

II — NIKO KOLODNY
COMMENT ON MUNOZ-DARDÉ'S
'LIBERTY'S CHAINS'

Munoz-Dardé (2009) argues that a social contract theory must meet Rousseau's 'liberty condition': that, after the social contract, each 'nevertheless obeys only himself and remains as free as before'. She claims that Rousseau's social contract does not meet this condition, for reasons that suggest that no other social contract theory could. She concludes that political philosophy should turn away from social contract theory's preoccupation with authority and obedience, and focus instead on what she calls the 'legitimacy' of social arrangements. I raise questions about each of these claims.

For Munoz-Dardé (2009), social contract theory has two main features. First, along with divine right theory, it sees the central problem of political philosophy as that of justifying the political body's authority over its members or, correspondingly, their obligations to obey. Second, unlike divine right theory, it insists that whatever authority a political body has derives exclusively from the fact that its members do, or would, freely choose to accept its authority over them, because this serves their individual interests.

Jean-Jacques Rousseau famously insists that the social contract be such that, after entering into it, each 'nevertheless obeys only himself and remains as free as before' (Rousseau 1997, Book I, §6). Munoz-Dardé suggests, with some justice, that the true originality and significance of this 'liberty condition' (as I will call it) is one of the less appreciated parts of Rousseau's legacy. According to Munoz-Dardé, *any* social contract must meet the liberty condition. However, she argues that Rousseau's social contract—that 'each of us puts his person and the full power in common under the supreme direction of the general will' (Rousseau 1997, Book I, §6) provided the others do likewise—fails to. When we understand why, we see that no other social contract can hope to succeed.

We would do well, she concludes, to abandon social contract the-

ory's preoccupation with authority and obligation. 'Rather than focus on questions regarding the source of authority and obligation, ... we should focus on questions of legitimacy' (Munoz-Dardé 2009, p. 163). Social arrangements are legitimate, when they are, not because they are, or could be, the object of self-interested choices. They are legitimate instead because they could result from a kind of mutual accommodation, which she has done much elsewhere to illuminate (Munoz-Dardé 2005), in which we take into account the reasonable demands that each of us can make of every other one of us in meeting our shared interests. At least understood in this way, as an account of political legitimacy, the contractualism of T. M. Scanlon (1997) has much to offer us, she suggests.

This is a deep, forceful, and provocative (at times almost iconoclastic) line of thought, which merits close and serious study. What follow are not so much criticisms as questions: in truth, just so many particular expressions of a general eagerness to hear more.

I

Why Must the Social Contract Meet the Liberty Condition? Munoz-Dardé in effect reconstructs the argument for the liberty condition in terms of an exchange between Rousseau and the 'Hobbit'. The Hobbit says: 'Assuming that the only options are giving up your liberty and escaping the state of nature, and retaining your liberty and remaining in the state of nature, the only reasonable option is to give up your liberty.' Rousseau replies: 'Even granting for the sake of argument that these are the only options, it would not be reasonable to give up your liberty.'

What can 'liberty' mean in this context? The exchange seems to suggest that it is something that one perfectly, or fully, enjoys in the state of nature. And to the extent that 'liberty' is something that is already compromised in the state of nature, the Hobbit seems free to reply that one has little, or nothing, to lose, in accepting the social contract. This suggests that 'liberty' cannot be freedom from coercion or interference, which are ubiquitous in the state of nature. Perhaps, then, 'liberty' is freedom from a certain kind of obligation. Not from all obligation, presumably. This would make the argument that the social contract cannot meet the liberty condition too easy, or too immediate, since the social contract must involve under-

taking some obligation. ‘Liberty’ must instead consist in freedom from obligations of certain kinds: either from obligations to certain persons, or from obligations to do certain things. As I note below, Munoz-Dardé later seems to suggest that we are free in so far as we pursue the common good, which would suggest that ‘liberty’ is freedom from obligation to pursue other ends.

One defence of Rousseau’s reply is simply to claim that liberty is sufficiently more important to us than whatever is distinctively lacking, or threatened, in the state of nature. In this vein, Munoz-Dardé considers the possibility that we care about our liberty in the way that we care about our limbs, and she seems to suggest that, if this were true, then it might support Rousseau’s reply.

At first, this is a puzzling suggestion. The Hobbist’s case seems quite compelling if what is lacking, or threatened, in the state of nature—principally, life—is a necessary condition of liberty, or of its value. In that case, the Hobbist can again reply that one has little, or nothing, to lose by accepting the social contract. ‘And’—one might say—‘isn’t life a necessary condition of limb, or at least of the value of limb? What could be more reasonable than sacrificing a limb to save one’s life? Of course—to tear an example from the tabloids—one may not be able to bring oneself to saw off one’s arm with a pocket knife in order to escape entombment under an avalanche. One’s “primitive drive” to protect one’s bodily integrity rebels. But that’s simply a fact about psychological limitations. It scarcely makes it a bad bargain.’

One reply is simply that liberty is not meant to be analogous to limb in this respect. Unlike limb, liberty is possible, and valuable to us, even in the absence of life. However, her discussion of cutting off one’s fingertip suggests that Munoz-Dardé may be drawn to a different response, which might grant to the Hobbist that liberty, or its value, does not survive death. The idea would be that the importance to us of certain goods is not always, or only, a matter of how much we lose when deprived of them. There is another dimension of importance that is reflected in how far, if at all, we can bring ourselves to give up certain goods, or even entertain the option of giving them up. It is a mistake to think of this as a mere psychological limitation. Instead it reflects something about the structure of practical reason. My arm may be more important to me than my life in the sense that I cannot so much as entertain the possibility of sawing it off to save my life, even though losing my life is a surely greater

loss than (because it includes) losing only my arm. Analogously, I may not be able to contract away my liberty in order to save my life, even though losing my life is a greater loss than (because it includes) losing only my liberty. This idea of a second dimension of importance, distinct from ‘cost’ or ‘loss’ as these are ordinarily understood, is highly suggestive. Of course, doubt may remain that this really is anything more than a psychological limitation. And it would need to be explained why am I not equally ‘giving up’ my life (and my limb) by *refusing* to saw through my limb, or ‘giving up’ my life (and my liberty) by *refusing* the social contract. This would seem to require an elusive, if not unintuitive, distinction between actively sacrificing the lesser good and passively suffering the loss of the greater. In any event, Munoz-Dardé worries that our concern for liberty may not be relevantly like our concern for limb; it is more abstract, less primitive.

A second defence of Rousseau’s reply, which Munoz-Dardé seems to consider at times, is that the Hobbist’s promise of a social contract that provides life (or any other good under threat in the state of nature) in exchange for liberty is illusory. Without freedom from at least certain kinds of obligations, one’s life is scarcely better assured. Indeed, Hobbes, if not the Hobbist, is sensitive to precisely this point. This is why one does not covenant to obey the sovereign absolutely, but instead retains the ‘true liberties’ of a subject: to refuse any service that, in one’s judgement, puts one’s own life at risk (Hobbes 1994, Part 2, ch. 21).

While Munoz-Dardé finds this argument ‘reasonable’, she nevertheless seems to place greater weight on a third, ‘formal’ or ‘structural’ defence of Rousseau’s response: that there is a kind of incoherence in attaching so much importance to liberty as to require that the social contract be freely chosen, while attaching so little importance to liberty as to allow that the social contract need not preserve it. I doubt that I grasp all of the nuances of the somewhat compressed presentation of the argument that Munoz-Dardé is forced to give in this paper. But one of its premisses, at least, is that the social contract theorist must suppose that it matters to us, his audience, that the social contract is, or can be, freely chosen.¹ How does he suppose it to matter to us?

¹ The suggestion that *Hobbes*, whom Munoz-Dardé counts as a social contract theorist, insists that the contract must be freely chosen seems curious, since he claims that coerced covenants to obey suffice for obligation.

One answer is that we value the state of liberty, and so see ourselves as having reason to want to remain in that state. If the social contract theorist supposes that it matters to us that the social contract be chosen from this state because we value being in it, then one sees why this supposition might be in tension with his recommendation that we enter into a social contract that threatens to remove us from it. It is this sort of tension, for example, that John Stuart Mill exploits to argue that we have no reason to respect slavery contracts (Mill 1991, ch. 5). The argument for free association, in general, is that it fosters the cultivation and exercise of the associates' highest human faculties—promotes their utility, as Mill understands it. But selling oneself into slavery—that particular kind of association—undermines this aim.

One worry about this third defence, however, is that it is still not entirely clear why it shows anything more than that the social contract theorist must presuppose that we care about our liberty to some extent. Why must he think that we care about it more than, or sufficiently more than, the goods absent, or under threat, in the state of nature?

Another worry is that the social contract theorist might suppose that we care whether the contract is freely chosen for a different kind of reason: because we each have a right of self-ownership, or a power to promise, and it just is part of this right, or power, that free choice is necessary to alter one's normative relations in the way the social contract requires. Why do we have this right, or power? Perhaps it's primitive. Perhaps it's part of what it is for us to be self-governing, autonomous agents. At any rate, whether we have this right or power does not depend on whether exercising it is itself, or tends to bring about, something of value. If this is why the social contract theorist supposes that we care whether the social contract is freely chosen, then it is less clear why it would be self-defeating for him to recommend to us a social contract that deprives us of our freedom: that removes us from the state from which the right, or power, can be further exercised. After all, the justification of the right, or power, does not lie in the value of its exercise, or of anything its exercise might bring about.

II

Why Does Advancing the Common Good Meet the Liberty Condition? I have been considering Munoz-Dardé's account of the argument for the liberty condition. I turn now to how the social contract might even be thought to meet the liberty condition. To a first approximation, the content of Rousseau's social contract—what obeying the general will comes to—is to contribute whatever is necessary in order to advance the 'common good'—to advance equally, and to the greatest extent, the shared interests (e.g. in preservation) of all parties—so long as all other parties are willing to do the same. How, in accepting even this minimal contract, does each remain as free as before and obey only himself? This is not a question that Munoz-Dardé addresses, but it is one that might naturally arise. After all, isn't one undertaking new constraints, which one did not have before, and agreeing to obey something—the general will—which is not oneself?

One worry is that there are situations in which what is required of one to advance the common good (e.g. military service) will leave one less free than before. Here freedom is understood as something like power to achieve one's ends, or the absence of interference. The general structure of Rousseau's reply, as I read him, is that so long as one is careful in keeping accounts, and takes into consideration all that one gains from the compliance of others, one will see that, on balance, no freedom is really lost (1997, Book 1, ch. 6; Book 2, ch. 4).

What I find harder to make sense of is how obeying the general will, so understood, is supposed to satisfy the other part of the liberty condition: namely, that one obey only oneself. Here freedom seems to be understood not as the means to achieve one's ends, or non-interference, but instead as something like self-government, or having no master.

One possibility is that one obeys only oneself when one pursues one's own good. Certainly, by advancing the common good, one advances one's own good to some extent. However, alternatives to contributing to the common good, especially when others are contributing, may advance one's good even more, as Rousseau seems to say (1997, Book 1, ch. 7).² And it seems too permissive to say that

² Dent (2005, pp. 148–50) suggests that this is too quick. One's own good, properly understood, consists, in part, in relations of equality with others. This is in part because only such relations can preserve one from the debasement and other ills of inflamed *amour propre*.

one obeys only oneself when one advances one's own good to some extent. One can advance one's good to some extent under tyranny: 'as long as a people is compelled to obey and does obey, it does well' (Rousseau 1997, Book 1, ch. 1). The problem is not simply that this does not seem, intuitively, like 'obeying only oneself'. It is also that it does not explain why the terms of the social contract are unique: why 'the clauses of this contract are so completely determined by the nature of the act that the slightest modification would render them null and void' (Rousseau 1997, Book 1, ch. 6).³ Now, it might be suggested that one is supposed to 'identify' with the common good to such an extent that it becomes one's own good. But this seems to court the totalitarian reading that Munoz-Dardé warns us against. It also seems, again, too permissive. Why cannot one identify with a tyrant, and then obey only oneself by obeying the tyrant? The same goes for the suggestion that one obeys only oneself in so far as one abides by one's own past commitments. Why cannot one commit to obey a tyrant, and then obey only oneself by obeying the tyrant?

Still another possibility is that one obeys only oneself when one obeys no other individual. It might be argued that this is what Rousseau means when he says that the social contract 'guarantees [the individual] against all personal dependence' (Rousseau 1997, Book 1, ch. 7). But why should it matter, in itself, whether one's master is an individual or a group? Because it is less insulting to be lorded over by several men rather than one? And once again, this seems too permissive. If all that is needed to obey only oneself is not to obey any other individual, one might obey only oneself by obeying a tyrannical group.

The explanation of why one obeys only oneself in fulfilling the terms of the social contract, but would not obey only oneself in fulfilling any other terms, must have something to do with the content of those terms: with the fact that they are, in essence, terms of equality. This might suggest a Kantian interpretation: the terms of the contract are the Moral Law, and the Moral Law just is the law of our will, the law of our free causality. This is the sense in which, by complying with it, we obey only ourselves. While such an idea might have been suggested to Kant by reading Rousseau, I find little

³ Similar remarks seem to apply to the suggestion that one obeys only oneself when one does what one has most reason to do.

indication that this is what Rousseau himself has in mind.

So how Rousseau imagines that we obey only ourselves by obeying the general will remains, for me at least, obscure. But here is a speculation. What is special about the terms of the social contract, perhaps, is simply that they are independently just, that they reflect the natural equality of persons.⁴ When one fulfils these terms, limiting one's actions in ways that one otherwise would not, one can see oneself as doing so for a reason that is independent of whether someone else has granted one those terms of cooperation: namely, that they are just terms, that they respect natural equality. Thus, one need not see oneself, in fulfilling those terms, as depending on the will of anyone else. By contrast, one cannot say this of any other terms of cooperation—which explains why the terms of the social contract are unique. If one fulfils other terms, limiting one's actions in ways that one otherwise would not, the only reason that one can see oneself as having for this involves the thought that, as matter of contingent fact, these are terms that others are willing to cede to one. This is so even if they cede to one more than one cedes to them, and even if, ostensibly, it was one who dictated the terms to them, rather than the other way around. Even so, those terms are the terms that one enjoys only at their sufferance, only because they acquiesce to the extent they do. In this sense, one still depends on their wills. In sum, in obeying the general will, we can see ourselves as limited by respect for justice, rather than as limited by the terms that others grant us: by their wills. In respecting their natural equality, we obey only ourselves no less than we did before cooperation with them, when we were limited only by the resistance of nature.

This would give a more plausible interpretation of 'personal dependence'. 'Personal dependence' consists not in following the dictates of an individual, so that it might be avoided simply by following the dictates of a group, but instead in constraining oneself solely on the terms offered by some alien will, whether individual or corporate. This might also explain why 'one believes himself the others' master, and yet is more a slave than they' (Rousseau 1997, Book 1, ch. 1), without reading in concerns from elsewhere about

⁴ Rousseau may sometimes seem to suggest that justice is conventional, or the product of agreement. But what he means, I think, is that what justice requires of one depends on whether others are also willing to abide by just terms. 'What is good and conformable to order is so by the nature of things and independently of human conventions ... but this justice, to be admitted among us, has to be reciprocal' (Rousseau 1997, Book 2, ch. 6).

'*amour propre*' and the 'empire of opinion' (see, for example, Rousseau 1979, p. 244). The ostensible master depends on an alien will no less than the ostensible slave. (Perhaps he is more a slave in that he depends on several wills, namely the wills of all those whom he ostensibly commands, whereas his slaves depend only on one will, namely his.) And it might help to explain Rousseau's notorious condition 'that whoever refuses to obey the general will shall be constrained to do so by the entire body: which means nothing other than that he shall be forced to be free' (Rousseau 1997, Book I, ch. 8). The individual who is imagined to refuse to obey seeks better than equal terms: 'to enjoy the rights of a citizen without being willing to fulfil the duties of a subject'. The thought is that even if he were to win better than equal terms, he could see himself as enjoying them only at the sufferance of others. In being forced to accept terms of equality, he is forced to accept the only terms on which he could cooperate with others without dependence on their wills.

III

Can the Social Contract Meet the Liberty Condition? As it happens, Munoz-Dardé does not share these questions, or at least is willing to grant to social contract theorists that they can be answered. So long as one is contributing only to the common good, she accepts, one remains as free as before and obeys only oneself. Her concern instead appears to be that, in the interesting cases, the pursuit of the common good will require concrete institutions with coercive powers. Now, again, so long as they coerce one only to contribute what is necessary to advance the common good, one remains as free as before and obeys only oneself. But what guarantees that one will not be coerced to other ends? There is no perfectly reliable institutional safeguard: no bill of rights or system of checks and balances that is sure to keep any actual institution on the rails.

She is surely right about this. The question is why it shows that the social contract, as we have been understanding it, does not meet the liberty condition. If the contribution in question is not in fact required for the common good, then the terms of the social contract, as we are presently understanding them, do not obligate one to make that contribution. With regard to the actual institution's demand that one make it, one is where one was before the social con-

tract. Things would be different if the social contract were to do whatever some authority orders, including, potentially, to advance ends other than the common good. But, as we are understanding it, the contract is just to contribute what advances the common good.

It might be replied that this is little consolation, since the coercive apparatus can still be used to *force* one to make the contribution, even if one is not obligated to make it. But why does this show that the social contract does not adequately preserve one's liberty? Is the idea that, by accepting the social contract, one makes oneself more vulnerable than one would otherwise be to such coercion? But why? Others can gang up, construct a coercive apparatus, and use it to force one to do their bidding, even if one refuses the social contract. Is the worry that, before one realizes that the coercive apparatus has fallen into the wrong hands, one may irretrievably weaken oneself before it (e.g. lay down one's arms), or contribute to strengthening it (e.g. help to build its jails and thumbscrews), and so have that much more to suffer when it is finally brought down on oneself?

Perhaps, but I suspect that the deeper worry here is that the social contract cannot have the simple terms that our 'first approximation' has attributed to it: that one is required to contribute only what advances the common good. The problem is that, in practice, it will be as though the terms were that one is required to contribute only what *one judges* advances the common good. Given inevitable disagreement about what serves the common good, potential contractors can foresee that this contract will not achieve the intended end. Before long, some will judge that what they are asked to contribute does not advance the common good, and so will see themselves as permitted to refuse it. The rest, who disagree, will conclude that the terms of the agreement have been breached, and so will see themselves as permitted to refuse their contributions. And we will be back where we started. Generally put, in order for the agreement to serve its aims, the agreement must include some surrender of private judgement about what serves those aims.

This is why Hobbes insists, and structures the relevant agreements so as to ensure, that there is no condition (or at least no future condition) that the sovereign must meet in order for individuals to be obligated to obey. Otherwise disagreements would inevitably arise about whether the sovereign had met those conditions, leading to civil strife. 'Besides if any one (or more) of them pretend a breach of the covenant made by the sovereign at his institution, and others

(or one other) of his subjects (or himself alone) pretend there was no such breach, there is in this case no judge to decide the controversy; it returns therefore to the sword again; and every man recovereth the right of protecting himself by his own strength, contrary to the design they had in the institution' (Hobbes 1994, Part 2, ch. 18). The difficulty for Hobbes, as noted by contemporaries such as Bishop Bramhall, is that it is unclear how individuals can surrender the necessary private judgement, given that they retain the 'true liberties' of subjects: to refuse any service that, in their judgement, puts their own lives at risk.

Indeed, Rousseau seems concerned about precisely this problem: 'the alienation is made without reservation ... For if individuals were left some rights, then, since there would be no common superior who might adjudicate between them and the public, each, being judge in his own case on some issue, would soon claim to be so on all, the state of nature would subsist' (Rousseau 1997, Book 1, ch. 6). Thus, Rousseau's agreement to obey the general will cannot be understood as an agreement to do what (each judges) will advance the common good. It must be understood as an agreement to accept public decisions about what advances the common good.

Here, to my mind at least, is where Munoz-Dardé's pessimism about the social contract has a clearer target. The problem is not what we might be *coerced* into doing, but instead what we might find ourselves *obligated* to do against our own judgement, as a result of the social contract. How can we agree to the surrender of private judgement necessary for cooperative pursuit of the common good with reasonable confidence that public judgement will ask of us only what is necessary for the common good? (Note that this isn't just a worry about inefficiency, but also about freedom, on our present assumption that we are free only in so far as we see ourselves as contributing to the common good.) Part of Rousseau's answer, as Grofman and Feld (1988) have suggested, may be to appeal to the idea that many heads are better than one. Under the right conditions, public judgement is more reliable than private judgement (Rousseau 1997, Book 2, ch. 3; Book 4, ch. 2). But I imagine that it would be in the spirit of Munoz-Dardé's criticism to press the question: what guarantee does any of us have that public judgement meets those conditions? And if each of us retains a right to private judgement whether public judgement meets those conditions, then how long before the state of nature returns?

IV

What Follows for Authority and Obligation? What is this concern about authority and obligation that according to Munoz-Dardé, the divine right and social contract theorists share, but the ‘legitimacy approach’ (if I may use that clumsy label) somehow unburdens us of or sees us past? At first, it might seem that it is just the broad concern about how individuals should relate to institutions. When, if ever, should an individual help to bring about, support or comply with the state? The legitimacy approach, the thought would run, bids us to limit ourselves to questions about how to evaluate institutions, rather than to trouble ourselves with these questions about how to relate to them. ‘Do not ask what you can do to create or vindicate social authority, but ask instead what it does for you’ (Munoz-Dardé 2009, p. 163).

But suppose that we cannot explain political obligation, so broadly understood, in terms of divine right or individual, self-interested choice. Why should it follow that obligation, so understood, is no longer a live subject for political philosophy? The suppressed premisses would be these. First, if obligation cannot be explained in terms of divine right or individual choice, then it cannot be explained at all. Second, what we learn from our inability to explain obligation is that we should turn our attention elsewhere.

With regard to the first premiss, why think that either divine right or individual choice is the only way to explain political obligation, so understood? Munoz-Dardé writes that within John Rawls’s theory there is ‘little or no focus on the question of the source of political obligation’ (Munoz-Dardé 2009, p. 190). Granted, he devotes comparatively few pages to the topic of how individuals are to relate to institutions. But he does describe the ‘natural duty of justice’, which is supposed to apply to individuals even without their actual consent (let alone God’s intervention) (Rawls 1971, §19). True, Rawls himself seeks to justify the principle itself by appeal to (something like) self-interested, hypothetical consent. But it is not clear that the principle can be justified only in this way.

With regard to the second premiss, whether or not we can explain political obligation, so understood, can we set aside our concern with it? Surely, the question will arise: do I have reason to follow the rules of this institution? Indeed, one of the reasons why we care about legitimacy, one might have thought, is that the legitimacy of an insti-

tution bears on the reasons that individuals have to comply with it.

So Munoz-Dardé must have something more specific in mind.⁵ I take it that she accepts that we can explain, and reasonably care about, certain normative relations between individuals and institutions. But these do not involve *authority*, or the sort of political obligations to *obey* that are counterparts to authority. Munoz-Dardé does not say exactly what is supposed to be special about relations of authority, but perhaps it is a kind of circumscription, or surrender, of private judgement, at least as a guide to action. If an institution has authority over one, then the fact that it commands something of one entails that one has compelling reason to comply, even if one would not have otherwise had, or taken oneself to have, compelling reason to act in that way.

On one conception of authority, whether a command is authoritative does not depend on any connection between its content and the reasons that the person commanded would independently have. It might be said that the authority owns one—as in the divine right theory of, say, Sir Robert Filmer (1991)—and so one is obligated to do whatever it says out of respect for its property rights. Or it might be said that one has promised to obey the authority's commands regardless of how the content of the commands relates to the reasons that one independently has—as in the social contract theory of a certain kind of 'Hobbit' (here, Hobbes less his doctrine of the 'true liberties' of subjects). Of course, on such a view, authority over one may be justified by reasons that one has independently, such as reasons to keep promises. But this justification does not involve any relation between the *content* of the command and the reasons that one has independently of the command. Because authority of this kind is not limited by the content of the command, it can be sweeping in scope. A justification of authority over one kind of activity immediately provides a justification of authority over other kinds.

Is the legitimacy approach meant as an alternative to a concern with authority of this kind? One sees how surrendering one's judgement to an authority of this kind might threaten one's liberty, understood as freedom from obligation to pursue ends other than the common good. But it is not obvious to me that authority of this

⁵ From personal communication, it's clear that she does not have in mind the distinction of Simmons (1979), that obligations are relations that *particular* individuals stand in to *particular* institutions, whereas whatever normative relations mere legitimacy suffices for are relations that every individual stands in to every legitimate institution.

kind can be explained only by contract or pre-contractual ownership (and so God's will or an Aristotelian doctrine of natural slavery). Perhaps social cooperation is impossible without some willingness to abide by a procedure for resolving disagreements, so that whatever reasons (such as those flowing from Rawls's natural duty of justice) we have for such cooperation are, in turn, reasons for surrendering our judgement to such a procedure. Or perhaps respecting each other as equals requires not only respecting our equal claims on each other, but also respecting our equal say in resolving disputes about what, precisely, those claims are: surrendering our judgement to a specifically democratic procedure (see, for example, Christiano 2008). Offhand, these justifications might even be the upshot of the sort of mutual accommodation, envisioned by Scanlon and Munoz-Dardé, that is supposed to underlie the legitimacy approach. Of course, these justifications may not give us reasons for obedience that are as decisive, or pre-emptive, as those that Filmer and the Hobbist purport to give us. For example, in the case of a democratic outcome that is radically substantively inegalitarian, our reasons for respecting equal say may well be outweighed by our reasons for respecting equal claims.

Furthermore, it is not clear whether the legitimacy approach is meant to see us past a concern with an altogether different conception of authority, which does depend on a connection between the content of its commands and the reasons that the commanded person independently has. Joseph Raz (1984, chs. 3, 4) proposes, roughly, that an institution has authority over one when and only when following its commands, rather than one's private judgement, would lead one to conform better to the reasons that one independently has. By definition, accepting this sort of authority would seem to be less likely to threaten one's liberty than following one's own judgement. This authority needs no recourse to choice or God. And it again seems compatible with the ideal of mutual accommodation that is supposed to underlie the legitimacy approach. In principle, the best way to respect, in one's actions, the claims of oneself and others (mutually adjusted in the way that Scanlon and Munoz-Dardé describe) might be by following certain institutional rules rather than one's private judgement. Of course, the implications of this sort of authority would be quite different from the kind described earlier. Since authority of this kind depends on the content of commands, for instance, its scope is likely to be more limited. At

the very least, a justification of authority over one kind of activity, as Raz stresses, will not immediately provide a justification of authority over other kinds of activity.

V

Can the Alternative to the Social Contract Do Any Better? It is not entirely clear to what extent, and how, the legitimacy approach is supposed to avoid the fundamental tension that Munoz-Dardé finds in the social contract tradition. Recall that that tension is constituted by, on the one hand, the need to satisfy the liberty condition and, on the other hand, the inability to do so. Which specific departures from the social contract tradition allow us to escape this dilemma?

One possibility is that on the legitimacy approach, there is nothing corresponding to the liberty condition. Perhaps, so long as we are not social contract theorists, we are not required, on pain of ‘pragmatic self-defeat’, to insist that social arrangements preserve our liberty. But still mustn’t they guarantee liberty in order to be legitimate? This would seem hard to deny, at least if the first argument for the liberty condition—the simple appeal to the importance of liberty—or the second argument—the claim that liberty is necessary for other vital goods—carries any weight.

The other possibility is that the legitimacy approach succeeds, where social contract theory fails, in meeting the liberty condition. If the reason why social contract theory fails to meet the liberty condition, however, is that it does not guarantee that institutions will not, in violation of the terms of the social contract, coerce us to ends other than the common good, then I don’t see how the legitimacy approach can do any better. The legitimacy approach can’t guarantee that institutions will not, in violation of the principles of legitimacy, coerce us to illegitimate ends.

Suppose instead that the reason why social contract theory fails to meet the liberty condition is that it cannot guarantee that one will not be obligated to pursue ends other than the common good, because it requires a surrender of judgement to a fallible, or corruptible, authority. Then whether, and how far, the legitimacy approach does better would seem to depend on the question broached at the end of the last section: whether, and how far, the legitimacy approach avoids surrender of judgement.

This question, like the others, is not meant rhetorically. As I say, my aim is just to hear more.⁶

314 Moses Hall #2390
 University of California, Berkeley
 Berkeley, CA 94720-2390
 USA
 kolodny@berkeley.edu

REFERENCES

- Christiano, Thomas 2008: *The Constitution of Equality*. Oxford: Oxford University Press.
- Dent, Nicholas 2005: *Rousseau*. New York: Routledge.
- Filmer, Robert 1991: *Patriarcha and Other Writings*, ed. Johann Sommerville. Cambridge: Cambridge University Press.
- Grofman, Bernard, and Scott Feld 1988: 'Rousseau's General Will: A Condorcetian Perspective'. *American Political Science Review*, 82, pp. 567–76.
- Hobbes, Thomas 1994: *Leviathan*, ed. Edwin Curley. Indianapolis, IN: Hackett.
- Mill, John Stuart 1991: *On Liberty and Other Essays*. Edited by John Gray. Oxford: Oxford University Press.
- Munoz-Dardé, Véronique 2005: 'The Distribution of Numbers and the Comprehensiveness of Reasons'. *Proceedings of the Aristotelian Society*, 105, pp. 207–33.
- 2009: 'Liberty's Chains'. *Proceedings of the Aristotelian Society Supplementary Volume* 83, pp. 161–96.
- Rawls, John 1971: *A Theory of Justice*. Cambridge, MA: Harvard University Press.
- Raz, Joseph 1986: *The Morality of Freedom*. Oxford: Oxford University Press.
- Rousseau, Jean-Jacques 1979: *Emile*, trans. Allan Bloom. New York: Basic Books.
- 1997: *The Social Contract*. In *The Social Contract and Other Later Political Writings*, trans. Victor Gourevitch. Cambridge: Cambridge University Press.
- Scanlon, T. M. 1997: *What We Owe to Each Other*. Cambridge, MA: Harvard University Press.
- Simmons, A. John 1979: *Moral Principles and Political Obligations*. Princeton, NJ: Princeton University Press.

⁶ I would like to thank Véronique Munoz-Dardé for patient and illuminating discussion.