the family and its constituent members. Thus, in such a case, the family has a moral right (and the member has a corresponding moral duty) that the member follow the family’s directives. To not do so is to violate this right and constitutes a kind of offense against the family. Thus, in our example of the family, our two conditions of authority are fulfilled: the directives of the family provide each individual family member with content-independent reasons to follow the directives and a family member’s failure to follow the directives would constitute a violation of the family’s rights.

A second important instance of the ground of respect can be found in democratic assemblies. To put this in terms of the enabling conditions described above, the democratic assembly’s moral authority is a condition that enables the directives of the democratic assembly as content-independent reasons. We have reason to treat the democratic assembly’s prescriptions as reason for action by virtue of the fact that the democratic assembly possesses moral authority. The ground for this kind of moral

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102 There are some decisions that may be so egregious such that respect would not require conformity. However, the point remains that in some significant set of cases, respect weighs decisively in favor of conformity with the family’s decision.

103 A second ground of moral authority might be a promise to comply with the directives of the authority.
authority can be found in the work of theorists concerned with underlying value of democracy. One vein in this area of scholarship asserts that democracy is an intrinsically valuable form of government.\textsuperscript{104} Very generally speaking, there is something intrinsically fair or just about deciding issues democratically. The general argument for the moral authority of democracy borrows this idea from these theorists.

A state’s legal system constitutes a set of rules that creates a shared social world for the citizens of the state. For example, this legal system establishes systems of property, tort, and contract. It establishes various entitlements to things, such as health care and social insurance of various sorts, directs certain research and educational enterprises, and much else besides. Moreover, it establishes schemes of taxation for the support of the state’s various ends. Because the shared social world deeply affects the life prospects of each member of the citizenry, no single person is solely entitled to determine its shape. Rather, given that everyone is deeply affected by the shared social world, each, as a matter of fairness or justice, should have a say with regard to the shape of the laws that largely constitute the shared social world. Moreover, procedural fairness or justice requires that each has an equal say in the decision-making process. The decisions of the democratic assembly realize this requirement.\textsuperscript{105}

The democratic assembly has a constitutive moral right that its directives be followed. To see this, consider what we might say of someone who fails to conform with the democratic assembly’s directives. Generally speaking, such a failure constitutes an arrogation of the group’s decision. It is to assert that one should have greater say than

\textsuperscript{104} See Christiano (2003), 8ff for a discussion of the intrinsic worth of democracy.  
\textsuperscript{105} See Christiano (1996), ch. 2 for a version of this view.
one’s fellows with regard to the social rules that constitute the shared social world. Moreover, it constitutes a failure to treat one’s fellow citizens as equals in the decision-making process regarding the rules that affect all members of the group. This is a kind of failure of respect for them. In sum, the democratic assembly, as the representative of the group has constitutive moral authority because failure to conform to the democratic assembly’s directives constitutes a failure to treat one’s fellows justly. Conversely, generally speaking, conformity to the decisions of the democratic assembly constitutes just treatment of one’s fellow citizens in at least one sense—it treats them as equals.\textsuperscript{106}

Theories defending the inherent worth of democratic governance differ on the details as to why giving each an equal say is fair or just.\textsuperscript{107} Nonetheless, to the extent that any member of this family of views is correct, then democratic assemblies provide judges with content-independent reasons for deciding cases in accordance with the democracy’s directives. However, such authority does not entail the provision of exclusionary reasons. The reason to follow the directives, based in procedural justice or fairness, competes with, rather than excludes, other relevant ordinary reasons. Reasons of justice and fairness are weighty considerations that will prevail in such competition in most cases, but not all. For example, considerations of substantive justice might weigh in favor of an alternative outcome. Similarly, insofar as the ground for taking the democracy’s directives as content-independent reasons is that the directives give each an equal say regarding the rules of the society, the scope of this reason ranges over a limited set of

\textsuperscript{106} See Christiano (forthcoming), ch. 6 for a detailed instance of this form of argument.

contents. For instance, a democratic assembly’s authority would not extend to directives that in effect denied citizens an equal say in the political process.

3.5 Social Coordination

A second ground of the authority of social institutions has to do with their capacity to effect valuable forms of social coordination. As we shall see, John Finnis and Joseph Raz argue that institutions that can issue directives that facilitate valuable forms of social coordination have authority by virtue of this capacity. In short, one has reason to take an institution’s directives as authoritative if it is the case that such directives facilitate valuable forms of social cooperation. Below, I rehearse Leslie Green’s criticism of this view. Though Green’s point is generally correct, we shall see that coordinating agents in certain circumstances have authority. Moreover, the grounds of this authority are closely bound with their capacity to facilitate valuable forms of social coordination. Below, I describe these particular circumstances.

Let us begin by considering Finnis’s and Raz’s claim that coordinating agents, because they are coordinating agents, have Razian authority—i.e., they provide their subjects with exclusionary and content-independent reasons.

Finnis asserts:

Authority (and thus the responsibility of governing) in a community is to be exercised by those who can in fact effectively settle co-ordination problems for that community. *** The fact that the say-so of a particular person or body or configuration of person will in fact be, by and large, complied with and acted upon, has normative consequences for practical reasonableness; it affects the responsibilities of both ruler and ruled, by creating certain exclusionary reasons for action. These normative consequences derive from a normative principle—that authority is a good
(because required for the realization of the common good)—when that principle is taken in conjunction with the fact that a particular persons, body, or configuration of persons can, for a given community at a given time, do what authority is to do (i.e. secure and advance the common good).  

Raz similarly observes that “one important function of authoritative directives is to establish and help sustain conventions” where conventions are “understood in a narrow sense in which they are solutions to coordination problems, i.e., to situations in which the vast majority have sufficient reason to prefer to take that action which is (likely to be) taken by the vast majority.” Raz further asserts that “sometimes authoritative intervention creates [the prospect that a co-ordinating convention will emerge], and that it creates it because of its authoritativeness.”

In sum, both Raz and Finnis hold that an agent who can secure social coordination by ensuring conformity to its directives—a coordinating agent—should be taken by its subjects and judges as a source of content-independent and exclusionary reasons. However, these authors’ arguments in support of this claim are not very clear. Moreover, Leslie Green casts doubt on this claim. Green’s basic argument against this claim can be illustrated by way of discussion of situation in which the subjects of a coordinating agent would not be justified in treating such a coordinating agent as authoritative. This situation is a simple coordination game.

Coordination games are typically described in terms of preferences of the participants to the game.

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109 Raz (1986), 49.
110 Id., 50.
111 Green (1988), ch. 4.
Harold and Maude’s preferred outcome is one where each engages in the same pattern of behavior. They both disprefer the outcome where each engages in a different pattern. The problem of a coordination game is determining whether to coordinate behavior around coordination point A or coordination point B. Harold has reason to act in conformity with pattern A if he thinks Maude will act in this way and vice versa. We can say the same of pattern B. The problem is that no member knows how to act unless he knows how others will act. Thus, coordination games are most troublesome when it is not easy to determine how one’s counterparts will act.

An example of a simple coordination problem is determining on which side of the road to drive. Pattern A might be driving on the left side of the road, pattern B on the right. We each prefer to drive on the right side of the road only if it is the relevant group’s coordination point. The same goes for the left side of the road. The coordination problem
in this case is setting the coordination point for the group—right-sided or left-sided road driving—and making such coordination point known to the members of the group.

Though coordination games are commonly described in terms of the preferences of the parties, they need not be. We can have coordination games and coordination problems whose basic unit of currency is reasons rather than preferences. For example, we might say that every driver has reason to conform to a particular pattern, driving on the left or right side of the road, only if other drivers conform to that pattern. More generally, then, we might characterize coordination games as situations in which each member of a group has a reason to conform to a particular pattern of behavior only if the other members of the group generally conform to the pattern. Whether we describe coordination games in terms of reasons or preferences, the coordination problem is basically the same: For the individual participants in a coordination game to have a reason or preference to conform to a particular pattern of behavior, the relevant group must conform to the pattern.

An agent who can (1) secure the conformity of a large enough number of the participants in a coordination game to a particular pattern of behavior and (2) widely disseminate knowledge that such conformity has been widely secured can solve coordination problems for the parties to coordination games. Let us call such an agent a coordinating agent. When such a coordinating agent directs its subjects to conform to a particular coordination point, it thereby gives rise to the expectation in each participant in the coordination game that the group will converge upon this coordination point. Thus,
each member comes to have reason to conform her behavior to this coordination point thanks to the efforts of the central coordinating agent.

Green’s point is that though a subject of a coordinating agent has reason to act in accordance with the coordinating agent’s directives, he does not have reason to treat such directives as exclusionary reasons. Hence, such directives are not authoritative in the Razian sense. Take for example the case of driving on the left or the right side of the road. Before the pronouncement of the relevant coordinating agent, the participants are paralyzed. They do not know which side of the road to drive on because they do not have any expectations about what others will do. After the coordinating agent directs the population to drive on, say, the right side of the road, the participants come to have such an expectation. They expect others to drive on the right side of the road. In light of this expectation, each participant knows that she too should drive on the right side of the road.

A coordinating agent is able to secure coordination of a group because it can secure compliance with its directives. Raz holds that coordinating agents characteristically enjoy this latter ability because many in the relevant community take their directives to be authoritative, i.e., a source of exclusionary reasons. Alternatively, our coordinating agent might be able to secure coordination through the threat of sanction or through some combination of the facts that its subjects fear its sanctioning power and take its directives as authoritative. Either way, the question remains open for each individual participant in a coordination game that asks whether she would be justified in taking such directives as authoritative—as exclusionary reasons. The answer in the case of the simple coordination game described above is no.
The following is true of our agent. She wishes to coordinate her actions with others. She knows that others follow the directives of the coordinating agent, whether out of fear of sanction or because they take its directives as authoritative. Thus, she has an expectation that the rest of the group will generally do as the coordinating agent directs. Given that our particular individual is in a coordination game, she has decisive reason to conform her action to what she expects everyone else to do. Thus, she should do as the coordinating agent directs. However this reason is a first-order reason, not an exclusionary one. As Green puts it:

Conventionalism presupposes that conformity with convention is always conditional: each should conform if and only if he expects the others to do the same. When he does expect this, he has no reason to do anything else. It is part of the concept of authority, however that it is binding.\textsuperscript{112}

The point here is that a subject of a coordinating agent in a coordination game has reason to do as the coordinating agent requires because she expects everyone else to act in that way. Thus, the coordinating agent’s directives change the nature of the first-order reasons the subject has by securing widespread conformity to the pattern described by the directives. The coordinating agent’s directives make it the case that a certain pattern of behavior is the behavior of the group. This fact, brought about by the coordinating-agent’s directive, is a first-order reason for the individual participant in the coordination game to do as the coordinating agent has directed. Thus, the coordinating agent’s directives provide content-independent reasons of limited scope—they are reasons to act as the coordinating agent prescribes insofar as the coordinating agent’s directives solve

\textsuperscript{112} \textit{Id.}, 121. Note that in Green’s terminology, a binding norm provides content-independent and exclusionary reasons to its subjects.
coordination problems for individual members of coordination games. Note, however, that directives in this case are first-order reasons to act. They are not exclusionary. They do not give their subjects reasons to exclude reasons from their deliberations when deciding how to act. To see this, consider once again the example of left-side or right-side road driving. Before being coordinated, the subjects of the road-driving coordination game had equal reason for driving on either the left or right side of the road. The coordinating agent’s directive to drive on the right side of the road changes the space of reasons. Once the directive is issued, the subjects have greater reason to drive on the right side of the road. The reasons for driving on the left side of the road are not excluded by virtue of the coordinating agent’s directive to drive on the right side of the road.

We can see this same idea particularly clearly in case of a battle-of-the sexes road-driving coordination game. We might imagine that for various reasons left-handed persons have reason to drive on the left side of the road and right-handed persons similarly have reason to drive on the right side of the road. Perhaps it is more comfortable to shift gears with one’s dominant hand or perhaps persons drive more safely and less awkwardly when they drive on their dominant side. However, both left- and right-handed persons have overall reason to drive on the side of the road that everyone else drives on. Once the coordinating agent directs the group to drive on the right side of the road the left-handed persons still have reason to drive on the left-hand of the road. Considerations of personal comfort may still militate in favor of the left-handed person’s driving on the left-hand side of the road. However, these reasons are outweighed by the fact that any
individual left-hander will be much safer driving on the right rather than left side of the road given that everyone else is doing so.

In sum, an agent does not have Razian authority over subjects merely by virtue of being a coordinating agent for those subjects. Nonetheless, the ground of certain agents’ authority (both Razian and moral) is intimately bound up with their role as coordinating agents in situations where the members of a group are engaged in a joint endeavor. As we shall see below, a joint endeavor gives rise to a particular species of coordination problems. In circumstances that I describe below, agents who can solve such groups’ problems of coordinating their respective joint endeavors have authority over the group. Before enumerating these circumstances, I must explicate the notion of a group’s joint endeavor and explain how coordination problems are concomitants of such endeavors.

For a group to be engaged in a joint endeavor, the following must be true of it. First, the members of the group must have the same end. For example, the members must share the end of playing a symphony. Second, they must be committed to pursuing the end together rather than as individuals. For example, a group of people might each have the end of ameliorating poverty in their city, but they might not be committed to pursuing this end as members of a coordinated group but rather as individuals separately working on the problem. They might be inclined to pursue this end through giving their own money to individual poor persons rather than, say, forming an organization that lobbies
city council or serves as a food bank. Third, the members of the group must generally share a sense of who the group members are.\footnote{We might want to add conditions of mutual awareness to our account of a joint endeavor. For us to say that a group is engaged in joint endeavor, it may not be enough that one through three are true of the group members; rather, each must know that that one through three are true. That each has an end that others in the group have, that each is committed to pursuit of the end through the group, and that each has a sense of who belongs to the group may not fully characterize a joint endeavor. In addition, we might add that for a group to be engaged in a joint endeavor, each must know that the other members of the group have the same end, are committed to pursuing it and have a sense of who belongs to the group. Moreover, we might add that each must know that each knows that this fourth condition obtains as well. I do not think anything in my argument hinges on whether we characterize joint endeavors in terms of conditions one through three or one through five. See Bratman (1999) for a more detailed account of shared cooperative activities, a concept akin to the present notion of a joint endeavor. I omit some of Bratman’s detail not because it is not persuasive but rather because it is unnecessary for the present purposes.}

Joint endeavors give rise to coordination games and hence coordination problems. To see this, consider that there are many ways that any particular group can pursue a joint endeavor. Different strategies can be employed to pursue the relevant shared end, and with regard to any one strategy, the roles that each plays in pursuit of the particular strategy can be allocated among the group members in different ways. For example, a group of firefighters must choose between a number of strategies for controlling a particular house fire. They might douse the whole house in water to stop the fire or create a water barrier around the part of the house that is on fire, which they will leave to burn out. Whichever strategy the firefighters employ, different persons must perform different tasks in the firefighting team in order to control the fire. For any individual member of the group to know how to pursue the joint endeavor, she must know her role is in the endeavor. What one’s role is turns on what everyone else is doing. One’s role must
complement the activity of the others. Hence, we have a coordination game: One has reason to follow a particular pattern of behavior only if the other members of the group generally conform to the pattern.

In the case of coordination games that arise in the context of joint endeavors, the pattern of behavior at issue is oftentimes complex. As with our firefighters, a group in a joint endeavor must settle both strategies and assignment of roles for pursuing an end. We can refer to this complex pattern of behavior as a plan. An agent engaged in a joint endeavor has a reason to play a particular role described in a particular plan for the execution of the joint endeavor only if the other members of the group are following the same plan.

What I am calling a plan—a particular strategy and assignment of roles geared toward the realization of a joint end—can arise in a number of ways. It need not be imposed by a central coordinating agent. A plan may arise emergently. Moreover, central elements of the emergent plan may be fixed by custom. For an example of an emergent plan unaided by custom, let us consider a group of hunters. A group of hunters might naturally fall into various roles and positions in the course of the hunt based on their observations of the actions of their fellow hunters. Once one hunter begins pursuit of prey, it may be immediately clear to the other hunters what they are best positioned to do in pursuit of the animal. Something similar may be true in the course of certain games. Persons in a one-on-three fast break in basketball can simply determine what role to assume in the fast break once the break for the basket has begun.
Custom might help determine how coordination problems are solved. We might imagine an example of hunters and basketball players following a plan that was not completely emergent; rather, some of its elements might be established by custom. Certain persons might customarily assume particular roles. Some players or hunters might specialize in being swingmen who play the outside of the hunt or the fast break. Others might be better ball or spear handlers and hence carry the spear or ball up the middle straight at the prey or to the basket.

There are various reasons why it may be better to have a coordinating agent determine the group’s particular coordination point rather than to coordinate emergently or with the aid of custom. One relevant to the authority of coordinating agents has to do with a necessary or beneficial division of labor between the execution and development of the plan for realizing a joint endeavor. Consider a 1000-person team of firefighters that is pursuing the joint endeavor of fighting a large forest fire. There are many different possible strategies for fighting the fire and many different roles each member of the group might play. Here, we have a coordination game. Each member has reason to conform his behavior to a particular plan geared toward controlling the fire only if the other members of the team are generally conforming to the plan. We might imagine that an individual firefighter might try to deliberate by her own lights what her role should be given her knowledge of what her fellow firefighters are doing much like our hunters or basketball players do. Moreover, we might imagine she does so with the help of a coordinating agent. The coordinating agent issues certain directives about who should do what. The firefighter might rightly believe that the group as a whole generally follows the
coordinating agents’ directives. Hence, her knowledge of those directives will help her
determine how best she can fit her activity into what everyone else is doing. In this case,
she might be justified in ignoring the directives as they apply to her yet count on the same
directives for guidance as to how the other members of the group will behave. However,
this is probably a bad idea in this case on a number of counts.

First, the firefighter may simply not have the time to deliberate very carefully
about what role she should play in the overall plan in addition to performing her,
presumably, demanding tasks. In such a case, our firefighter might be better able to
further the end of fighting the fire by concentrating on her particular tasks and leave to
the coordinating agent the specialized tasks of determining what role and tasks would be
most optimal for her to perform. If so, then Raz’s normal justification thesis applies to the
firefighter over a range of issues relating to her participation in the joint end of fighting
the forest fire. That is, she will likely do better with regard to the reasons relevant to the
joint end of fighting the fire should she conform to the coordinating agent’s directives
rather than acting on her own deliberations about how to fit her activity in with the
activity of her fellows. Thus, over this range of issues, the coordinating agent has Razian
authority over our firefighter—i.e., the coordinating agent provides the firefighter with
content-independent and exclusionary reasons.

Second, the firefighter might not be best placed to judge the proper breadth of his
role in the plan. To the extent that glory and the need for recognition are constants in
human nature, it would not be surprising if the firefighter, as many would, would have a
tendency to assign herself a role based on considerations having to do with his standing
in the group or opportunities for glory. Similarly, we might imagine that a central
coordinating agent might similarly be less partial than the individual firefighter in
applying considerations of justice relevant to the assignment of particular roles and
strategies for fighting the fire. Should a coordinating agent be less partial than the
individual firefighter on either of these scores, the coordinating agent would be better
than the firefighter at deliberating with respect to the reasons relevant to determining the
proper shape of the firefighter’s role and would have Razian authority over the firefighter
for this reason.

Note that in this case, not only would the coordinating agent have Razian
authority; it would have moral authority as well because considerations of justice are at
stake. Complex joint endeavors are not the immediate ground of moral authority, though
they are the occasion. It is not the end that the participants in a complex joint endeavor
share that directly grounds moral authority. Rather, it is a number of ends and interests
that they do not share and that have occasion to conflict in the pursuit of the joint
endeavor. For example, each participant has an interest in having the opportunity to do
interesting work, to develop her talents, to receive remuneration, and to have some say in
how things are done. This latter interest is instrumental for the protection of one’s other
interests, but has intrinsic value as well. Let us call these interest ancillary interests. Note
that though they are ancillary to the joint end in one sense, they may equal or exceed its
importance.

Justice requires that the ancillary interests of each participant of a joint endeavor
be given due consideration in the construction of the plan that governs the execution of a
joint endeavor. A coordinating agent may construct such a plan. To the extent that it does, a participant of the joint endeavor who violates the plan commits a moral wrong against his fellow participants. Thus, the participants are bound to a kind of conditional duty. Insofar as they are participants in the joint endeavor, they are bound to follow the just plans of a coordinating agent. To do otherwise is to fail to give proper deference to the ancillary interests of one’s fellow participants. The coordinating agent’s moral right is instrumental in this case (its violation leads to harm of a moral interest in justice rather than constitutes such a harm) and derivative (the right protects the moral interests of persons other than the rights-bearer).114

Some authors argue that a representative and democratic body stands a greater chance of being impartial regarding decisions affecting the represented group than any other body in the group.115 This thought applies to the case of our coordinating agent. If the agent that coordinates the group’s pursuit of a group endeavor is representative and democratic, there is reason to think that its deliberations about the proper allocation of roles would be less partial than the deliberations of individuals deliberating alone. The basic thought is that if everyone’s interests and viewpoints are represented in the deliberations of the agent tasked with assigning the roles to the members of the joint endeavor, there is a greater likelihood that the deliberation regarding the proper role of any individual group member’s role will be impartially designed than if that member were tasked with deciding the scope of her role on her own. Note further that if our arguments above regarding the inherent fairness of democratic decision-making are

114 See the discussion at the end of section 3.3 above.
115 See, for example, Christiano (1996).
sound, the democratically organized coordination agent would also have constitutive moral authority—that is, failure to follow the directives of a fair deliberative process would constitute an injustice against the group.

4 Conclusion

In sum, we have done two main things in this chapter. First, we have seen that there are at least two complementary forms of claim-right authority—Razian and moral. Second, we have seen a variety of grounds for the justification of each of these forms of authority. The normal justification thesis is a ground of the former and the latter under certain circumstances. Respect is a ground of moral authority. The need for coordination is not a ground of either form of authority on its own; however, we saw that a coordinating agent may come to have Razian authority and moral authority under particular circumstances—namely, when the agent has special expertise concerning the proper scope of the roles that comprise a plan for the execution of a joint endeavor or when the agent is constituted by a democratic and representative assembly. With these conceptions of claim-right authority in hand and a sketch of the circumstances under which claim-right authority so conceived is justified, we can turn to the conditions under which an agent can be at home in claim-right authority claiming social institutions.
A perennial question in political philosophy asks, “Under what conditions, if any, is the authority of the state justified?” We may extend this question from political philosophy to social philosophy by asking this question more broadly of all social institutions. Under what conditions, if any, is the authority of any social institution—e.g., a family, a workplace, or the state—justified. A slightly different question queries the conditions under which persons can be at home in a social world characterized by authority-claiming institutions. Though these latter two questions are related, they are not co-extensive in the sense that a person may fail to be at home in a social institution whose claims to authority are justified.

Consider the ground of consent. Binding oneself to an authority through consent does not ensure that the relevant authority will be a home for one. For example, workers oftentimes are bound to the directives of a person they have promised to obey irrespective of whether they believe that the required actions are valuable or worthwhile. Though there is a limiting condition on what one is bound to do in such circumstances—one is not bound by immoral directives—one may nonetheless be bound to act in seemingly pointless ways. To take from a recently witnessed exchange, a waitress might be obligated to perform a variety of largely pointless tasks (e.g., wiping clean windows, sweeping a just-swept floor, polishing tableware that does not improve upon the polishing) in a restaurant on a slow day for no other reason than her manager could not stand the thought of the wait staff standing around doing nothing. Though the waitress
may rightly believe her work is valueless, she is nonetheless obligated because she has consented to her manager’s authority. The manager in this case ensures that the restaurant is not a home but rather a place of alien and seemingly pointless managerial imposition for our waitress. As many works of fiction and non-fiction attest, our waitress is not alone in her alienation from the authority structures of the workplace.

In sum, to show that an institution’s claim to authority is justified is not to show that it is a home for its subjects. Rather, as we shall see, a further condition must be met—namely, the institution’s subjects must also identify with the authority-claiming institution. In this chapter, I defend a conception of identification with one’s social institutions and explain how this conception relates to the justification of the authority of social institutions and the possibility of being at home in them. The discussion proceeds in four parts.

In part one, I consider and criticize Joseph Raz’s understanding of identification with a social institution and the role that such identification plays in grounding authority. As we shall see, Raz holds that to identify with an institution is to enjoy solidarity or a form of civic friendship with the institution. In part two, I develop an alternative conception of identification with a social institution that is continuous with the notion of identification with a social role described in earlier chapters. On this account, one’s identification may, but need not, involve the pursuit of solidarity or civic friendship with one’s fellow institutional members. As we shall see in part three, one’s identification with a social institution may, under certain circumstances, ground the institution’s authority over one. Identification in these circumstances plays a dual role: it facilitates one’s being
at home in the social institution that claims authority, and it grounds such authority. Finally, in part four, I describe a set of conditions under which two things are true: (1) an institution’s claim to authority is justified irrespective of whether one identifies with it, and (2) the subjects of the authority should identify with the institution. In other words, I describe conditions under which an authority’s subject would be making a kind of mistake in failing to identify with the authority-claiming institution. If these conditions are met, then the social institution’s failure to be a home for an agent is due to the agent’s inability to identify with the institution or a mistaken judgment that he should or need not.

1 Raz’s Conception of Identification and Its Connection to Authority

Raz holds that identification provides, in tandem with consent, a limited supplementary ground of authority. That is, Raz holds that a subject who identifies with an institution can thereby modestly extend the scope of the institution’s authority over her. Moreover, Raz holds that the subject can extend the institution’s authority in this way only if she consents to the authority and if the normal justification thesis applies (or, as we shall see, largely applies). I argue that Raz underestimates the role that identification can play in grounding an institution’s authority. He underestimates its potential role in this respect because he does not clearly specify what exactly it is to identify with an institution. With a clear specification of identification with an institution in hand, we can better see the role it can play in grounding authority. As a preface to the discussion in the next section where I specify identification and its role in grounding
authority, I describe and criticize in this section Raz’s notion of identification with an authority-claiming institution.

Recall that Raz’s conception of authority comprises two elements. First, A is a legitimate authority with respect to S only if A’s directives provide S with content-independent reasons. I have discussed at length elsewhere the meaning of content-independence. In short, A provides S with a content-independent reason to perform some action if and only if A’s intent that S act in some way is a reason for S to act in that way. Second, A provides S with an exclusionary reason for action. The key distinction between an exclusionary reason and an ordinary reason is that an exclusionary reason is a second-order reason. It is a reason not to take some reasons into account in one’s deliberations. Thus, one does not balance an exclusionary reason against the reasons it excludes to determine what to do. Rather, the exclusive reason displaces the excluded reasons in one’s deliberations.

According to Raz, the primary justification of an authoritative relationship thus conceived is the normal justification thesis. This thesis holds that A’s authority over S is in the usual case justified insofar as S is more likely to do better with respect to the reasons that apply to him by following A’s directives than by following his own deliberations directly. In such a case, S has a content-independent reason to conform to A’s directive. Moreover, this reason is an exclusionary reason. Because S is likely to better comply with the reasons that apply to him by following A’s directives rather than his own deliberations regarding such reasons, S should exclude from his deliberations those reasons and follow A’s directives instead. In sum, when the normal justification
thesis holds, A’s directives give S content-independent and exclusionary reason for action in accordance with the directive.

Raz considers whether identification with a group can serve as the primary justification of an authoritative relationship with the state. For example, might an American’s primary reason for following the laws of the United States be that she identifies with the community of fellow Americans? Raz answers questions of this type in the negative; however, he holds that identification can broaden the scope of the authority of a state and thereby serve as a supplementary justification of the state’s authority.

Raz holds that identification can play a role in justifying authority only in tandem with two other grounds of justification—consent and the normal justification thesis. Raz holds that consent is a performative act akin to the performative act of promising in that, when valid, it alters a normative situation. Raz enumerates a host of differences in the ways that these two performative acts can alter a normative situation. One similarity is that they both can, in some cases, alter a normative situation by generating new duties. For example, when one promises to meet someone for lunch, one thereby comes to have a duty to meet that person for lunch that one did not have before the promise was made. Moreover, this duty is not reducible to the reasons that one had to make the promise in the first place. Similarly, by consenting one may come to have new duties. Raz’s example is the leader of an expedition’s consent to the inclusion of a newcomer in the expedition.

Raz (1986), 90ff.
Such consent generates certain duties of care binding on the leader of the expedition and owed to the newcomer.

On Raz’s account, our capacity to bind ourselves through consent is limited and defined by pragmatic considerations. The touchstone question is whether it is generally useful or good for agents to be able to bind themselves to such an extent. The limited reach of consent is particularly salient in the case of political authority. On Raz’s view, consent to an authority generally reaches only as far as the normal justification thesis. That is, generally speaking, consent to follow the directives of a political authority is only valid insofar as the normal justification thesis holds with respect to the authority. Hence, consent, though perhaps reinforcing or making more salient one’s obligations, goes no further in justifying a political authority than does the normal justification thesis.

However, Raz notes one key exception. Raz holds that a certain good stands to be realized by being able to bind oneself beyond the reach of the normal justification thesis.

Undertaking an obligation to obey the law is an appropriate means of expressing identification with society, because it is a form of supporting social institutions, because it conveys a willingness to share in the common ways established in that society as expressed by its institutions, and because it expresses confidence in the reasonableness and good judgment of the government through one’s willingness to take it on trust, as it were, that the law is just and that it should be complied with.\footnote{\textit{Id.}, 92.}

Thus, Raz argues that we can realize certain goods if we can, via consent, bind ourselves to the laws of the state. Raz describes this good as an expression of our identification with the state. With Leslie Green (and Aristotle), we might call the good that Raz
gestures at here as civic friendship. Expressing one’s identification with one’s society by consenting to and thereby binding oneself to its laws is partly constitutive of civic friendship. Raz’s idea, then, is that a distinct good stands to be realized if we allow consent’s normative reach to extend beyond the scope of the normal justification thesis. So, for this limited purpose, persons can bind themselves to the state’s laws even if the normal justification thesis does not apply. However, Raz adds that if the state’s laws badly fail to serve the reasons that apply to the citizen who identifies with his society, then binding himself to such laws would be an inappropriate expression of his identification with the society and a failed attempt at realizing the good of civic friendship. Thus, Raz’s idea is that the good realized through identification with one’s society grounds only a modest expansion of the normative reach of consent beyond the reach of the normal justification thesis.

2 A Conception of Identification with a Social Institution

For Raz, an agent expresses his identification with his society by consenting to the political authority of the society’s state and thereby binding himself to the state’s authority. Such an expression of identification seems to be, on Raz’s account, a form of friendship or solidarity. Though Raz tells us how one expresses one’s identification with society, he never clearly specifies what identification with society is. Thus, it is hard to assess his claims that identification can play only a modest supplementary role in grounding the authority of the state.

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118 Green (1988), 218-19. Note also that Green generally shares Raz’s understanding of the role that identification can play in the justification of the state’s authority.
In what follows, I offer a conception of identification with one’s social institutions that is continuous with the notion of identification with a social role described in the earlier chapters of this dissertation. As I will explicate at length below, identification with a social institution entails standing in a certain relationship to the end of the social institution. This end may be a form of friendship or solidarity, as Raz and Green seem to suggest. For example, the end of some fraternal organizations seems largely to be such an end. However, the end in most cases is something other than (or in addition to) having a relationship with one’s fellows. For example, the family’s end might be to care for the well-being of certain children or a university’s end might be research and the education of particular populations of students. No doubt the end of social institutions are often complex admixtures of a kind of friendship and some other end. For example, the end of most families probably involves both caring for certain children and persons and doing so in a kind of filial friendship with those persons. Similarly, the end of many fraternal organizations involves performing a public service in communion with one’s fellows.

As we shall see, thus understood, identification plays a much more significant role in grounding the authority of social institutions than Raz’s discussion suggests. In what follows, I explicate the main elements of the alternative conception of identification with a social institution. First, one who identifies with the social institution has the social institution’s end as her own. Second, the identifier intrinsically values the social institution’s end. Third, the identifier is committed to pursuing the end as a member of the social institution. Once the three elements of this specification are in place, we can
see how identification relates to the authority of social institutions and the question of whether such authority-claiming institutions can be a home for their subjects. Let us take these three elements in turn.

2.1 Having a Social Institution’s End as One’s Own

To understand what it means to have a social institution’s end as one’s own, we must clarify the notion of the end of a social institution. As noted in chapter one, a social institution is constituted by a complex of norms that define certain roles and duties of the members of the institution. These norms work together to serve an overarching end. For example, the norms defining the rights and responsibilities of family members facilitate the realization of certain ends—e.g., the caretaking of particular children and the emotional and financial support of one’s fellow family members. As mentioned in chapter one, we can think about ends of social institutions in two different ways. At one extreme, we might think of the end in purely functional terms. The end of a social institution simply is the end that the institution’s complex of constitutive norms systematically realizes. On this account, the best interpretation of the end of a social institution and the institutional participants’ understanding of the end might be very different. At the other extreme, we might think of the end as a joint endeavor of the institution’s members. In the previous chapter, we described the basic elements of a joint endeavor. The members of the group must share an end, they must be committed to pursuing the end as members of the group, and they must share an understanding of the membership of the group. On this account, the end of a social institution is not separate
from the institutional participants’ understanding of the end. Rather, it is constituted by that understanding. Let us call these two kinds of ends the functional end and the joint endeavor.

An example should help illustrate these two different kinds of ends. We might imagine a high school whose faculty and administration have a certain understanding of its point—namely, to serve the educational needs of particularly bright and talented students in the area. A Marxist critic of the institution might correctly point out that irrespective of the self-understanding of the institution’s members, the end of the institution is actually to serve and perpetuate the social and economic dominance of a certain segment of the area’s population—perhaps, certain wealthy families in the area.

An institution’s joint endeavor and functional end can no doubt come apart. However, they can also correspond. And, to the extent the participants of an institution are competent, they strive to make the institution’s functional end line up with its joint endeavor. Further, any institution’s history is liable to be one of struggling to line these two kinds of ends up via a strategy of effecting change in the normative structure of the institution, a strategy of revising its members’ self-understanding, or some combination of these two strategies.

Identifying with an institution entails taking as one’s own the institution’s ends in both the functional and joint endeavor sense. Thus, one can identify with an institution only if there is a minimal degree of coherence between its functional end and its joint endeavor. This is not to say that there should be perfect coherence between these two ends. Nor is it to say that there is perfect agreement among the institution’s members
about the nature of the institution’s joint endeavor. Rather, it is to say only that there is a sufficient degree of coherence between the institution’s functional end and joint endeavor and that there is a sufficient degree of agreement as to the nature of the institution’s joint endeavor.

2.2 Intrinsically Valuing the Institution’s End

To identify with a social institution entails sharing the end of the social institution. However, it must involve more than this. Consider again the paradigmatic employee alienated from her workplace. She may perform her various functions in service of an end that she values and takes her fellow workers to share. This end may be to sell as many hamburgers in as short of a time possible as cheaply as possible. However, the waitress adopts and values this end only because doing so is necessary to keep her job and earn some money. In other words, the end is valuable only for instrumental reasons. She does not see it as intrinsically valuable. Hence, for our waitress, though the job may have instrumental value, the job itself is alienating. To identify with a social institution, it is necessary to value the group’s end (or set of ends) intrinsically rather than instrumentally. Moreover, as in the case of sophisticated identification with a social role described in chapter one, the identifier’s intrinsic valuation of the end of the social institution has two modes—an affective valuation and a valuation that proceeds from one’s judgment of the value of the end. In short, one who identifies with a social institution sees and feels the value of the organizing end of the institution.
2.3 Pursuit of Joint Endeavor as Member of a Group

There is yet a third element of identifying with a social institution. In addition to having and intrinsically valuing the social institution’s end, one must also be committed to pursuing the end as a member of the group. To see what this element adds to our account of identification with a social institution, consider that one might have and share a social institution’s end without being committed to pursuing it as a member of the group. For example, one might have and intrinsically value the end of giving to the poor without being committed to pursuing such an end as a member of a group.

There are a number of different reasons why an agent might be committed to pursuing an end as a member of a group. Some ends, such as winning a football game, performing a symphony or having a friendship can, as a matter of conceptual possibility, only be performed by a number of people working together. An ineliminable aspect of pursuing the end is pursuing it through the group. To value pursuing such an end is to value pursuing it as a member of the group. To see this, consider the absurdity of the following claim: I enjoy performing in an orchestra, but it would be better if I did not have to do this with all those other people. Just as absurd is the claim that one values everything about one’s friendships save for the other people who are involved. Unlike the ends of friendship or the performance of an orchestra, a number of other ends could, as a matter of conceptual possibility, be discharged by only one person, but it may be extremely unlikely, or much more surely or better discharged by an group. Examples of this second kind of contingently group-centered end are keeping the peace in a town, winning a war, training the next generation of philosophy graduate students, providing
care for the needy or raising a family. One who values such ends intrinsically and
pursues them through a group because doing so is contingently necessary or beneficial
does not fully identify with the social institution. These person experiences the groupness
of the pursuit as a necessary cost. Note however, that some ends are compound ends
coupling both ends that could be discharged individually with those that must be
discharged through a particular group. For example, one might want to raise a child
together with certain others with whom one hopes to forge a special relationship.
Similarly, raising a modest sum of money for charity is such an end. One might do this
because one has a compound end of raising money for a charity and engaging in an
activity-based form of friendship with a group. Perhaps, there might be a psychological
tendency for persons who initially value the pursuit of an end with a group because doing
so is contingently necessary or highly beneficial to the realization of the end to come to
value intrinsically pursuing the end as a member of the group.¹¹⁹

3 Identification and the Authority of Social Institutions

Those who identify with a social institution take themselves to be pursuing a
complex joint endeavor with the members of the social institution. As we saw in the last
chapter, joint endeavors are the occasion for coordination games and their attendant
coordination problems. The members of a joint endeavor share the same end and a
commitment to pursue the end as a group; however, there are many possible ways the
group could work together to pursue the end. In other words, there are many possible

¹¹⁹ Rawls (1971), Part III.
coordination points for any joint endeavor. The coordination problem is determining which coordination point to pursue. Any individual member of the group only has reason to pursue the group’s end in a particular way if doing so fits with the group’s plan—the set of strategies and allocations of roles geared toward the pursuit of the group’s end.

As suggested in the last chapter, under certain circumstances, centralized coordinating agents are the best or only means to solve the coordination problems that joint endeavors pose. Under yet further circumstances, those coordinating agents have Razian and moral authority over those they coordinate. A question, then is whether the circumstances that surround the coordination problems posed by social institution match the circumstances that require authoritative coordinating agents. Though I cannot fully answer this question here, I do specify the conditions under which social institutions must be or are best organized by authoritative coordinating agents. Let us specify the conditions requiring a centralized coordinating agent and an authoritative centralized coordinating agent in turn.

3.1 Conditions Favoring the Centralized Coordination of a Social Institution

As we saw in the last chapter, coordination problems associated with joint endeavors can be solved in a number of ways: by an emergent process of coordination among the individual members of the coordination game, by custom, some combination of emergent coordination and custom, and by centralized coordination. As we also saw, circumstances in which centralized coordination is beneficial or perhaps even necessary are when the group to be coordinated is very large and when the number of different roles
that are necessary to discharge the group’s shared end is complex. We find both of these circumstances in the social institutions that the social world comprises. For example, such circumstances are characteristic of large firms, academic departments, schools of higher learning, hospitals, and the state, to name just a few.

In addition, we should note that centralized coordination provides institutions with a kind of control over their coordination points that custom and emergent coordination cannot. To see this, consider again the case of left-side road-driving or right-side road driving. We might imagine that at time 1 in Sweden, the coordination points of driving on the left or driving on the right side of the road might be equally good for all Swedes. By happenstance, the Swedes might initially adopt the custom of driving on the left side of the road. However, circumstances might change. For example, all neighboring countries might choose a right-sided rule of the road. Things might then be better for the Swedes if they were to change their coordination point from the left to the right side of the road.

However, it is not easy for a large group of persons to move from one coordination point to another even when the other is better. In Sweden, the situation was that right-sided coordination is best, left-sided coordination is second best, and no coordination is third best yet nonetheless Sweden was stuck at the second best coordination point (left-sided road driving). It is hard to change a group’s coordination point. This is true even when another coordination point would be better for the group. It is hard to change because it is in no one individual’s interest to conform to the superior coordination point (drive on the right side of the road) when one expects that everyone
else will continue to conform to the inferior coordination point (the left side of the road). For beneficial change in coordination points to take place, a sufficient number must come to believe that a sufficient number of others will change their behavior. Coordination agents can facilitate such change in expectation and behavior because they (by definition of what a coordinating agent is) have a known ability to secure widespread compliance with their coordinating directives. As such, the coordinating agent can effect change in a group’s coordination points. The state of Sweden effected just such a switch in coordination points in 1967 when it changed the country’s coordination point from left-sided driving to right-sided. Coordination agents can similarly move large groups of people from a state of no coordination to a coordination point.

Thus, there are at least two reasons why social institutions establish coordination points via a coordinating agent rather than relying on emergent coordination and custom. First, such an agent may be necessary, or at the very least highly conducive to, the coordination of the complex joint endeavors characteristic of most social institutions. For example, it is hard to imagine a well-functioning large law firm, academic department, political organization or state that did that is not organized in some measure by such a coordinating agent. Second, such a coordinating agent facilitates the possibility of beneficial and controlled change in the coordination points of social institutions.

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120 See *Time Magazine*, September 15, 1967.
3.2 Conditions of the Authoritative Coordination of a Social Institution

Yet further conditions must be met for a centralizing coordinating agent to have authority over its subjects. Recall from the previous chapters our discussion of the conditions under which a coordinating agent would be generally better than its subjects at deliberating with respect to the reasons relevant to the proper shape of the subject’s roles than the subject is. When this condition is met, the coordinating agent has Razian authority over the subject. That is, the coordinating agent’s directives concerning the complex joint endeavor’s coordination point and the individual’s place within it provide the subject with content-independent and exclusionary reasons. The coordinating agent’s directives provide the subject with reason to refrain from acting on his own deliberations about the proper shape of his role (i.e., with exclusionary reasons) because the coordinating agent’s deliberation are superior to the subject’s deliberations in this regard.

We have rehearsed a number of reasons why the coordinating agent’s deliberations might be superior to the subject’s deliberations in this respect. First, the subject may benefit from a division of labor in which the subject focuses on performing his role rather than deliberating about its proper shape. The role, however it is defined, may be so demanding in terms of time and effort that the occupant of the role has little remaining time to deliberate carefully about the proper shape of the role. Second, the occupant of the role who deliberates about the proper contours of the role is liable to be less partial than a centralized coordinating agent. The common need for glory and recognition from others and the natural concern and understanding of one’s own interests are liable to lead the person who deliberates alone to a distorted and overblown
conception of the shape of his appropriate role in the pursuit of a group’s end. Thus, we might expect a centralized coordinating agent to better deliberate with respect to the reasons relevant to determining the proper shape of a role than individuals deliberating a role. Moreover, insofar as the coordinating agent is constituted by a democratic and representative group, we have yet further reason to think that the coordinating agent’s deliberations will be less partial than the individual’s deliberations. I have also suggested in the previous chapter that when a joint endeavor is characterized by these second and third conditions, the relevant coordinating agent enjoys moral authority in addition to Razian authority. When the second condition is met, one conforms better to considerations of justice by conforming to the coordinating agent’s directives rather than acting directly on one’s own deliberations. In such a circumstance, conforming to the directives protects the moral interests of one’s fellows. Thus, one has a moral duty to conform to the coordinating agent’s directives. This moral duty correlates to a moral right of the agent that its directives be followed.

Moreover, we saw in the last chapter a further argument for the claim that when the third condition is met—the coordinating agent is constituted by a representative and democratic assembly—the coordinating agent has moral authority over its subjects. If this argument succeeds, the moral authority of the coordinating agent is constitutive rather than instrumental. The moral authority is constitutive rather than instrumental because on this account failure to conform to the directives of the coordinating agent constitutes rather than tends to lead to a violation of the moral interests of one’s fellows. Namely, the idea is that when one fails to follow the directives of a democratic and representative
assembly, one fails to treat one’s fellows as equally entitled to have a say in the decision-making process regarding the allocation of roles and strategies pursuant to the group’s joint endeavor.

In sum, there are three circumstances that may support the Razian authority of a coordinating agent with respect to decisions about the proper shape of its subjects’ roles pursuant to the realization of the group’s joint endeavor. First, the coordinating agent may have more time and resources to deliberate about the proper shape of the roles than does any individual member. Second, it may be less partial in its deliberations about the proper shape of the roles than any particular member. Third, the coordinating agent may be constituted by a democratic and representative assembly. Because of its democratic and representative nature, such an assembly is better informed about the various interests and abilities of its members than any individual member. These abilities and interests are important reasons relating to the proper shape of the roles of the social institution.

Moreover, the second and third conditions support the moral authority of the coordinating agent as well. To the extent the coordinating agent of a social institution meets these three conditions, it has authority over the participants in the joint endeavor that constitutes the institution. Note that such authority is limited to issues regarding the determination of the shape of the roles pursuant to the group’s joint endeavor.

3.3 The Necessary Overlap of Identification with Social Roles and Social Institutions

At this point we can pull some of the threads of the argument from earlier chapters into the present discussion. Recall the question posed in the earlier chapters
querying the conditions under which one may be both be bound by the duties and requirements posed by one’s social world and at be at home in such an institution. The basic answer given in chapter two is that under certain conditions, which we have discussed, one has compelling reason to conform to the duties of the social roles with which one identifies. This reason stems from the fact that one achieves the goods of meaning and self-determination by conforming to the duties of the roles with which one identifies insofar as the organizing end of the role is sufficiently moral and nontrivial.

Authority role-duties pose a special challenge to this account of the normative force and at-homeness of social roles. The underlying assumption of this account is that with regard to most roles there is a sufficiently moral and nontrivial end that explains and justifies the pursuit of the duties attendant to the role. For example, the shape of the duties of the role of mother, which include caring for certain children in various ways, can be largely explained and justified by the end of the well-being of those children. The challenge, then, is to describe the kind of end that can explain and justify authority role-duties. Authority role-duties, recall, are duties to conform to the directives of certain authority structures associated with the role. Most roles include duties of this sort. For example, conventionally speaking, citizens must conform to the state’s commands, professors must follow the decision of their departments, and individual parents must conform to the decisions reached by the parents together.

The preceding section provides the answer to this challenge. A complex joint endeavor, the type which I suggest is characteristic of many social institutions, is the kind of end that can explain and justify authority-duties. Note, then, the following. Most social
roles involve authority-duties. To identify with a role is to have and intrinsically value an end that explains and justifies the duties that constitute the role. The main kind of end that can explain and justify authority-duties are joint endeavors characteristic of social institutions. Thus, to identify fully with a social role, in most cases, involves identifying with the social institution in which it is housed.

4 The Dual Role of Identification with a Social Institution

Above we saw the conditions under which a coordinating agent of a social institution, say a departmental committee or a state’s democratic assembly, have limited Razian and moral authority over its participants. The authority is limited to those directives that specify the roles pursuant to the joint endeavor. One subset of these participants are those who identify with the social institution. As we have seen, one who identifies with a social institution takes herself to be a participant in the joint endeavor constitutive of the institution. As such, those who identify with a social institution are bound by the directives of coordinating agents that meet the foregoing conditions.

We can distinguish participants in a joint endeavor generally from participants who identify with the social institution. The latter take themselves to be at home in their social institution, whereas the latter do not. Those who identify with the social institution see intrinsic value in the institution’s end and in their activities that contribute to the pursuit of the end. Moreover, as we saw above, one who identifies with a social institution values the group pursuit of the end. The end that is valued is one that necessarily can be pursued only through a group. Thus, to value the end is to value its
group pursuit. For the following reason, we can say of such persons that they take themselves to be at home in the group pursuit of such ends: Namely, they see themselves as realizing an intrinsically valuable end by pursuing the end as a member of the group. As such, they achieve a sense of meaning from that part of their life devoted to this end. Moreover, they take themselves to be at home in the best or necessary form of such group pursuit of the end. In the conditions described above, the necessary or best form is via a centralized and authoritative coordinating agent. Thus, identification plays two distinct roles. First, one can come to be bound by the directives of a coordinating agent by virtue of identifying with a social institution. Second, one who identifies with a social institution thereby takes herself to be at home in its authority-claiming institutions—at least insofar as those institutions’ claims do not reach beyond the authority to shape the roles pursuant to the relevant joint endeavor. Recall from the discussion in chapter two that at-homeness comprises both an objective and a subjective aspect. The agent described in this section fulfills the subjective aspect of being at home. She also fulfills the objective aspect, and, as such, fully is at home in an institution to the extent that its constitutive end meets the objective conditions discussed in chapter two above. Namely, the end meets a minimally moral threshold and is nontrivial.

We should make a final point about a necessary presupposition for the present view that identification with one’s social role can play a role in grounding the normative force of one’s role-duties, including, in some circumstances, the role-duty of conforming to the directives of relevant authority structures. This presupposition is a form of value pluralism. This form holds that there are many values and that many of these values are
incommensurable with one another.\textsuperscript{121} For example, the value of art may be incommensurable with the value of sports. When deciding between viewing or participating in sport or art, one may not be able to say that one has more reason to do the one than the other. Rather, there may simply be an incommensurable choice. This is not to say that value is silent about how one should act. One should realize some value or other and not every pursuit has value. However, it is to say that value may be silent about which particular valuable activity—say, art or sport, one should pursue. The basic presupposition of the present view is that there is a background sea of incommensurable values. One might organize a life around any number of these values. However, to be meaningful, one’s life must be organized around some set of these values or other. Social roles and social institutions are important because they facilitate such organization. Moreover, in a healthy social world, they facilitate organization of one’s life around particularly compelling versions of these incommensurable values. Note that to say that there are particularly compelling versions of the values in the sea of incommensurable values is not to reject the notion that there are incommensurable values. The idea is that there are certain incommensurable value-types, say, friendship, play, aesthetic value, and knowledge. Within these types, there might be more or less valuable instances of the realization of the value. Social institutions and social roles facilitate the realization of versions of play, friendship aesthetic value, and knowledge that cannot be realized without them.

\textsuperscript{121} See Gaus (2003), 31ff for a discussion of different interpretations of this claim. See also Raz (1986), 321-66 and 395-97 for discussions of incommensurability of values and moral pluralism respectively.
Identification with a social role and social institutions is a way of selecting a particularly compelling version of an incommensurable value and attendant set of reasons from the pluralist’s background sea of incommensurable values and reasons. When one identifies with a role and social institution, one has reasons to act pursuant to the valuable organizing end of the role. One realizes the good of meaning (and, as we have seen self-determination) by pursuing this valuable end and not others. In this sense, identification with a role grounds the normative force of one’s role-duties. One comes to have specific reasons for action (reasons for acting as one’s role requires) by identifying with the role that one would not have otherwise.

However, identification cannot ground one’s reason for conforming to one’s role-duties if it cannot serve this selecting function. To see this consider the possibility of a morally incumbent joint endeavor. If there is such a morally incumbent joint endeavor and if it is realized exclusively via one of the social institution’s in an agent’s society, then the agent has no choice but to conform to the requirements of this institution and her role within it. Whether she identifies with this role and institution would be irrelevant to whether she has reason to conform to its specific requirements.

To help see what such a morally incumbent end might look like, imagine a modified value pluralism that posits that many values are incommensurable but that there are some (or perhaps only one) values that is morally incumbent. On the simplest view, one value would condition the value of the cluster of values that are incommensurable with one another. Consider John Finnis’s list of basic goods—life, play, practical reasonableness, knowledge, aesthetic experience (or beauty), sociability (or friendship),
and religion. The value-pluralist holds that such goods are incommensurable and that a good human life can be constructed out of the pursuit of various subsets of these values. Moreover, we might add that in addition to these basic values there is a regulative value that conditions the pursuit of these values. We have seen this idea throughout this dissertation. I have repeatedly claimed that one’s life is valuable and hence meaningful in the pursuit of the ends that are the organizing principle of one’s social roles and social principles only insofar as such ends meet a moral threshold. The way I have put this is that one’s pursuit of these values must be compatible with respect for the humanity of one’s fellows. Thus, we have an example of a version of modified value pluralism. There are a number of incommensurate values. However, the value of these values is conditioned by a regulative value: respect for the humanity of one’s fellows. Moreover, this conditioning value might itself be an end of a social institution. If the social institution were the only way to realize this end, then its requirements, like the end that the requirements serve, would be morally incumbent.

I end, then, with a question and a comment. We might imagine a social institution whose organizing principle is this morally incumbent end. The question asks whether there is such a social institution. One possibility is the democratic state. Some theorists argue that equal respect for our fellows can only be achieved insofar as we determine the rules that govern our common social world in a representative and democratic fashion. The comment is that if there is such an institution that realizes a morally incumbent end, then one is bound by it irrespective of whether one identifies with it. However, note that

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identification still has a role to play with respect to such an institution. Unless one identifies with the morally incumbent institution—that is, unless one sees and feels its intrinsic value—one will see its requirements as alienating. It will not be a home for one. It will not be a home for failure of the subjective aspect of being at home in the world. However, in this case, the fault of the failure to be at home does not lie with the institution. It is intrinsically valuable; moreover, it is a morally incumbent value. Rather, the problem is either a tragic inability to feel the value of the institution that realizes this morally incumbent value or a mistaken judgment that it is not such a morally incumbent value. I leave to another occasion an exploration of whether there are any actual social institutions or idealized version of actual social institutions that realize such a morally incumbent value.
CHAPTER 6

ADJUDICATING BETWEEN HARD AND SOFT POSITIVISM

A key premise of Joseph Raz’s theory of law holds that the law claims authority. We might ask a number of questions about this premise. One asks, “What does this premise mean?” At first blush, it seems mysterious, perhaps even incoherent. To claim authority implies agency of some sort. Only agents can make claims. However, laws are not agents. They are norms. On Raz’s account, to say that law claims authority is to say something about legal officials’ practices with respect to the law. Legal officials hold out the law as commanding allegiance from other legal officials and citizens alike. In the name of the law, legal officials purport to obligate other legal officials and citizenry and not merely to coerce them to act in certain ways. Raz holds that such practices presuppose the view that the law is authoritative. That is, such practices are intelligible only if we take the officials engaged in them to believe (or to be acting as if they believe) that the law is authoritative. In sum, Raz’s view, which I adopt here, is that the statement “the law claims authority” is shorthand for the thesis that the practices of legal officials presuppose that the law is authoritative. A second question queries the content of law’s claim to authority. What exactly is law claiming when it claims authority? Below, I consider two answers to this question. The first holds that when law claims authority it claims to provide its subjects with

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125 Id.
content-independent and exclusionary reasons to do as the law specifies. The second holds that when law claims authority, it claims to provide its subjects with content-independent but not necessarily exclusionary reasons to do as the law specifies. This is the content-independent thesis. As we shall see, the correct specification of law's claim to authority—i.e., whether the content-independent or exclusionary thesis is true—has implications for the debate between hard and soft positivist theories of law. The exclusionary thesis supports hard positivism and the content-independent thesis supports soft positivism.

To adjudicate between the content-independent and exclusionary theses, we should look to a particular aspect of legal officials' practice of recognizing only some classes of norms as laws that are binding on the citizenry and other legal officials. Legal officials do not arbitrarily recognize just any norm as laws. Rather, they systematically apply only the norms of particular classes—for example, the norms prescribed by legislatures, prior court decisions and custom. Such practices of recognition presuppose certain grounds for recognizing certain sources as sources of law. These grounds are the key to determining the precise character of the law's claim to authority. Some grounds for recognizing certain norms as law justify treating those norms as sources of content-independent and exclusionary reasons. Let us call these exclusionary grounds of recognition. Other grounds of recognition justify treating the norms recognized as law as sources of content-independent reasons only. Let us call these content-independent grounds of recognition.

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126 See chapters three and four for full discussions of content-independent reasons and exclusionary reasons, respectively.
Below, I describe two commonplace content-independent grounds of recognition: coordination and respect. I also describe one exclusionary ground, Raz’s normal justification thesis. Given that there is an admixture of kinds of grounds of recognition, I conclude that law’s claim to authority is a claim to provide content-independent reason, and sometimes but not always, to provide exclusionary reasons. In other words, I conclude that attributing to legal officials the presupposition described by the content-independent thesis better renders the legal officials’ practice intelligible than does attributing to legal officials the presupposition described by the exclusionary thesis. Given this conclusion, I also conclude that soft positivism, which is supported by the content-independent thesis, is a more plausible theory of law than its rival, hard positivism, which is inconsistent with this thesis.

In the first part of this chapter I do two things. First, I explain in more detail what it means for law to claim authority. Second, I provide the arguments described above for why we should take law’s claims to authority to entail the content-independent thesis rather than the exclusionary thesis. The second part of this chapter is divided into two sections. In the first, I explicate the distinction and debate between hard and soft positivism. In the second, I argue that the content-independent thesis supports soft positivism and is inconsistent with hard positivism. Putting the conclusions of parts one and two together, I conclude that soft positivism is more plausible than hard positivism.
The Nature and Content of Law’s Claim to Authority

Does law’s claim to authority consist in a claim to provide content-independent and exclusionary reason to the subjects of law? In other words, is the exclusionary thesis correct? Or, does law’s claim to authority consist in a claim to provide content-independent but not necessarily exclusionary reason? In other words, is the content-independent thesis correct? An obvious worry is that these questions about the content of law’s claim to authority are ill-formed because they unduly anthropomorphize law. The idea is that only agents can make normative claims. Laws are not agents, hence they cannot make normative claims. Let us deal with this worry about the nature of law’s claim to authority before turning to our two questions above about the content of this claim.

1.1 The Nature of Law’s Claim to Authority

A standard response to the worry that the content-independent and exclusionary theses unduly anthropomorphize law is as follows: The statement that the law makes a normative claim is simply shorthand for the explicit or implicit claims of the persons and institutions that make and implement the law. As Raz notes:

The claims the law makes for itself are evident from the language it adopts and from the opinions expressed by its spokesmen, i.e. by the institutions of the law. The law’s claim to authority is manifested by the fact that legal institutions are officially designated as ‘authorities’, by the fact that they regard themselves as having the right to impose obligations on their subjects, by their claim that their subjects owe them allegiance, and that their subjects ought to obey the law as it requires to be obeyed.¹²⁷

Raz’s thought is that we can make out laws’ normative claims by a kind of ethnography of the system that contains laws. Certain institutions make and administer laws and thereby make certain demands of the governed. The governed respond in various ways and make certain demands and pleas of their own of the institutions that make and administer the law. We should impute those normative claims to laws that make this system intelligible. What must legal officials believe about the law’s normative claims for them to apply it as they do and to make the demands they do on its behalf? To answer this question is to determine the content of law’s claim to authority. In order to answer this question, we must describe the relevant practices of legal officials.

1.2 The Content of Law’s Claim to Authority

To determine the content of law’s claim to authority, it is necessary to look more closely at the practices of legal officials that constitute a legal system. These practices presuppose the belief on the part of relevant legal officials that the law has authority. In the following subsection, I rehearse Raz’s account of an essential aspect of legal system. Namely, legal officials do not decide cases before them purely on the basis of their own discretion. Rather, they apply certain norms supplied by other decision-making bodies as standards. As we shall see, this practice of legal officials presupposes that the legal system’s norms, its laws, are authoritative. In section 1.2.2, I describe the rule of recognition—the practice among legal officials of picking some norms and not others as authoritative. As we shall see, the rule of recognition presupposes the content-independent thesis rather than the exclusionary thesis.
1.2.1 The Authoritative Nature of the Law

Joseph Raz provides us with a thought experiment that persuasively suggests a particular view of the fundamental nature of law and legal systems. He asks us to imagine a system of courts in which every case is determined solely on the basis of the judge’s view of the merits of the case at hand. In such a system, judges do not look to customs, legislative enactments, or judicial precedents, even their own, for guidance in deciding the cases before them. Rather, the judge’s only guide is her view of the requirements of the reasons that apply to each case individually—reasons such as justice, fairness, efficiency and so on. Raz asserts that such a system of pure judicial discretion is not a system of law for lack of a fundamental element of legal systems—norm-applying organs. In a legal system, judges rarely, if ever, decide cases solely on the basis of their view of the balance of all reasons relevant to the case at hand. Rather, their deliberation is guided by authoritative norms; judges apply these norms to adjudicate the cases before them. As a general matter, the judges in a legal system take these norms to be binding irrespective of whether they reflect the judge’s understanding of the requirements of the relevant reasons in any particular case. A defining characteristic that distinguishes a legal system from a system of pure judicial discretion is that judges in the former system apply authoritative norms to decide cases rather than relying solely on their own judgment to decide the outcome. In sum, Raz’s thought experiment makes the following conclusion appealing: Because authoritative norms mark a fundamental element of legal systems, the

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128 Raz (1979), 107-08.
element that distinguishes them from purely discretionary systems, they merit the honorific “law”. Moreover, the laws of a legal system are the authoritative norms that judges apply to the cases they decide. In this chapter, I accept this conclusion.

Though the distinction between a norm-applying system and a system of judicial discretion seems to capture a real difference, more must be said to specify the precise nature of this difference. In a purely discretionary system, the judge adjudicates solely on the basis of her judgment about the requirements of all relevant reasons. However, this does not yet distinguish such a system from a norm-applying system. Presumably, the judge who decides cases by applying authoritative norms does so because the judge judges that all relevant reasons require that she do so. To say otherwise would be to say that the judges in a legal system characteristically decide cases irrationally. What then is the difference between applying a norm to decide a case and deciding a case solely on the basis of one’s own judgment? The difference is that the norm-applying judge traffics in a certain kind of reason that the purely discretionary judge does not—a reason that the authoritative norms of the system provide.

On Raz’s account, the kind of reasons that a norm-applying judge has that the purely discretionary judge does not are reasons that are both exclusionary and content-independent. An exclusionary reason is a kind of second-order reason. It is a reason to exclude certain reasons from one’s deliberations—deliberations leading to a decision in

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129 On Raz’s account, laws provide this same sort of reason to citizens as well. For the citizen, laws provide content-independent and exclusionary reasons that lead to action. For the judge, these same laws provide the same kinds of reasons, but here they are content-independent and exclusionary reasons regarding the standards of assessment of citizens’ behavior.
the case of a judge and deliberations leading to action in the case of the citizen. Raz refers to the reasons that exclusionary reasons exclude as dependent or ordinary reasons. The purely discretionary judge in no case takes herself to have reason to exclude ordinary reasons from her deliberations. She decides the cases before her by deliberating with respect to all ordinary reasons she takes to be relevant. On Raz’s account, laws purport to exclude ordinary reasons from the judge’s deliberations. When the outcome of a case is fully determined by law, the laws relevant to the case exclude all ordinary reasons from the judge’s deliberations.

Laws also provide a first-order reason for the judge’s decision—namely, a content-independent reason to judge on the basis of the authoritative norm. The precise nature of a content-independent reason is a vexed issue. The conception of content-independence that I employ here is as follows: If S’s reason to phi is that some agent prescribes that she phi, then she has a content-independent reason to phi.130

We are now in a position to characterize more fully the difference between the purely discretionary and norm-applying judge. On Raz’s account, a norm-applying judge takes certain authoritative norms to give her second-order reasons to exclude ordinary reasons from her deliberations about the proper outcome of a case and first-order reasons

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130 The terms “agent” and “prescribes” are to be read very broadly in this conception. “Agent” include natural persons and nonnatural persons such as legislative assemblies and other decision-making bodies. Prescribing encompasses commanding, requesting, and advising. Putting this together, the present understanding of content-independent reasons contemplates that nonnatural persons, such as deliberative bodies, congresses and committees, can prescribe certain actions. Moreover, it contemplates that such prescriptions can be reasons. This conception of content-independence is both non-standard and key to the arguments of this chapter. I defend this conception in chapter three.
for her to decide a case in a particular way because some agent has prescribed that she
decide cases in accordance with the norm. The purely discretionary judge traffics only in
ordinary reasons; she does not take herself to have the exclusionary and content-
independent reasons that the norm-applying judge takes herself to have.

In this chapter, I accept Raz’s distinction between the norm-applying judge and
the purely discretionary judge and the idea that the former is a judge in a legal system
governed by laws, whereas the latter is not. Note that accepting this distinction has
implications for a theory of law. If laws are those authoritative norms that judges apply
and that constrain the judge’s discretion, then there are certain implications for what the
laws of a legal system can be. Namely, they cannot be unmediated reasons. Rather, they
must be judgments regarding such reasons that reflect the views of some person, set of
persons, or decision-making body concerning the standards that should apply to the
state’s subjects. A judge deciding on the basis of unmediated reasons rather than
applying such a standard is acting as a discretionary rather than a norm-applying judge.

If we accept Raz’s view of the distinctiveness of legal norms and a legal system,
then we are committed to a kind of positivism. Laws come from sources—i.e., sources
that have expressed judgments concerning how the law’s subjects should act and how
cases should be decided. Though I accept Raz’s way of thinking about the law and his
commitment to a kind of positivism, I call into question the particular characterization of
this distinction and hence of the distinctive kinds of reason that laws provide. I argue
below that we can distinguish between the norm-applying judge who traffics in laws and
the purely discretionary judge who does not as follows: The norm-applying judge takes
herself to have reason to decide cases in accordance with norms prescribed by certain sources because they have been prescribed by those sources. That is, she takes such source-based norms to give her content-independent reasons. However, she need not take those norms to provide her with exclusionary reason as well. They may or may not provide her with exclusionary reason. These non-exclusionary source-based norms nonetheless demarcate a fundamental distinction between a purely discretionary court system and a legal system and hence earn the honorific “law”.

Before I can turn to the argument that supports the content-independent thesis, I must describe the rule of recognition—the practice among legal officials of picking certain kinds of norms and not others as law. As we shall see in section 1.3, this practice is consistent with the content-independent thesis rather than the exclusionary thesis.

1.2.2 The Rule of Recognition

Note that the norm-applying judge characteristic of a legal system does not apply just any norm to the cases before her. To see this, consider a slightly modified version of our purely discretionary court system—a tag-team purely discretionary system. In this case, the judge is accompanied by a magistrate who determines what she thinks the proper resolution of the case at hand should be. She then prescribes this decision to the judge. This judge is a norm-applying judge insofar as she takes the tag-team magistrate’s prescription as a content-independent and exclusionary reason for her decision. Though this system features norm-applying organs, it still lacks a fundamental element of a legal system—i.e., publicity. The norms of a legal system are not only authoritative, they are
shared by the officials of the legal system. In the tag-team system, each team of judges adheres to its own private set of authoritative norms. By contrast, in a legal system, all legal officials share the same set of authoritative norms.

The rule of recognition picks out the authoritative norms that belong to the public set of norms shared by legal officials and that constitute the society’s legal system. As H.L.A. Hart originally notes in his seminal account, the rule of recognition is constituted by two elements.\footnote{Hart (1997), 94ff.} First, a rule of recognition is a convergent social practice among the legal system’s officials of recognizing certain kinds of norms as valid law. For instance, in the American legal system, there is a practice among legal officials of recognizing the enactments of Congress and the pronouncements of the Supreme Court as law. These practices constitute part of the rule of recognition definitive of the American legal system. This rule of recognition, as is the rule of recognition of any complex society, is highly complex. The rule comprises many clauses describing the various sources of legal authority in the society.\footnote{Moreover, it establishes a hierarchical relationship between its various clauses. For instance, the rule delimits the way in which the pronouncements of the Supreme Court constrain and limit the enactments of Congress, and vice versa. Note, however, just as the individual clauses of the rule of recognition are established by practice amongst legal officials, so is the relationship amongst the clauses.} Second, the rule of recognition is more than a regular pattern of behavior. It is a pattern of behavior pursued from an internal point of view. The rule of recognition is not a group habit or reflex. It is accepted by and, hence, guides the behavior and evaluations of the relevant group. For example, consider the clause of a possible rule of recognition with the following content: apply the laws enacted by the legislature. A judge who has the internal point of view with respect to this clause applies
certain norms because she recognizes that they have been enacted by the legislature. Moreover, she will criticize others for failure to follow this rule and refrain from criticizing those who conform to the practice.

1.3 Determining the Normative Claims of Law

Above, we detailed the view that a legal system is a norm-applying institution. It is an institution in which its officials’ decisions are constrained by authoritative norms—the norms of the legal system or, in other words, the system’s laws. This practice presupposes law’s claim to authority. Legal officials apply norms to decide cases. They employ these norms as a standard by which they should judge the citizenry’s behavior and by which such citizenry is bound. Moreover, they apply only certain classes of norms—those norms recognized in the legal officials’ shared practice of the rule of recognition. This practice is our key to our query concerning the content of law’s claim to authority.

Recall that we wish to determine whether law’s claim to authority consists in a claim to provide content-independent and exclusionary reason to its subjects or more simply a claim to provide only content-independent reason. In other words does the exclusionary thesis or the content-independent thesis better describe the content of the law’s claim to authority? As we have seen, the rule of recognition is a shared practice among legal officials of taking the fact that norms are of a certain class to be a reason to apply that norm as a standard in their decisions. Presumably, there are reasons for selecting certain classes of norms as authoritative but not others. These grounds are the
key to adjudicating between the content-independent and exclusionary thesis. To make sense of legal officials’ practice of systematically picking norms of certain kinds and not others, we must attribute to them the belief in certain grounds, grounds of recognition, for selectively recognizing the legal system’s laws.

Some likely grounds for selecting a class of norms as authoritative support treating those norms as content-independent reasons but not exclusionary reasons. Other grounds of recognition support treating the recognized norms as content-independent and exclusionary. In the following section, I describe three different grounds of recognition. As I shall argue, two of these grounds support treating the recognized class of norms as content-independent but not necessarily as exclusionary reasons—respect for the democratic assembly and the good of coordination—and one of these grounds—the normal justification thesis—supports treating the recognized norms as content-independent and exclusionary reasons.

I assume that the rule of recognition in many societies is best interpreted as supported by an admixture of these grounds. A set of laws recognized on the basis of an admixture of grounds will have an admixture of normative force. Some laws, those supported by exclusionary grounds, will provide their subjects with content-independent and exclusionary reasons, and yet others, those supported by content-independent grounds, will provide content-independent but not exclusionary reasons. Thus, any general statement about law’s claim to authority must hold that law claims to provide content-independent but not necessarily exclusionary reasons to its subjects. Let us turn now to a more complete discussion of how two of our grounds of recognition imply laws
that provide content-independent but not exclusionary reasons and how one of the grounds implies laws the provide content-independent and exclusionary reasons. Let us start with the exclusionary ground—the normal justification thesis.

1.3.1 The Normal Justification Thesis

Recall from previous chapter’s Raz’s normal justification thesis. This thesis holds:

[T]he 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.\(^{133}\)

One ground of recognition is that the relevant class of norms satisfies the normal justification thesis vis-à-vis those subject to the norm. That is, the citizenry will do better with regard to the reasons that apply to them by following a particular class of norms rather than deliberating directly with respect to the reasons that apply to them.

For example, one might argue that the normal justification thesis might be the ground of recognizing a representative and democratic assembly’s legislative enactments. A number of theorists have argued that the decisions of a representative and democratic assembly are particularly well-informed vis-à-vis society’s members taken individually. The idea is that in the assembly, a variety of societal interests and points of view have a seat at the table. In the democratic and representative assembly, these interests and points of view are registered and inform the ultimate decision. On this view, we should expect

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\(^{133}\) Raz (1986), 53.
the assembly’s decisions regarding the society’s laws to be better informed than the
decisions of individuals not privy to the democratic and representative deliberation. Thus,
legal officials, who are not privy to these decision-making fora, might have reason to take
the decisions of the democratic assembly as standards that control their decisions rather
than determining for themselves what these standards should be. Yet a second example
might be bodies within the government that have specialized expertise that satisfies the
normal justification thesis. For example, a rule of recognition might recognize the rulings
of certain specialized agencies, such as the Food and Drug Administration, as law in light
of its expertise. In these cases, the normal justification thesis is the ground of a rule of
recognition that recognizes as a class the norms decided upon by a democratic and
representative legislature or a group of experts. That is, the judge is likely to act better in
deciding cases by applying the democratic assembly’s or group of experts’ directives to
decide cases rather than the standards she would select by her own lights.

Note that in this case, the directives of the democratic assembly or group of
experts would provide the judge with exclusionary reasons. Recall that an exclusionary
reason is a reason to exclude from one’s deliberations considerations that would
otherwise be relevant. When the judge defers to the directives of a legislature or a group
of experts in recognition of their relative expertise with regard to certain issues, she is
treating their directives as exclusionary reasons. She is allowing their decisions to
exclude and replace her own deliberation with respect to that set of issues.
1.3.2 Moral Authority and Democratic Assemblies

Respect for the democratic assembly is a second ground of recognition. Unlike the normal justification thesis, this ground provides legal officials with content-independent but not exclusionary reasons. To put this in terms of the enabling conditions described in the previous chapters, the democratic assembly’s moral authority is a condition that enables the directives of the democratic assembly as content-independent reasons. Discussion of the ground for democratic assembly’s moral authority can be found in the work of theorists concerned with underlying value of democracy.\(^{134}\) One vein in this area of scholarship asserts that democracy is an intrinsically valuable form of government.\(^{135}\)

A state’s legal system constitutes a set of rules that creates a shared social world for the citizens of the state. For example, this legal system establishes systems of property, tort, and contract. It establishes various entitlements to things such as health care and social insurance of various sorts, directs certain research and educational enterprises, and much else besides. Moreover, it establishes schemes of taxation for the support of the state’s various ends. Because the shared social world deeply affects the life prospects of each member of the citizenry, no single person is solely entitled to determine its shape. Rather, given that everyone is deeply affected by the shared social world, each, as a matter of fairness or justice, should have a say with regard to the shape of the laws

\(^{134}\) See Christiano (forthcoming), particularly ch. 6.
\(^{135}\) See Christiano (2003), 8ff for a discussion of a handful of works that defend the intrinsic and instrumental value of democracy, respectively. Christiano holds that democracy has both instrumental and intrinsic value. He develops at length an account of its intrinsic value in Christiano (1996) and Christiano (2004). See also Waldron (2002).
that largely constitute the shared social world. Moreover, procedural fairness or justice requires that each has an equal say in the decision-making process. The decisions of the democratic assembly realize this requirement.\footnote{See Christiano (1996) and Waldron (2002) for versions of this view.} Very generally speaking, the idea is that deciding on the rules that shape our common social world democratically is fair or just and is valuable for that reason. A separate dimension of the value of democratic decision-making is the quality of the outcomes of this form of decisions reached in this way. This value, by contrast, is instrumental rather than intrinsic.

Theories defending the inherent worth of democratic governance differ on the details as to why giving each an equal say is fair or just. Nonetheless, if some version of the view of the intrinsic value of democracy is right, then the democratic assembly has a constitutive moral right that its directives be followed. To see this, consider what we might say of someone who fails to conform to the democratic assembly’s directives. Generally speaking, such a failure constitutes an arrogation of the group’s decision. It is to assert that one should have greater say than one’s fellows with regard to the social rules that constitute the shared social world. Moreover, it constitutes a failure to treat one’s fellow citizens as equals in the decision-making process regarding the rules that affect all members of the group. This is a kind of failure of respect for them. In sum, the democratic assembly, as the representative of the group, has constitutive moral authority because failure to conform to the democratic assembly’s directives constitutes a failure to treat one’s fellows justly. Conversely, generally speaking, conformity to the decisions of
the democratic assembly constitutes just treatment of one’s fellow citizens in at least one sense—it treats them as equals.

It appears, then, that on the view of some theorists, respect for the equality of our fellow citizens is a ground for conforming to the directives of a representative and democratic assembly. Our question is whether we should also take such respect to be a ground for treating the representative and democratic assembly as exclusionary reasons. If it is an exclusionary reason, then when considering whether to follow (or in the case of the judge whether to apply) the democratic assembly’s laws we should exclude from our deliberation all or some of the considerations underlying the law in question. In my view, we should not. Rather, we should treat the assembly’s laws as extremely weighty reasons for conformity, but one that can be outweighed by countervailing reasons. My argument for this view is based on an analogy to individual autonomy. For at least three reasons, we should not interfere with choices that individuals make that affect only or primarily their well-being. These reasons are analogous in a number of respects to those we have discussed for following the laws of a democratic and representative assembly.

The first reason is based on individuals’ relative expertise with respect to their own well-being. This reason parallels the reason for conforming to the directives of a democratic assembly discussed above—namely, the democratic assembly has relative expertise regarding the viewpoints and interests of everyone represented by the assembly. To the extent the democratic assembly is better at deliberating with respect to the viewpoints and interests of all members of the community than the individual, the individual has reason to conform to the directives of the assembly regarding matters
where the viewpoints and interests of all in the community are relevant. When considering whether to interfere with a choice you make regarding your own well-being, I should not act on my deliberations about what is good for you because, likely, your decisions on the basis of considerations relating to your well-being will be better than mine.\(^{137}\) Hence, your decisions give me an exclusionary reason with respect to considerations relating to your well-being. The exclusionary force of these decisions parallels the exclusionary force of the directives of a democratic assembly regarding issues for which the viewpoints and interests of all in the community are relevant.

A second reason for not interfering with the choices others make regarding their own well-being is developmental. For example, Bob might rightly believe that in a particular case concerning his friend Harry’s well-being, Harry does not reason better than Bob. We might imagine that Bob is experienced and wise in dating matters and knows that Harry’s current choice of partners is going to be nothing but trouble for Harry. Nonetheless, Bob might have a developmental reason not to interfere with this choice despite his concern and better grasp of Harry’s well-being needs. We see this kind of reason in the individual case in the common saying that people need to make their own mistakes. In part at least, this saying refers to persons’ need to make their own mistakes in life so that they can learn from them and become better decision-makers. Some theorists of a democracy emphasize this kind of reason for valuing democratic

\(^{137}\) See Mill (1989/1859).
governance. Democracy is valuable because it provides citizens with various opportunities to develop their capacities.\textsuperscript{138}

In our example, Bob’s reason for not interfering with Harry’s choice of partners may be a developmental reason. That is, by not interfering with Harry’s decision he allows Harry to learn from his own mistakes. Note that this reason is not an exclusionary reason; rather, it is a first-order reason. Bob has reason not to interfere with Harry’s decision that outweighs his reason to interfere. Harry’s long-term well-being, the development of his capacity to be a good decision-maker about personal matters, is a weightier consideration than his short-term well-being concerns with not dating someone who will run him through an emotional wringer in the short-term.

The third reason for not interfering with the choices others make regarding their own well-being parallels the reason to conform to the democratic assembly’s directives based in respect. The idea here is that given the kind of creatures persons are, they should be entitled to make their own decisions. Persons are self-directed and minimally rational agents. They have a capacity to form and pursue a plan of life. The proper response to such a capacity includes, among other things, not interfering with decisions of such agents that exclusively or primarily have effects only on the well-being of the agent. A way of putting this point is to say that every person has a life that is her to lead as she sees fit insofar as it does not affect others. To interfere with her decisions is to deny this claim and to manifest less respect than creatures of this sort merit.

\textsuperscript{138} For different versions of this point, see Mill (1991); Holmes (1993); Gould (1988), and; Christiano (1996).
We might think that respect for individuals as self-directing minimally rational agents grounds an exclusionary reason. On this view, when deciding whether to interfere with the decisions of another, respect requires us to refrain from taking into account considerations relating to that person’s well-being. The idea is that we would be overstepping our bounds by thinking about these considerations. These considerations are, as it were, none of our business and not ours to decide. By contrast, we might think that respect grounds a first-order reason that weighs against any well-being based reasons we might have for interfering with the other’s decision. The latter model better fits with the structure of our reasoning in such cases.

Cases where considerations of an agent’s well-being justify interfering with the agent’s decision that affect only his well-being would count against the exclusionary model of respect. On the exclusionary model, respect excludes considerations of the agent’s well-being. The proponent of this model would have to explain why in some cases considerations of well-being are excluded and in other cases not. The proponent of the first-order reason model has a more straightforward explanation. Though a weighty consideration, respect for the agent is sometimes outweighed by considerations of the agent’s well-being. The question then, do we think there are such cases? I think there are.

Consider, for example, very difficult occupations that promise relatively high pay but at a high cost in terms of bodily well-being. Young people with little skills are most likely to take such jobs because they have the physical stamina to take on such arduous tasks. Working in the coal mines or copper mines in 19th century France or Chile,
respectively, are tasks of this sort. These particular tasks severely endangered and diminished the life of the workers who took them on.

Imagine again our two friends, Bob and Harry. Bob has decided to engage in a two-year contract in a mine. He knows how hard the work is. He also knows that political and social conditions are such that once he leaves for the mines he will not be able to return until he has fulfilled the terms of his contract. Despite all this, Bob has decided to take on this contract in hopes of making enough money to return to his village and make a good start on life there. Imagine further that Harry knows that Bob is severely overestimating his ability to save money in this way and to withstand the rigors of the job. Harry knows that Bob probably will not save the money he hopes to save and that Bob will not be healthy when he returns. Thus, Harry knows basically all the same facts as Bob about the job and what it requires and the amount of money Bob will earn, yet he draws different and more accurate conclusions. This is a case, then, where the first two kinds of reasons for Harry’s not interfering with Bob’s decision do not apply. We are stipulating that Harry has better command of the well-being related reasons than does Bob. We are also stipulating that this is a decision that will not have developmental benefits for Bob. Harry correctly estimates that if Bob survives the ordeal, he will return a shell of his former self. Harry’s remaining reason not to interfere with Bob’s decision is respect for Bob’s autonomy as someone entitled to make and pursue his own lifeplan.

Imagine further that Harry could easily undermine this plan by sending a letter notifying the mining company that Bob is a cousin of a labor activist. This letter would make it impossible for Bob to take the job at the mine, but would have no further effect.
Our question, then, is how should Harry think about whether to send the letter. If the exclusionary model is right, then he should not take Bob’s well-being into account when deciding whether to send the letter. Respect requires Harry to refrain from taking Bob’s well-being into account in this decision. If the first-order reason model is right, then Harry should take Bob’s well-being into account and weigh it against the countervailing requirement of respect for Bob.

The latter model better fits the way we should reason in this case. Bob’s well-being is a consideration that should figure in Harry’s deliberations. It may very well be outweighed by respect for Bob, but it should be taken into account when he considers whether to send the letter. Evidence for this is that there is a dividing line of the following sort: on one side of the line the negative well-being effects of taking the job outweigh the considerations of respect and on the other, the reverse holds.

In my view, the case described above falls on the pro-letter writing side of the dividing line. The negative well-being effects described in this scenario seem to be sufficient reason for Harry to send the letter at the expense of the considerations based in respect. However, we could imagine a similar scenario where the key difference is that the well-being effects of Bob’s decision are much less dire. In this scenario, Harry is right to think that Bob overestimates his ability to save significant sums of money in the course of his work, but he will survive the ordeal and will not be a shell of his former self. It will be hard and dangerous, but it is not the near certain promise of devastation on offer in the first scenario. In this case, considerations of respect may very well be decisive. Even if Harry knows Bob is wrong about the money and that Bob’s well-being will be set back in
some measure by this experience, he might have overall reason based in respect for Bob not to send the letter.

The key point in this example is not whether I am right about where the two scenarios fall with respect to the dividing line. The point is that there is a dividing line. At some point, considerations of an agent’s well-being do outweigh respect for the agent when considering whether to interfere with his actions that affect only the agent. If considerations of the agent’s well-being never outweigh considerations of respect, then either the exclusionary model or a first-order model that held that reasons of respect always trump considerations of well-being is correct. However, if considerations of the agent’s well-being can sometimes outweigh reasons of respect, then this poses a challenge for proponents of the exclusionary model. I think our example above suggests that sometimes, when the considerations of well-being are sufficiently weighty, they do outweigh considerations of respect.

We can analogize from the case of respect for the autonomy of individuals to the case of respect for the autonomy of the democratic assembly. When the normal justification thesis applies to the democratic assembly, its directives provide the assembly’s subjects with exclusionary reasons regarding those issues on which the assembly is a relative expert. When the normal justification thesis does not apply, we must look to developmental and respect-based grounds for following the assembly’s directives. If we analogize from respect for the autonomy of the individual, we might say that respect for the assembly and one’s fellow citizens requires that we conform to the assembly’s decisions over a certain domain—namely, those that pertain to the common
good and justice in the community. We can ask the same question of the nature of the reasons grounded in respect for the democratic assembly’s directives that we asked of the nature of the reasons grounded in respect for the individual’s autonomy.

Does respect ground an exclusionary reason or a weighty first-order reason? If our analogy holds, then respect for the democratic assembly, like respect for individual autonomy, grounds a weighty first-order reason. I see no reason to think the analogy does not hold. Thus, I conclude that respect for the democratic assembly, though weighty and rarely outweighed by considerations of the common good and justice relevant to the democratic assembly’s decision, may be outweighed if the stakes in terms of the common good are high enough. In other words, respect for the democratic assembly grounds a first-order reason and not an exclusionary one. Moreover, to the extent the ground of recognition of the laws enacted by the democratic assembly is respect, we have reason to treat such laws as sources of content-independent but not exclusionary reasons. In short, respect is a content-independent ground of recognition.

1.3.3 Social Coordination

A third ground for treating certain sources of law as providing content-independent reasons is that those sources’ directives can secure valuable forms of social coordination. The coordinating agent provides the coordinated with content-independent reasons. That is, the coordinated have reason to take the coordinating agent’s prescriptions as reasons for action. From the perspective of the subject whose actions are to be coordinated, two conditions must obtain to enable the coordinating agent’s
directives as content-independent reasons for the subject. First, the coordinating agent provides a signal that the coordinated subject knows most other subjects will follow with regard to a coordination point. Second, the coordinating agent’s prescriptions must prescribe a coordination point regarding a good of some sort, such as public safety. When these two conditions are met, coordinating agent’s prescriptions provide the coordinated with content-independent reasons for action.

In this same vein, judges have reason to apply the norms that are prescribed by coordinating agents that meet these two conditions. Note that a legal system’s rule of recognition plays a key role in determining what sources of norms (e.g., legislatures, customs, prior court decisions) can meet these two conditions. Notice the self-sustaining nature of the rule of recognition in the context of coordination. The rule of recognition is a convergent practice among legal officials of treating certain sources’ norms as law. One reason that a judge has to continue treating the sources specified by a society’s rule of recognition as law is those sources are capable of coordinating societal behavior in service of societal goods. They are capable of providing such coordination precisely because they are part of the legal system’s rule of recognition.

To see this, consider a particular example in a simplified world of 100 legal officials. The legal officials have a convergent practice of enforcing Sam’s edicts. Lillian, a legal official, wants to enforce rules of the road that conduce to public safety. However, she does not know whether to enforce a rule of driving on the left or the right side of the road in service of the end. What she would like to do is enforce a coordination point one way or the other. However, acting alone she cannot do this. Were she able to coordinate
her actions with all the other legal officials, they together could enforce and maintain a coordination point. This is where Sam steps in. Sam issues an edict that everyone shall drive on the right side of the road. Lillian knows that there is a convergent practice of enforcing the laws that Sam prescribes. Lillian now knows what to do in service of the desired coordination point. She should act as Sam has prescribed in service of the good of coordinating public safety on the roads. Thus, Lillian’s (and all other legal officials) have a self-sustaining reason to follow the legal system’s rule of recognition. Namely, by following the rule of recognition, the officials can contribute to the realization of valuable forms of social coordination.

The strength and scope of the legal officials’ coordination-based content-independent reasons varies with the end that is being coordinated in a particular case. The strength of such reasons varies with the importance of the end that is coordinated. For example, in a particular case concerning the rules of the road, the importance of applying the laws that facilitate public safety on the roads, such as the laws that mandate on which side of the road to drive, are only as weighty as the concern for public safety. The scope of coordination-based content-independent reasons only reaches as far as the need to realize coordination. Sources’ prescriptions that do not serve such ends do not provide coordination-based content-independent reasons.

Having noted these limitations of coordination-based content-independent reasons, there is reason to think that the strength and scope of these reasons is great and expansive. This is because a weighty end that requires coordination that only the rule of recognition’s sources can provide is formal justice. Formal justice is the requirement that
like cases be treated alike in the sense that they be subject to the same rules. For judges to
treat like cases alike, they must converge upon the standards that should be applied to any
particular cases. The rule of recognition is such a convergence. Judges achieve the end of
formal justice through participating in this convergence. Note, however, that even in this
case, the coordination-based reason is a content-independent reason. The weight of the
reason for applying the standards recognized by the rule of recognition is only as great as
the weight of the end of formal justice. Moreover, there are limits on the scope of this
end. Formal justice is a hollow value as applied to vicious laws. The haphazard
application of apartheid may very well be better than its formally just application.

1.4 Conclusions Regarding the Exclusionary and Content-Independent Theses

I have catalogued two different conditions that enable sources as sources of
content-independent reasons for judges. One is a condition that applies only to a
particular kind of source—the democratic assembly. This condition is the moral authority
of the democratic assembly. The second condition applies to any source that figures in a
society’s rule of recognition. A second enabling condition is the coordinating capacity of
a source. The facts that a source has the capacity to coordinate behavior and that its
prescriptions prescribe valuable coordination points enable such a source as a source of
content-independent reasons for judges. Generally, the first condition is satisfied with
respect to any source that figures in a society’s rule of recognition. These two grounds—a
source’s moral authority and its coordinating capacity—are grounds of recognition that
are liable to figure in the best interpretation of many societies’ rules of recognition. These
are grounds of content-independent reasons rather than content-independent and exclusionary reasons; they are content-independent grounds. We have also seen the main enabling condition that enables sources as content-independent and exclusionary reasons—the normal justification thesis, which is a kind of epistemic enabling condition.

In sum, there is an admixture of grounds that are likely to figure in the best interpretation of any society’s, particularly contemporary democratic societies’, rule of recognition. If, with Raz, we take law’s claim to authority to be shorthand for a presupposition necessary to interpret the practices of legal officials, then we have reason to specify such a claim in terms of the content-independent thesis rather than the exclusionary thesis. Legal officials pick and choose amongst the classes of norms they recognize. Their likely bases for such choices support treating such norms as content-independent in some instances and content-independent and exclusionary in others. Any general assertion about law’s claim to authority must accommodate this admixture of kinds of laws—some are content-independent, some are exclusionary. Thus, we should read law’s general claim to authority as a claim to provide content-independent but not necessarily exclusionary reasons. In other words, we should take the content-independent thesis to be true rather than the exclusionary thesis. As we shall see in the next section, this conclusion has implications for the correct theory of positivism. It supports soft positivism and undermines hard positivism.
Raz’s Argument for Hard Positivism and Against Soft Positivism

Raz subscribes to the exclusionary thesis rather than the content-independent thesis. Thus, he asserts that law claims to provide exclusionary and content-independent reasons to its subjects. As we shall see, this thesis is the foundation of Raz’s theory of law, hard positivism. The content-independent thesis is a rival to the exclusionary thesis; it holds that the authoritative norms characteristic of a legal system provide their subjects with content-independent reasons but need not provide them with exclusionary reasons.

As we shall see, the content-independent thesis is not compatible with hard positivism, though it is compatible with, a form of soft positivism, inclusive legal positivism. Thus, our arguments in the previous section concerning the content-independent thesis have implications for the debate between hard and soft positivism. Namely, if they are correct, then soft positivism, particularly inclusive legal positivism, betters the rival hard positivist theory of law.\(^{139}\)

The central claim of Raz’s hard positivism is the sources thesis. This thesis claims that “the existence and content of every law is fully determined by social sources.” Raz adds that “[a] law has a source if its contents and existence can be determined without using moral arguments.”\(^{140}\) Thus, the sources thesis can also be formulated as follows: The

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\(^{139}\) Seminal arguments for hard positivism can be found in Raz (1985a) and Raz (1979). Andrei Marmor and Scott Shapiro are also proponents of hard positivism. Marmor (2001) and Shapiro (2001). In his Postscript, H.L.A. Hart sides with the soft positivists. Hart (1997). The seminal defense of soft positivism under the name positive positivism is Coleman (1982). See also Waluchow (1994). For an overview of the debate between soft positivism and hard positivism, see Himma (2002).

\(^{140}\) Raz (1986).
existence and content of every law is fully determined without using moral arguments.141 The sources thesis is ambiguous between two separate threads that must be separately defended. The first holds that moral arguments are in no case sufficient to determine the existence and content of law. In other words, that a norm is correct as matter of morality is in no case a sufficient condition of its legal validity. Let us call this the sufficiency thread. The second holds that moral arguments are in no case necessary to determine the existence and content of law. In other words, that a norm meets minimal criteria of morality is in no case a necessary condition of its legal validity. Let us call this the necessity thread.

Raz’s defense of these two threads of the sources thesis also constitutes a critique of two separate theses associated with soft positivism. The first thesis, coined as the incorporationist thesis by Matthew Kramer, holds that it is possible that in some legal systems a norm’s correctness as a matter of morality may be a sufficient condition of its legal validity. The second soft positivist thesis, also coined by Kramer, is the inclusivist thesis. This thesis holds that it is conceptually possible that in some legal systems a necessary condition of a norm’s legal validity is that it meet certain minimum requirements of morality.142 Below, I explain how the exclusionary thesis supports the

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141 The conventional way to do this is to look at the pronouncements of past court decisions, legislative enactments, and social customs. These pronouncements embody norms that can be identified without using moral arguments.
142 See Kramer (2004), 2-9 for the distinction between two versions of soft positivism that he labels as incorporationism and inclusive positivism.
sufficiency and necessity threads of the sources thesis and, hence, undermines incorporationism and inclusive legal positivism, respectively.\textsuperscript{143}

\subsection{The Sufficiency Thread and Incorporationism}

Incorporationism holds that in some legal systems, a sufficient condition for the recognition of norms as law is that they are correct as a matter of morality. This incorporationist claim is inconsistent with the exclusionary thesis in two ways. It is inconsistent with both the content-independent and exclusionary aspect of the exclusionary thesis.

The content-independent aspect of the exclusionary thesis holds that laws purport to provide their subjects with content-independent reasons. That is, every law claims that it should be followed because some agent prescribes that it be followed. Thus, to say of a norm that it is law is to say, among other things, that it is some agent’s view that the norm’s subjects should act as the norm requires. We can see, then, the trouble with holding that some norms are norms of law by virtue of being correct as a matter of morality. Namely, norms that are correct as matter of morality need not be any agent’s view of how the norm’s subjects should act. Thus, contra the incorporationist thesis, a norm’s correctness as a matter of morality cannot be a sufficient condition of its legal validity.

Incorporationism is also inconsistent with the exclusionary thesis’ exclusionary aspect. Incorporationism holds that in some legal systems, judges may recognize some

\textsuperscript{143} I take the arguments that follow to be versions of the same basic argument that Raz levels against soft positivism in Raz (1985a).
norms of law by determining whether the norms are correct as a matter of morality. Determining whether a norm is correct as a matter of morality requires deliberating with respect to various moral reasons. The exclusionary aspect of the exclusionary thesis holds that laws purport to provide judges with exclusionary reasons. Moreover, these reasons purport to be highly exclusionary. With regard to any norm that is law, there are reasons, including moral reasons, for and against the norm’s being a law. Laws purport to be highly exclusionary in the sense that they purport to exclude all such supporting and defeating reasons from judge’s deliberations. Norms that judges recognize by considering the moral reasons that support and defeat such norms cannot be highly exclusionary in this sense. Hence, if the exclusionary aspect of the exclusionary thesis is correct, then norms recognized by considering their supporting and defeating moral reasons cannot be law. In sum, if the exclusionary thesis is true, then incorporationism is false.

2.2 Inclusive Legal Positivism and the Necessity Thread

Whereas incorporationism runs afoul of both the content-independent and exclusionary aspect of the exclusionary thesis, inclusive legal positivism runs afoul only of the exclusionary aspect of this thesis. Recall that incorporationism holds that a norm’s correctness as matter of morality may be a sufficient condition of its legal validity. One problem with this thesis is that such a norm need not be any agent’s view of how its subjects should act. A norm that is no agent’s view of how the norm’s subjects should act cannot provide those subjects with content-independent reasons—i.e., reasons to act as a norm specifies because some agent prescribes acting in that manner. Inclusive legal
positivism does not suffer from this deficiency. Inclusive legal positivism holds that the morality of a norm may, in some legal systems, be a necessary condition of its legal validity. Hence, the inclusive legal positivist can readily admit that a further necessary condition of a norm’s legal validity is that it be capable of providing its subjects with content-independent reasons.

The problem the exclusionary thesis poses for the inclusive legal positivist revolves around the purported exclusionary nature of law. The inclusive legal positivist envisions a two-part test that a norm-applying judge must use to identify the authoritative norms she should apply. First, identify the relevant norms that provide content-independent reasons. Second, select from these norms only those that are sufficiently moral. This second step runs afoul of the exclusionary thesis in much the same way as incorporationism does. This second step requires the judge to deliberate with regard to matters of morality to identify which of the relevant norms that purport to provide content-independent reasons are applicable as norms of law. As we have seen, according to the exclusionary thesis, laws are highly exclusionary. They purport to remove from judge’s deliberations all ordinary reasons relevant to whether the law should be law. Norms recognized by deliberating with respect to these same reasons cannot be exclusionary with respect to those reasons. Hence, if the exclusionary thesis is correct, then norms recognized in the manner the inclusive legal positivist proposes cannot be law.\footnote{For discussion of whether Raz is entitled to this highly exclusionary thesis, see Waluchow (1994) and Kramer (2004).}
2.3 The Content-Independent Thesis

The content-independent thesis relaxes Raz’s distinction between the authoritative norms the norm-applying judge applies and the ordinary reasons the purely discretionary judge considers to make her decisions. On this relaxed view, the distinction between the norm applying and purely discretionary judge is that the former takes herself to have certain content-independent reasons to decide the cases in accordance with certain norms, whereas the latter basis her decisions solely on the ordinary reasons she takes to be relevant. Thus on this relaxed view, the distinctive characteristic of norms of law is that they purport to provide judges with content-independent reasons. We can see from our reasoning above that this thesis is incompatible with incorporationism. Incorporationism allows for the possibility that judges may identify as law norms that are no agent’s view as to how a case should be decided and, hence, cannot provide judges with content-independent reasons. However, the content-independent thesis is not similarly incompatible with inclusive legal positivism. As we have seen, inclusive legal positivism runs afoul of the exclusionary aspect of the exclusionary thesis, but not the content-independent aspect. The content-independent thesis just is the content-independent aspect of the exclusionary thesis sans the exclusionary aspect. We can see, then, that the content-independent thesis is compatible with inclusive legal positivism. Moreover, it is incompatible with the sources thesis, which holds that moral deliberations must play no part in identifying the norms of a legal system.

The debate between Raz’s hard positivism and inclusive legal positivism can be cast in terms of the content-independent and exclusionary theses. Framing the debate in
this manner allows us to approach the debate from a fresh perspective. Namely, we can ask how we should characterize the authoritative norms that distinguish the norm-applying judge (who is part of a legal system) from the purely discretionary judge (who is part of something short of a legal system)? Should we characterize these norms as purporting to provide exclusionary and content-independent reasons as the exclusionary thesis suggest, or should we characterize them as the content-independent thesis suggests as norms that purport to provide content-independent reasons but not necessarily with exclusionary reasons as well? Answering this question implies an answer to the debate between hard positivism and inclusive legal positivism. If we should characterize these norms as the exclusionary thesis suggests, then hard positivism is correct. But if we should characterize them as the content-independent thesis suggests, then hard positivism is not correct; rather, inclusive legal positivism is.

3. Conclusion

On the hard positivist account, law purports to supply both judge and citizen with norms that provide such exclusionary and content-independent reasons. The explication of the grounds above suggests that the source-based norms picked out by a society’s rule of recognition provide judges with content-independent but not exclusionary reasons in some key instances. Such norms may also provide such judges with content-independent and exclusionary reasons to the extent the normal justification thesis applies to the judges. Hence, judge’s normative relations to these sources is an admixture of content-independent relations and content-independent and exclusionary relations. In some cases,
the judge’s reason to apply a source’s norms may be that the source satisfies the normal justification thesis with respect to those governed by the norm. However, it is doubtful that this is always the case. In other cases, some combination of the catalogued grounds of content-independent reasons enable sources as sources of content-independent reasons. Hence, we should conclude that the better specification of law’s claim to authority is the content-independent thesis rather than the exclusionary thesis. The hard positivist holds that laws purport to provide content-independent and exclusionary reasons. Moreover, this claim is a key premise supporting the hard positivist theory of law. However, this claim is problematic if legal officials’ grounds for applying source-based norms justify those norms as content-independent but not necessarily exclusionary reasons. The explication of the two grounds canvassed above suggests that this antecedent is satisfied and that the hard positivist claim is implausible.
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