



Digital Commons@

Loyola Marymount University
LMU Loyola Law School

Loyola of Los Angeles Law Review

Volume 40
Number 3 *Symposium: The Second-Person
Standpoint and the Law*

Article 3

3-1-2007

Legal and Other Governance in Second-Person Perspective

Aaron James

Follow this and additional works at: <https://digitalcommons.lmu.edu/llr>



Part of the [Law Commons](#)

Recommended Citation

Aaron James, *Legal and Other Governance in Second-Person Perspective*, 40 Loy. L.A. L. Rev. 911 (2007).
Available at: <https://digitalcommons.lmu.edu/llr/vol40/iss3/3>

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

LEGAL AND OTHER GOVERNANCE IN SECOND-PERSON PERSPECTIVE

*Aaron James**

In *The Second-Person Standpoint*, Stephen Darwall seeks to extract a distinctive conception of morality from general features of “the second-person standpoint”—the “perspective you and I take up when we make and acknowledge claims on one another’s conduct and will.”¹ The resulting conception is what Darwall calls “morality as equal accountability”²: for one to have a specifically *moral* obligation is ipso facto for others to have a kind of authority over one—authority to hold one into account for what one is obligated to do.

Darwall’s project is one of moral theory, but legal authority and obligation is a paradigm case of the “second-person standpoint” in Darwall’s sense. In making and enforcing the law, it is often said, the sovereign authority does not simply purport to exercise power, even justified coercive power: it lays claim to the willing obedience of its subjects. That is to say, it lays claim not just to compliant behavior, but to compliance based in acceptance; the subject is to accept, from his or her own point of view, the sovereign’s legitimacy and his or her own duty to obey.³ Though law is not Darwall’s focus,

* Assistant Professor of Philosophy, University of California, Irvine. For comments or relevant discussion, I am grateful to William Bristow, Marshall Cohen, Margaret Gilbert, Nicholas Jolley, and Robin Kar.

1. STEPHEN DARWALL, *THE SECOND-PERSON STANDPOINT: MORALITY, RESPECT, AND ACCOUNTABILITY* 3 (2006) (emphasis omitted).

2. *Id.* at 101 (emphasis omitted).

3. See, e.g., H.L.A. HART, *THE CONCEPT OF LAW* 80–83, 90 (1961) (distinguishing between being “obligated” and merely “obliged”); JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY*, at v (1979); JOSEPH RAZ, *THE MORALITY OF FREEDOM* ch. 2 (1986) [hereinafter RAZ, *MORALITY OF FREEDOM*]; see also ROBERT PAUL WOLFF, *IN DEFENSE OF ANARCHISM* (Arthur C. Danto ed., 1970); G.E.M. Anscombe, *On the Source of the Authority of the State*, in *AUTHORITY* 142 (Joseph Raz ed., 1990); Hanna Pitkin, *Obligation and Consent—II*, 60 *AM. POL. SCI. REV.* 39 (1966). Some theorists deny that legal authority purports to have a Hohfeldian “claim-right” to compliance. See, e.g., KENT GREENAWALT, *CONFLICTS OF LAW AND MORALITY* (1987); Robert Ladenson, *In Defense of a Hobbesian Concept of Law*, 9 *PHIL. & PUB. AFF.* 134 (1980). Though I am sympathetic to this denial, I assume for the sake of argument

this is just the kind of mutually regarding perspective which he takes to reveal morality's true nature: morality as equal accountability. This poses the question, How, if at all, do Darwall's arguments apply to the relation between legal authority and its subjects, and is morality as equal accountability the result?

I will pursue this question in two stages, by first considering legal authority and obligation, and then turning to moral obligation generally. In the case of law, I want to suggest that Darwall's arguments do naturally apply to legal authority and obligation, at least in the case of democratic legal authority, but in a way that calls morality as equal accountability into question. That Darwall's arguments do apply to law is of interest in its own right. This shows that moral contractualism (in the Scanlonian form that Darwall favors) is not simply an alternative to consequentialism at the level of general moral theory with no direct implications for legal authority.⁴ In conjunction with Darwall's arguments, moral contractualism can in certain cases explain the obligating nature of law. This is not evidence in favor of morality as equal accountability, however. For there is a better explanation, within contractualism, why Darwall's narrower arguments apply: the narrower arguments apply given the very nature of democratic governance and reasons for its legitimacy which give morality as equal accountability no essential role.

Since law and legitimacy are not Darwall's main concern, there is some risk of unfairness in making this argument. In the second part of my discussion, I therefore consider Darwall's arguments in the context of his primary concern, interpersonal relations. I argue

that there is a general connection between purported legitimate authority and a (purported) duty of obedience. As I understand it, the purported "duty" involves the subject's having normally sufficient reason for compliance. This leaves open whether the reason is also "exclusionary," and it allows for special or extenuating circumstances, including civil disobedience and trivial violations (such as running the rural three o'clock a.m. stop sign). I also make no assumption about the direction of explanation, that is, whether the legitimacy of authority depends on triggering an independent duty of obedience, or whether such a duty instead flows from independently established legitimate legal authority. I do, however, suggest a version of the later direction of explanation below.

4. Scanlon's contractualism is as follows: "an act is wrong if and only if any principle that permitted it would be one that could reasonably be rejected by people [who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject]." T.M. SCANLON, *WHAT WE OWE TO EACH OTHER* (1998). Darwall agrees, but takes morality as equal accountability to be contractualism's foundation. See DARWALL, *supra* note 1, ch. 12.

that, even here, Darwall's central arguments are incomplete, since they do not effectively rule out what should be seen as the main contractualist alternative to morality as equal accountability. According to what I refer to as "morality as self-governance," governance of self is basic, while governance of others, in law and in interpersonal dealings, is less the hallmark of moral obligation than one of its specifically political dimensions. The possibility of this view shows that Darwall has not adequately explained why we need to posit a primitive kind of authority or standing to make demands beyond a person's general standing as owed justifiable treatment.

In closing, I speculate about the source of this lacuna: Darwall's relatively uncritical acceptance of an expressivist conception of the reactive-attitudes.

I. SECOND-PERSONAL REASONS

Darwall's argument begins by examining cases in which some agent *A* makes a "claim" or "demand" on the conduct of *B* (as expressed, e.g., when one says "Get off my toes," "What do you think you're doing?," or "Thou shall not kill").⁵ The claim or demand assumes that *B* has certain reasons for action.⁶ Darwall argues that *B* in fact *has* the purported reason, in the cases in question, only if several basic, quasi-Austinian "normative felicity conditions" hold:

- (1) *A* has legitimate, *de jure* authority or standing to make such claims against *B*;
- (2) *B* is accountable to *A* for compliance, in the sense that, in case of non-compliance, *A* has authority or standing to complain, object, blame, or issue some other "accountability-seeking response" ("Strawson's Point");⁷

5. DARWALL, *supra* note 1, at 5.

6. Darwall stipulates that his interest is solely in cases of "pure" reason-giving, which do not involve the influence of "nonrational influence—intimidation, seduction, and so on." *Id.* at 39.

7. Strictly speaking, (2) is not what Darwall names "Strawson's Point," but rather a general thesis that Darwall seems to regard as implicit in Peter Strawson's famous argument. See P.F. Strawson, *Freedom and Resentment*, 48 PROC. BRIT. ACAD. 187 (1962), reprinted in PERSPECTIVES ON MORAL RESPONSIBILITY 45 (John Martin Fischer & Mark Ravizza eds., 1993). Darwall puts "Strawson's Point" as follows: "Desirability is a reason of the wrong kind to warrant the attitudes and actions in which holding someone responsible consists in their own terms." DARWALL, *supra* note 1, at 15 (emphasis omitted); see also *id.* at 66. However, Darwall

(3) *B* is “normatively competent,” in the sense that *B* is capable of appreciating and being moved by the reasons *A* purports to give, and capable of holding him or herself responsible for acting on these reasons (“Pufendorf’s Point”);⁸

(4) *B* has authority, the kind of authority which is infringed if *B* is not addressed by *A* legitimately, i.e., in a way that allows *B* to comply freely, or by exercise of *B*’s normative competence (“Fichte’s Point”).⁹

According to Darwall, the practical reasons which support these assumptions comprise a distinctive normative kind, the class of “second-personal reasons.”¹⁰ Not all practical reasons are supposed to be of this sort. There are also reasons to make the world go better rather than worse, from a purely impersonal point of view. And there are reasons and requirements which, although “agent-relative” or “exclusionary,” afford others no necessary authority or standing to make compliance demands.¹¹ Nevertheless, Darwall argues, in a wide range of cases—including, but not limited to, reasons “addressed or presupposed in orders, requests, . . . demands, promises, contracts, givings of consent, commands”¹²—we do find a different and distinctive class of reason which presuppose conditions (1)–(4). In all such cases, Darwall explains, such “second-personal reasons” “simply wouldn’t exist but for their role in second-personal address.”¹³ Their very “validity depends on presupposed authority and accountability relations between persons and, therefore, on the possibility of the reason’s being addressed person-to-person.”¹⁴

This is not yet to say anything about morality. According to Darwall, moral obligations not only provide reasons for action, the reasons they provide are second-personal reasons. Moral obligations

does seem to regard this thought as a reason for (2). I question below whether this or any other instance of the “wrong kind of reason” problem has this upshot.

8. See DARWALL, *supra* note 1, at 22–24, 111–15, 249–52.

9. See *id.* at 20–22, ch. 10.

10. *Id.* at 5–10.

11. For Darwall, moral obligations are a subset of agent-relative requirements. Their necessary connection to mutual accountability is supposed to explain their agent-relativity. See *id.* at 8.

12. *Id.*

13. *Id.*

14. *Id.* (emphasis omitted).

too, then, “simply wouldn’t exist”—at least with the full authority they purport to have—but for “presupposed authority and accountability relations between persons.”¹⁵ One might take this to entail that moral obligations are artificial, because the “authority and accountability relations” they presuppose depend on contingent social organization, in the way legal authority and accountability are usually thought to. Darwall concludes, instead, that certain authority and accountability relations are part of moral nature, arising simply by virtue of the dignity of persons.¹⁶

What are these morally basic relations? Darwall’s answer is sometimes misleadingly vague, as for example when he writes:

Second-personal reasons are invariably tied to a distinctively second-personal kind of *practical authority*: the authority to make a demand or claim. Making a claim or a demand as valid always presupposes [1] the authority to make it and [2] that the duly authorized claim creates a distinctive reason for compliance (a second-personal reason).¹⁷

Now [1] is just (1) from above, a plausible claim about any act of making a claim or demand. But [2] misleadingly suggests that the act of validly making a claim always “creates” a distinctive reason for compliance with basic moral requirements, instead of simply creating a distinctive reason to give an account of independently motivated conduct. To take Darwall’s own example,¹⁸ if you tread on my toes I can do more than invite you to see that this is a bad thing to have happen; I can also demand that you step off. Even if I in some sense “address” a requirement to you—the requirement that people are not to tread on other people’s toes—it is not a requirement on your conduct *because I address it or say so*, at least not in the way sovereign legislation can itself be a reason for doing what the law requires.¹⁹ The datable act of my making the complaint might “create” a distinctive reason for you to give an answer or apologize,

15. *Id.* (emphasis omitted).

16. *Id.* at 13–14, 70–99, 213, 242–44..

17. *Id.* at 11.

18. *Id.* at 5–10.

19. This is sometimes called “content-independence.” See, e.g., H.L.A. HART, *ESSAYS ON BENTHAM: STUDIES IN JURISPRUDENCE AND POLITICAL THEORY* ch. 10 (1982); RAZ, *MORALITY OF FREEDOM*, *supra* note 3, at 35.

a reason you might have lacked had I remained silent. It might also get you to recognize the basic requirement for yourself. But this is not to say, what a strict reading of [2] suggests, that it also “creates” a distinctive, specifically moral (or moral obligation-related) reason for compliance with the basic requirement in the first place. You had such a reason not to tread on my toes even before I complained, and would have had this reason had I never piped up. What “creates” the basic requirement in the first place, in Darwall’s view, is nothing less than the “demands” of the “moral community,” which he understands in hypothetical, contractualist terms (as a demand on conduct that no one could reasonably reject).²⁰

So we should distinguish authority of at least two kinds. When a legislature creates legal obligations, or when a married couple or business partners make binding agreements for how they will get along, this is to exercise *legislative authority*—authority or standing to create obligations which might not otherwise exist except by some datable act of will. This is distinct from what may be called *accountability authority*—authority to hold someone into account. When a friend or lover asks for justification for an insensitive remark, they assume authority or standing to complain, object, and make demands for greater care. But they do not necessarily assume that they have legislative authority over the basic standards of care and sensitivity among friends or lovers to which they hold the person. Darwall’s central thesis is that moral second-personal reasons always presuppose accountability authority, not legislative authority.²¹

Philosophers do sometimes speak of basic moral requirements being “legislated.”²² One can, for instance, view all moral truth as a construction of authoritative moral reasoning (e.g., about what could

20. See DARWALL, *supra* note 1, ch. 11.

21. Robin Kar points out that this remains an important point about law. Robin Kar, *How an Understanding of the Second Personal Standpoint Can Change Our Understanding of the Law: Hart’s Unpublished Response to Exclusive Legal Positivism*, 95 GEO. L.J. (forthcoming 2006). Hart’s *The Concept of Law* can be seen as characterizing legislative authority (as the union of primary rules of conduct and certain power-conferring rules), but he provides no obvious account of accountability authority. See HART, *supra* note 3, ch. 5. If Darwall is right, this is an important omission.

22. Perhaps the most famous example derives from Immanuel Kant who speaks of legislating for a kingdom of ends. IMMANUEL KANT, *GROUNDING FOR THE METAPHYSICS OF MORALS* 38–42 (James W. Ellington trans., Hackett Publishing Co. 3d ed. 1993); CHRISTINE M. KORSGAARD, *CREATING THE KINGDOM OF ENDS* 106 (1996).

be reasonably rejected). In that sense, even basic moral requirements might be “legislated” by the hypothetical moral community’s demands. The basic requirement not to tread on the toes of others might then be said to flow ultimately from the fact that I (or others like me) can reasonably reject any principle which allows this; but for that fact, we may say, treading on my toes would have been fine. Even so, this hypothetical fact about what I would reject, if reasonable, is just not an actual, datable act of acceptance or rejection which can be said to legislate or “create” reasons for action in the way legal authority and binding agreements do. If this counts as “legislation,” it is not legislation in the ordinary legal sense, but a philosophically suggestive metaphor.

So when Darwall says that, in general, a moral second-personal reason (e.g., to avoid toe-treading) “simply wouldn’t exist” but for “authority and accountability relations,”²³ this is not to say what is often true in law—namely, that an action which is in fact obligatory would not have been such in the absence of an authority which issues and enforces it. The idea is instead this: If a principle is to provide a genuine moral obligation, it must be suitable for a certain role in practice; it must provide a basis for people to govern each other in the sense of enabling them to hold each other into account when they fail on their own to follow through. Moral obligations and the reasons they provide simply would not exist but for this practical governing role.

This is a strong claim. It is to deny the moral credentials of even a close contractualist cousin of Darwall’s own view. According to what might be called *morality as self-governance*, morality is essentially “second-personal” in the sense that its defining concern is, in T.M. Scanlon’s sense, “what we owe to each other” or “justifiability to others.”²⁴ Yet the basic moral problem, on this view, is one of self-governance—of how each is to govern his or her own conduct. How each is to govern or be governed by others is, by contrast, an artificial, remedial, or in any case secondary issue. We need principles concerning the governance of others only because they are needed for special kinds of political or interpersonal relationships, or because of real limitations on our ability to properly

23. See *supra* notes 13–14 and accompanying text.

24. SCANLON, *supra* note 4, at 5–7.

govern ourselves, or because of some combination of these. On this view, there is no further general or primitive authority or standing to issue demands beyond one's general and primitive standing as owed justifiable treatment.

Morality as equal accountability entails that morality as self-governance does not capture moral obligation. But why does it not? I do not think Darwall has adequately answered this question. To explain why, I will now consider how his main arguments about the second-person point of view have natural, plausible, and interesting application to legal authority in a democratic society. Why the arguments apply, I suggest, is explained better or just as well by the nature of democratic legitimacy than by morality as equal accountability. At least as far as the moral basis of legal authority and obligation goes, it is unclear why the more general conception of equal accountability must come into the picture.

II. DEMOCRATIC LEGITIMACY

Consider two ways legal authority might be said to have or approach legitimacy. What is crucial in each case is how each subject regards the legitimacy of the sovereign's rule.²⁵

Under conditions of *Proto-legitimacy*, the *de facto* authority aims in good faith to set terms in such a way that every subject can accept the legitimacy of its rule and their own obligation to obey. Most everyone agrees that it is wise to have some such authority; few would deny the evils of civil disorder, for example. Beyond modest confidence that most of those who rule make a good faith effort, however, there is not necessarily great confidence in how authority is exercised (though there may be such confidence as well).

Under conditions of *Sovereign Legitimacy*, the terms legislated and enforced in good faith are accepted by each subject as legitimate, and therefore regarded as providing normally sufficient reason to comply. People generally find the existence of a sovereign to be wise, as under *Proto-legitimacy*, but they also generally have

25. My discussion below has some similarity—if only that borne of inspiration—to the discussions of authority in A.J. Julius, *Nagel's Atlas*, 34 PHIL. & PUB. AFF. 176 (2006), and Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113 (2005). I take much of what I call "Democratic Legitimacy" to be compatible with, and partially an explication of, what is implicit in JOHN RAWLS, *The Idea of Public Reason Revisited*, in THE LAW OF PEOPLES 131 (1999).

confidence in the few who rule, largely because of what they find in practice: things work well enough; people often get along; arrangements are not too unjust, or not believed to be too unjust; and so on. Beyond confidence *that* the rulers are wise, however, there is not necessarily access to or appreciation of the reasons why the rulers choose as they do (though there may be such access or appreciation as well).

Now compare conditions of *Democratic Legitimacy*. Law, as set and enforced by the *de facto* authority, is addressed to each citizen, seen as its proper subject, and is derived from every citizen, seen as its joint author. In practice, this regulative ideal is approximated, and understood to be approximated, under the following sorts of conditions: (i) the society (at least) achieves both Proto-legitimacy and Sovereign Legitimacy; (ii) there are sufficiently fair representative political institutions for distributing political and legal power; and (iii) the exercise of power, in those positions, is by-and-large governed by public reasons—reasons everyone can reasonably authorize despite their differing private views.²⁶

When these conditions are largely fulfilled, each citizen enjoys two forms of authority or standing. As coerced subjects of the law, each has standing to demand from others that law be a possible object of willing compliance; that is, each has standing to demand that authoritative decisions be reasonably authorizable and so made only on the basis of public reasons. As putative co-authors of law, each has standing to demand compliance from others and, in case of non-compliance, enforcement by public means of coercive sanction.²⁷ In short, coercion gives standing to make an *authorship demand*, while *willing* compliance, in the face of coercion, gives standing to make a *compliance demand*.

Now, one can have authority or standing to make a demand without ever making or expressing the demand to others. In that case, others would not have the reasons they would have if the demand were made or expressed. We can close this gap as follows.

26. Here I have in mind Rawls's characterization of "public reasons," which Darwall cites approvingly. DARWALL, *supra* note 1, at 23; *see also id.* at 309–10.

27. Coercive sanction is legitimate if only because it is part and parcel of legitimate law, for instance, because of its justifiable (not reasonably rejectable) role in resolving coordination problems or in providing reasonable assurance of the compliance of others. Whether such considerations of legitimacy depend in any way on morality as equal accountability is a question discussed below.

Under conditions of Democratic Legitimacy, we may assume more or less general compliance with law in practice, if only that which is necessary for the continuing existence of law-governed society. Such compliance, we may say, is in itself of expressive significance. One's willing compliance, over time, expresses to others one's authorship and compliance demands. As a coerced subject of law, one's compliance expresses one's authorship demand, giving to all normally sufficient reason to jointly adopt reasonably authorizable terms. And as a putative co-author of law, one's willing compliance expresses one's compliance demand, giving to each other normally sufficient reason also to comply. In willingly complying, each in effect says to others, "I'm doing it, you do so as well."²⁸

Now consider the relation between our three models and Darwall's conditions (1)–(4).²⁹ Democratic Legitimacy fulfills each condition. That is, suppose we are not anarchists; the claims of law on our conduct do indeed give normally sufficient reasons to comply, if nowhere else, under conditions of Democratic Legitimacy.³⁰ What follows from this? One thing that follows, as per (1), is that the prevailing legal authority has legitimate authority to make legal claims. In the present case, such authority flows from each co-authoring citizen's compliance demand. With regard to (2), each is accountable for compliance, by public coercive sanction, given each complying citizen's authorship demand. As for (3), citizens each enjoy "normative competence" in a particularly strong sense. Unlike both Proto-legitimacy and Sovereign Legitimacy, rulers are not simply wanted and trusted as wise, they are required to govern according to public reasons—reasons each could appreciate and reasonably authorize. As for (4), citizens are only legitimately

28. The suggestion here is that one has reason to obey the law because of the expressed compliance demands of *others*. It is not the claim, made by some "expressive" theories of political obligation, that one's own compliance expresses a kind of reason-generating loyalty, allegiance, or identification with law. The advantage of this approach is that, barring extenuating circumstances, one can be bound by law simply by being successfully addressed by it. This avoids the problems raised by both consent-based and natural duty views in specifying the subject's special relation to law. The special relation is *simply* that one is successfully addressed by law, perhaps only by legible markers of a legal system's jurisdiction, such as a border-identifying sign. As I will not try to defend this approach here, I ignore the many objections that would need to be addressed.

29. See *supra* Part I.

30. This assumption is admissible because Darwall's argument is conditional: *if* we have certain reasons, then certain assumptions must hold (as "normative felicity conditions").

addressed with the demands of law if they are in effect its joint author. If law is not grounded in public reasons, which each could appreciate and reasonably authorize, it fails to respect each complying citizen's authority or standing as a joint author of law (by failing to comply with his or her expressed authorship demand).

But now we should ask: What explains why these assumptions apply? Does morality as equal accountability? Consider a different hypothesis that I will call the *Democracy Hypothesis*: assumptions (1)–(4) flow from the very idea of democratic society, given its constitutive ideal of collective-self governance, but from little more. To be sure, we do need to assume that democratic society is itself legitimate; Democratic Legitimacy must be legitimacy proper. But according to the present hypothesis, it is enough for legitimate democratic authority that no one could reasonably reject democratic society for all the reasons it can seem a good idea—because history has shown that it tends to be less unjust than authoritarian regimes, because collective self-governance is a worthy ideal, and so on. None of these reasons, on the Democracy Hypothesis, include pre-democratic rights to be both the subject and author of law, or any reference to morality as equal accountability.

To see the merit in this hypothesis, consider the alternatives to Democratic Legitimacy. Proto-legitimacy is not quite legitimate authority proper. Its subjects plausibly exercise a good deal of discretion about whether and how standing law applies. Punishment, if not tempered with generous excusing and extenuating conditions, would itself be illegitimate. Sovereign Legitimacy, by contrast, arguably is or can be legitimacy proper. Think of the ancient Hebrews. Suppose they had reasonable confidence that God is wise and that the priesthood faithfully determines God's will, even if they had little access to the reasons why God commands what He commands. And suppose people reasonably see no other way of doing things given their religion, culture, traditions, and the alternative societies they normally encounter or can imagine. It seems they would each have an obligation to comply with law. The result may not be justice, but it is not illegitimacy either.

The important point here is not that the ancient Hebrews had no access to the idea of Democratic Legitimacy, although that is

probably the case.³¹ It is that the inaccessibility of alternatives suggests that Sovereign Legitimacy is, under the circumstances, genuine legitimacy.³² So understood, the point equally applies to present-day societies, at least provided suitable qualification. Qualification is needed because the legitimacy of current authoritarian regimes is hard to defend. Their failures and the alternatives are now relatively well-known, well-enough known, perhaps, so that only democratic society could be legitimate. This is not to yet say that we need to assume pre-democratic rights to be both the subject and author of law; it may simply be that such rights are afforded by a democratic society and that any other system of rule, though legitimate in by-gone eras, is now indefensible (reasonably rejectable) on independent grounds. Provided these qualifications, however, it is not implausible to suppose that some existing authoritarian societies are or would be genuinely legitimate forms of Sovereign Legitimacy if we assume that they yet lack the culture and traditions necessary for real and functioning democracy to be accessible. Legal authority would then (but perhaps only then) generate a duty to obey.

If this is right, we can infer (1), that, under Sovereign Legitimacy, the established authority is legitimate. We can also infer (2), that it can legitimately hold subjects into account for compliance. But (3) does not follow in the sense Darwall means. Darwall follows Pufendorf in supposing that authoritative address presumes the subject's "normative competence"; even God must assume our ability to appreciate and be moved by the propriety of His demands from our own point of view.³³ But what must "competence" come to here? Under Sovereign Legitimacy, the duty to obey could potentially arise even if the "normative competence" of subjects comes to little more than acknowledgment (for good reasons) *that*

31. Darwall might agree, given his comment made in a similar vein: "The idea of moral community between free and rational persons is a significant achievement of relatively recent human history, and there is no reason to think that it was even available, say, to an ancient Hittite issuing an order or making a request." DARWALL, *supra* note 1, at 24.

32. To the passage quoted *supra* note 31, Darwall adds that certain presuppositions "only come[] clearly into view retrospectively (although from this latter perspective, the presuppositions will seem to have always been implicit)." DARWALL, *supra* note 1, at 25. The present claim, then, is that "implicitness" does not imply "accessibility" in the sense that constrains legitimacy.

33. DARWALL, *supra* note 1, at 111-15.

authorities are wise. Rulers are not limited to governing on reasonably authorizable, public reasons. So subjects may not even in principle have access to the grounds of authoritative decision as they must under Democratic Legitimacy. Nor, then, does (4) hold. There is, *ex hypothesi*, no sense in which subjects are recognized as having authority which is infringed unless the grounds of authoritative decision are available to them. Yet, it seems, subjects have a duty to obey.

What does all of this show? It supports the Democracy Hypothesis by suggesting that (3) and (4) hold mainly *because of the special way the relation between sovereign and subject is understood in democratic society. They do not come along with the mere assumption that legal authority generates a duty to obey.* Thus we seem to have genuine moral obligation, as a result of manifestly “second-personal” address, but without the robust standing or authority that Darwall defends.

Darwall does consider analogous cases of “hierarchical” authority, such as the authority assumed when a sergeant orders a private to “fall in.”³⁴ Drawing from Fichte, Darwall argues that, even here, we find a basis for (4). The sergeant’s act of address, which purports, by that very act, to give the private reason to fall in, presumes a common, underlying authority which each must share simply as “free and rational persons.”³⁵ But as I will presently explain, because of certain ambiguities in the idea of “normative competence,” Darwall overstates how much competence the private needs to have.

Darwall’s starting point is Fichte’s basic thought that orders addressed from one person to another are by their very nature between persons. You cannot intelligibly order a chair to move, and even if you order a dog to sit, this is not to exercise the kind of authority assumed when the sergeant orders the private to fall in.³⁶ The private must be “rational” in a sense the dog is not and must be able to comply “freely” in a sense the dog cannot. For, as with any exercise of authority (as distinct from mere power), the sergeant’s order asks the private to see for himself that the order is a reason for

34. *Id.* at 259–62.

35. *Id.* at 258.

36. Indeed, for Darwall, this is not genuine authority or second-personal address at all. See *id.* at 39–40, 43 (dog and cat examples).

action; in Darwall's terms, it "summons" his own "normative competence." And since the putative reason (to fall in now because the sergeant just said so) would not be valid in the absence of an authority structure (in which privates are to do as sergeants say), the private will see the reason for himself only if he regards the larger authority structure as itself legitimate.

So far, so good. What can we conclude from this? According to Darwall, it means that the reason in question is "properly conceived" in a way that any rational person would have to take it, as "addressed to a person-who-happens-to-stand-in-that-specific-putatively-normative-relation."³⁷ That is, regardless of what the private does in fact accept, he has to be able, at least in principle, to accept the reason and its associated structure from a "generalized perspective."³⁸ He should be able, "as a rational person," to "accept [the] normative relation in general and, as a consequence, accept the sergeant's authority should he occupy, as he does, the position of private."³⁹ This may seem like a lot for privates to have very clearly in mind. But it is not beyond their "normative competence" as Darwall generously construes that idea. All it takes for this is that people have "a process of reasoning available to them through which they could, *in principle*, have determined the validity of relevant second-personal reasons and been motivated to act on them."⁴⁰ Since it is up to us to decide what is rationally acceptable, we have a relatively free hand.

But is "normative competence" in this broad sense really a necessary condition for legitimate authority? It is fairly uncontroversial to say that legitimacy is independent of actual acceptance. Structures can be legitimate although their subjects do not in fact accept them (think of anarchists in legitimate democracies), and people can accept the legitimacy of illegitimate structures (e.g., the slave who believes he deserves no better). Nevertheless, this does not entail Darwall's capacious notion of "rational acceptability," and more restrictive notions seem to suffice for legitimate (even if ultimately unjust) authority. Consider again the Hebrews. Even if we grant that rational persons could not accept

37. *Id.* at 270–71; *see also id.* at 260, 269.

38. *See id.* at 271.

39. *Id.* at 270.

40. *Id.* at 275 (emphasis added).

theocratic Sovereign Legitimacy from a “generalized perspective,” we might feel that any reasonable person would admit its rational acceptability *in the Hebrews’ particular historical and cultural position* as informed by what people then generally knew, the alternatives they could imagine and usually encountered, and so on. Similarly, what is at issue with the private is whether rational persons regard military authority as rationally acceptable for the private *in his or her particular situation*. Given the point of view of the normal (say, American) private, and given his or her particular, historically specific, culturally informed point of view, this would seem hard to deny. Certainly, acceptance is not clearly irrational or unreasonable. And so just as the ancient Hebrews seem to have had a duty to obey, this seems enough for military authority to give its privates real (but perhaps defeasible) obligations. Justice is presumably not so constrained; it may be determined only by what free and equal moral persons would choose from a “generalized perspective,” or from behind a veil of ignorance, or some such. But compared to justice, legitimacy is a much lower bar.⁴¹

So the Democratic Hypothesis stands. We have at least one kind of case in which manifestly second-personal address does not clearly imply morality as equal accountability.

III. MORALITY AS SELF-GOVERNANCE

Darwall never makes any official claim about legal authority and its legitimacy, so although he presumably must think morality as equal accountability has something to do with legitimacy, there are probably many ways a connection can be forged. So Darwall can still insist that, insofar as legitimacy is *moral*, or involves moral obligations, a connection must be forged somewhere.⁴² However, the point I have been highlighting points to a similar limitation in Darwall’s larger argument for morality as equal accountability: even

41. Rawls goes so far as to take contextually-informed reasonable acceptability to place a constraint on original position reasoning. The purpose of John Rawls’s *Political Liberalism* is to show that it can meet even this constraint, and to show that egalitarian justice is legitimate within modern constitutional democracies, despite reasonable pluralism even about justice. See JOHN RAWLS, *POLITICAL LIBERALISM* (1993).

42. Darwall makes this point against Raz’s “normal justification thesis” in his unpublished paper, *Authority and Second-Personal Reasons for Acting*. See Stephen Darwall, Professor of Philosophy, Univ. of Mich., *Authority and Second-Personal Reasons for Acting*, Lecture at the Practical Reason Conference at Bowling Green State University (Apr. 7–8, 2006), <http://www.bgsu.edu/departments/phil/reasonconf/Papers/darwall.pdf>.

with regard to interpersonal relations, there are other ways of capturing the plausibility and appeal of Darwall's main arguments, which Darwall never clearly rules out.

The alternative I mentioned above is a contractualist conception of morality as self-governance. Its importance, in the present context, lies in how much it shares with Darwall's conception. Both views are governance conceptions. They agree that the basic point of having moral principles at all is the governance of human conduct in practice, quite aside from what states of the world simply happen to come about. Both views are contractualist in Scanlon's sense; they agree that these principles are just those no one could reasonably reject for governance in practice. And they agree that reasonable rejectability is essentially an idealization of cases of person-to-person justification. When you ask me "How could you do that?," having been injured by something I did, I am moved not only to rehearse my motives, but to give reasons which made me justified; I try to justify my action *to* you. In Scanlon's terms, I try to show that what I did comports with principles no one could reasonably reject for the situation I was in. Thus, on both views, morality (in the relevant, central sense) is essentially "second-personal" in the sense that it is at bottom about justification to, and between, persons.

The difference between the two conceptions arises over what is the most basic problem of governance, and so what principles are in practice principles for. According to morality as equal accountability, the basic problem is how we are to govern each other and when. According to morality as self-governance, it is how we each are to govern ourselves in light of the fact that what we do affects others. Relations of authority and accountability, which allow us to share in or influence how others govern themselves, are secondary, arising within special political or interpersonal relationships, or as remedies to human limitations on self-governance, or some combination of these.

The strength of the latter, self-governance conception, is that we clearly need principles to apply even when our conduct affects unspecified others at a distance. In a wide range of cases, the people our conduct affects will be in no position to influence or intervene in our choices by complaining, objecting, or asking for justification. Good governance is largely or entirely up to us. The challenge, for this conception, is to explain why the influence or interventions we

take to be central to most regularized relationships is somehow secondary to the kind of self-regulation we expect people to maintain by themselves.

The strength of the former, co-governance conception is that it avoids this challenge. Governance of others is in the first instance governance of specified others within specific relationships, which by their very nature recognize one as having standing or authority to so govern. The co-governance conception, however, generalizes from such cases to all relations between persons. The challenge, then, is to explain how or in what sense people could have standing or authority to govern others outside of the relationships and interactions needed for its practical exercise.

The self-governance conception can step up to its challenge by arguing that relations of authority and accountability arise largely because of human limits on governing ourselves all by ourselves. Imagine a community of saints, or a loving, tried and true couple, in which each party regularly gives the other his or her due with little effort. In the unusual case of failure, self-correction comes relatively quickly. Though it rarely or never happens in real life, no practical need for others to have authority or standing to make demands or hold accountable would arise. Given that the need usually *does* arise, we have a natural explanation why: we need principles of co-governance mainly because people cannot generally be relied upon to treat others perfectly well without a certain amount of help. There are things we did not notice; we never thought of a certain argument or perspective before; something basic slipped by in one's youth; power corrupts and blinds; and so on.⁴³

To be sure, human limitations on self-governance are themselves a general and predictable component of human life. They are indeed "all too human." But the above examples suggest that they are in any case not a general fact of life which conditions genuine moral obligation in principle; we could still have moral obligations even if we were better at self-government than we usually are. Moreover, it is not clear that our general limitations take

43. Does this mean that penalties for negligence are justified merely because of their helpfulness—that is, for the agent-neutral reason that things go better if penalties are in place? Not necessarily. Requirements to provide compensation for negligent conduct can still be justified in other terms, e.g., on grounds of fairness. If, however, there is a kind of standing to *demand* compensation for negligent conduct, it is to be analyzed as below in either relationship-sensitive or duty-reflecting terms.

any interesting general form other than what the present conception would predict. On the self-governance conception, we should expect social forms to be as various and circumstantial as the personal, social, or large-scale political and co-governance problems we actually face. Perhaps certain authority and accountability structures, such as those associated with promising, are so important for any human interaction that we always have a duty to create them if they are not already understood. But if so, this is the exception that proves the rule. Especially if we take in the long view of history, diversity of social forms is arguably what we find.

Such artificiality sometimes strikes people as incompatible with genuine morality; Hume's view that the applicability of justice requires a scheme of property is often received this way, for example.⁴⁴ But, on the present proposal, there is no sense in which genuine morality somehow emerges from mere artifice. Within a larger contractualist framework, the principles which are to govern conduct within social structures, or the structures themselves, are always a matter of what is justifiable to persons. At first blush, this would seem sufficient to capture genuine morality and moral obligation, even if we assume no specific relations of accountability. The hypothetical situation in which functioning relations of authority and accountability never apply, because we do just fine governing ourselves by ourselves, is not the total absence of moral obligation, but the universal rein of moral excellence.

A defense of morality as equal accountability depends, then, on showing that something essential to genuine moral obligation has been left out. Along these lines, one of Darwall's particularly attractive lines of argument takes the form of a challenge—the challenge to explain basic respect for persons, as expressed in the immediate and often unavoidable demand we make on each other for recognition. Many forms of relationship, including friendship, partnership, marriage, and citizenship, implicitly accord special “standing” to complain. For much the same reason, outsiders who object to internal dealings are sometimes dismissed as having little “say.” Drawing on Fichte, Darwall vividly brings out how at least some such basic forms of standing cannot depend on a “relationship”

44. DAVID HUME, *A TREATISE OF HUMAN NATURE* 532–52 (Ernest C. Mossner ed., Penguin Books 1985) (1739).

in any ordinary sense. A person I encounter can make genuine, special demands on my attention, just by catching my eyes with a sad and questioning gaze. If I avert my eyes, the person's request, "excuse me," will call for more than the usual politeness; barring special justification, it would be wrongfully disrespectful for me to continue to look away. But it seems that such a person needs to be no more than a person to so command or (in Kant's term) "exact" recognition from me. If we do not have general standing as persons to make just such demands, as a basic fact of moral life, how then is it to be explained?

It turns out that there is a way of treating obligations to recognize others as generated by a specific, if minimal, kind of relationship or relating. As Darwall explains in an extended footnote, Fichte himself was tempted toward something like this view.⁴⁵ On the most plausible version of Fichte's "voluntarism," it is, as Darwall puts it, "the fact of recognition that obligates."⁴⁶ The idea, as I understand it, is that Fichte's principle that "I must in all cases recognize the free being outside me as a free being" depends on my having already "recognized" someone in an independent, proto-obligatory sense; I must have attended to him instead of other objects; I must have seen him as a self-conscious being and not as a mere object, animal, or lower animal; and so on. It is *only* provided such awareness that one acquires an obligation to give the noticed someone a special role in one's deliberation and conduct, i.e., to recognize him "as a free being" "in *all* cases," even when disregarding him would be to one's gain. This is quite compatible with Kant's claim, which Darwall quotes approvingly, that a rational person "possesses a dignity . . . by which he exacts respect for himself from all other rational beings in the world."⁴⁷ The claim can be read this way: a rational person possesses a dignity by which she could, *if she encountered them*, exact respect for herself from all the other rational beings in the world (or at least from "any" of the other rational beings, since one presumably cannot encounter *all* of them within a single lifetime).

45. See DARWALL, *supra* note 1, at 262 n.26.

46. *Id.* at 264 n.26.

47. *Id.* at 263 n.26 (quoting IMMANUEL KANT, *The Metaphysics of Morals*, in PRACTICAL PHILOSOPHY 435 (Preussische Akademie 1996)) (emphasis omitted).

Darwall objects that this provides “no coherent alternative” to his own view that recognition “presupposes, rather than somehow creates” the normative standing to demand recognition.⁴⁸ For any demand someone actually makes on my attention, on some occasion, presupposes his standing to make such demands, independently of my encounter with him. To be a person is to be “in a position” to exact respect, before, as it were, it is ever exacted.⁴⁹ Yet a lot would seem to depend on what *actual* position a person is in. It is one thing if you are “in my face,” making demands I cannot ignore. It is quite another matter if I have some say in whether you come to my attention in the first place. I can avoid going where I might see you, not answer the phone, and so on. Perhaps avoidance of a specified person betrays recognition of his or her standing, and only fails to create an occasion for its exercise. But I can also avoid going to any number of places where as of now unspecified persons *would* be in a position to exact respect from me, were I to encounter them. Yet they may now and forever be unable to in fact do so, simply because we will never interact. They are not and will never be “in a position” to exact respect from me.

No doubt there is still a lot I owe to strangers I will never meet (e.g., giving to foreign aid). In this sense, they have standing many mere animals lack. But what does such “standing” come to, other than the fact that what I do must be justifiable to them? If this is all it comes to, it is something both self-governance and equal accountability contractualism will accept. Why must a further kind of standing or authority come into the picture?

Darwall will say that the present picture still does not capture the special dignity persons enjoy as persons, quite aside from special, authority-conferring relationships. He writes:

Dignity is not just a set of requirements with respect to persons Someone might accept the first-order norms that structure the dignity of persons and regulate himself

48. *Id.* at 265 n.26.

49. *Id.* at 264 n.26. Darwall levels a version of this objection (“Cudworth’s Point”) against Margaret Gilbert’s account of mutual agreement and Scanlon’s view of promises. *See id.* at 201–03, 204, 207–08. I have doubts here similar to those I go on to express in the text, but I leave them aside here. Even if they are mistaken, and Darwall is right about the special cases of mutual agreements or promises, this will not establish his larger claims about all moral obligation. The argument against Fichte does, however, promise to reorient us to morality generally, by suggesting an interpretation of the dignity of persons.

scrupulously by them without accepting anyone's authority to demand that he do so. . . . I claim, however, that he would not yet fully acknowledge the dignity of persons or respect persons for their dignity.⁵⁰

But it is not clear why this should be so. “[F]irst-order norms that structure the dignity of persons”⁵¹ can include not only requirements not to injure, coerce, or manipulate people, but also requirements to pay attention to them and listen to their complaints or demands.

I will not have to pay attention or listen very long if you complain needlessly and incessantly, even if you are sincere. I may be free to avoid you if I hear through the grapevine that you intend to make clearly unreasonable demands on me and my time. In other cases, when you voice a complaint, I must notice you and hear you out. I owe you this much, as a duty of respect for you as a person—even if I have done nothing wrong. But such “duties of recognition” can be justified like any other norms of rightful treatment, only for particular contexts of interaction—political structures, personal relationships, and special communicative contexts, including passing glances.

We can add, if we like, that my duties of recognition give you authority or standing to complain, in the sense that the act of complaining, on the appropriate occasion, can trigger my duty to recognize you, or listen to what you say. But even here the dignity and authority you enjoy can simply reflect my independently justified requirements of respectful treatment. Why must any further authority, beyond the interests of yours, which ground my requirements, be involved? Why must your “standing” be anything more than your standing as owed justifiable treatment, along with the principles of recognition that dictate when I must attend, listen, or give answers to you?

This limited conception of dignity is compatible with the claim, familiar from the case of legal rights, that certain rights are by their very nature something the right-holder has standing to claim.⁵² It

50. *Id.* at 14.

51. *Id.*

52. See Joel Feinberg, *The Nature and Value of Rights*, 4 J. VALUE INQUIRY 243 (1979), reprinted in JOEL FEINBERG, *RIGHTS, JUSTICE, AND THE BOUNDS OF LIBERTY* 143 (1980). Darwall cites Feinberg approvingly, treating legal claim-rights as an easy case for his analysis. See DARWALL, *supra* note 1, at 18.

may even be that no mere duty could justify this standing by itself.⁵³ The current suggestion, then, is that it is not clear why standing to be recognized should be modeled in any direct way on such claimable rights. Rights become claimable because a practice or structure implicitly recognizes the rights-bearer as a co-governing member. When some such social and authority structure is not in place, the standing we have to command or exact recognition is real, but of a different kind.

Darwall might object that this mischaracterizes basic encounters. It might be argued, for instance, that the supposed alternative picture still gives you no standing to complain or demand recognition when I wrongly ignore you and violate my very duty of recognition itself. That is why authority cannot just reflect requirements. But this special case can be handled in much the same way. When I fail my duty to listen, you have a right to complain, under that very duty. You simply complain twice. Instead of speaking directly to the first wrong done—"You're stepping on my toes"—on the assumption that I must listen to your complaint, you explicitly invoke that assumed duty in your complaint. You add: "Hey, I'm talking to you."

In sum, on the alternative picture I am suggesting, the dignity of persons is fully explained by the following three elements: (i) each person's status as owed justifiable treatment, that is, as owed compliance with principles no one could reasonably reject; (ii) each person's general interest in having some say in the conduct of others, an interest which differentially informs reasoning about what principles are reasonably rejectable, according to the specific context of the interaction in question; (iii) duties of recognition, that is, the fully specified principles governing the complaints and demands of others, for specific contexts of interaction (including both one-off, person-to-person encounters, as well as specific, authority-conferring regularized relationships, such as friendship, marriage, and citizenship). Darwall's thesis is the strong claim that, without adding further general and basic authority to hold others accountable, we cannot yet speak of genuinely *moral* obligations. But this seems too strong.

53. See, e.g., MARGARET GILBERT, A THEORY OF POLITICAL OBLIGATION: MEMBERSHIP, COMMITMENT, AND THE BONDS OF SOCIETY 162–63 (2006); Margaret Gilbert, *Scanlon on Promissory Obligation: The Problem of Promisees' Rights*, 101 J. PHIL. 83 (2004).

Darwall does develop one line of argument, the “wrong kind of reason” problem, which has the potential to establish his strong claim.⁵⁴ Following P.F. Strawson, Darwall argues that, since consequentialists appeal only to the impersonal goodness and badness of states of affairs, they do not give reasons of the right kind to justify moral principles. The mere fact that some outcome would be good to have happen does not show that someone is appropriately held accountable for bringing it about. What is needed to give the “right kind of reason,” Darwall proposes, is the further claim that it would be reasonable to expect this of someone, and thus reasonable to hold them accountable when or if they fall short of this.⁵⁵ This does not yet hurt the duty-based account of dignity outlined above, which does not assume consequentialism. But since that account is a creature of Scanlon’s contractualism, Darwall’s reply can be what he argues anyway, that Scanlon’s contractualism also runs afoul of the “wrong kind of reason” problem.

On the status of our basic reason to act only in ways that are justifiable to persons, Darwall reads Scanlon as closely aligned with Mill:

Roughly, for Mill, it is because of the desirability of living in unity with others that considerations of right (which are themselves based indirectly on the general happiness) give us reasons to act. Similarly, for Scanlon, it is because of the value or appeal that we take living with others on terms of mutual recognition and respect to have that considerations of right (and, relatedly, of what is reasonable) are reason-giving and, indeed, have priority for us.⁵⁶

Darwall objects as follows: “[I]t is hard to see how, from the fact it would be desirable for us to treat considerations of right as having priority over other values . . . it can possibly follow that such considerations actually have this priority.”⁵⁷ But Scanlon’s basic reason is not best seen as something we are moved by because of the desirability of being so moved. The requirement to act only in ways

54. See DARWALL, *supra* note 1, at 15–16, 65–70, 246–49.

55. See *id.* at 66.

56. *Id.* at 317.

57. *Id.*

that could be justified to others is an “agent-relative” requirement; though there is (normally conclusive) reason for me to act in the appropriate ways, this is not equally a reason for me to get *you* to act the appropriate ways. Scanlon’s claim is that, in acting on this reason, we *thereby* value other people, in the sense of respecting them as persons. We do not act on this reason, as Darwall suggests, for the sake of desirable states of affairs.⁵⁸

Darwall also presses a second objection: “[I]t is hard to see how its being desirable that we relate to one another on terms of mutual accountability can possibly ground the distinctively second-personal claim that we are mutually accountable.”⁵⁹ While it is true that separate principles need to be justified according to our contextually-varying interests in holding people accountable, when such principles do require us to recognize others and thereby give them standing to complain, this is not a mere matter of desirability. It is a matter of what no one could reasonably reject, given the various contexts in which we need to be allowed to influence and intervene in others’ conduct and mental affairs. Yet this *does* ground the “distinctively second-personal claim that we are mutually accountable.”⁶⁰ In practice, we can address requirements to each other second-personally in Darwall’s special sense. When I ignore you, you can rightfully demand that I take notice and listen in a way that calls upon my own appreciation of what I owe to you. But such “appreciation” is just this: seeing or being brought to see my duty, I hear you out. The duty I appreciate is not my duty because you say so or address it to me.

IV. EXPRESSIVISM ABOUT BLAME

Thus, I do not see that Darwall has succeeded in ruling out what would seem the most important alternative to his view. The source of this lacuna, I suggest, is Darwall’s relatively uncritical acceptance of an “expressivist” conception of the reactive-attitudes.

58. Indeed, I take it that this combination of Scanlon’s “buck-passing account” of value and the basis of moral motivation is the central proposal of Scanlon’s *What We Owe to Each Other*. This completes Scanlon’s contractualism as an alternative to consequentialism; it is an alternative, not only at the level of rightness and wrongness, but also at the level of value and its relation to right and wrong. See SCANLON, *supra* note 4.

59. DARWALL, *supra* note 1, at 317.

60. *Id.*

Following Strawson and Watson, Darwall focuses on the role we often give reactive-attitudes such as blame in expressed demands for accountability.⁶¹ I voice or express blame, for example, in asking you to apologize for your action. According to Darwall, this is not simply to express an attitude whose nature can be characterized independently of such forms of expression (for example, as belief can be characterized independently of belief reports). Rather, the very nature of a reaction such as blame is to be understood in terms of its role in, or suitability for, expressed accountability demands. Even when blame is not voiced or expressed, by a datable act of communication, it remains a form of “accountability-seeking” address, if only “implicitly.”

It is this expressivist conception which allows Darwall both to link obligation and accountability, and to draw conclusions about the presumed capacities of the agents we hold accountable. Everyone will agree that being morally responsible, for the fulfillment of some moral obligation, implies the appropriateness of praise or blame in principle. But if blame is always at least an “implicit” form of “accountability-seeking” address or communication, it follows that the morally responsible person is always appropriately held accountable by some such (perhaps only implicit) form of address. It in turn follows that a reaction such as blame is pointless unless it is assumed that blamed persons can be moved to hold themselves accountable for the presumed wrong done. As Watson puts the point: “The reactive attitudes are incipiently forms of communication, which make sense only on the assumption that the other can comprehend the message.”⁶²

Even if all of this follows *given* expressivism, the essential question is why we should favor expressivism in the first place. Why should blame be understood in terms of its role in co-governance rather than in some other way? In recent unpublished work, Scanlon proposes a non-expressivist conception, which he puts as follows:

61. See Strawson, *supra* note 7, at 45; Gary Watson, *Responsibility and the Limits of Evil: Variations on a Strawsonian Theme*, in *RESPONSIBILITY, CHARACTER, AND THE EMOTIONS* 256 (Ferdinand David Schoeman ed., 1987), reprinted in *PERSPECTIVES ON MORAL RESPONSIBILITY* 119 (John Martin Fischer & Mark Ravizza eds., 1993).

62. Watson, *supra* note 61, at 127.

[T]o claim that a person is *blameworthy* for an action is to claim that that action shows something about the agent's attitudes toward others that impairs the relations that others can have with him or her. To *blame* a person is to judge him or her to be blameworthy and to take your relationship with him or her to be modified in a way that this judgment of impaired relations holds to be appropriate.⁶³

According to Scanlon:

[B]lame itself—the revision of one's attitudes toward a person in response to attitudes expressed in his behavior—is not, even incipiently, a form of communication. Expressions of blame are, and they may be pointless if the person cannot appreciate their force. But this does not, in my view, make blame itself inappropriate.⁶⁴

As Scanlon illustrates, in blaming someone, one need not express any moral emotion; one “might just feel sad.”⁶⁵

Blame in such unexpressed forms can have an important role in self-governance. For instance, feeling sad because of how you have mistreated me, I may be led to distance myself from you, or to decide that our relationship will be less important to me than it was. The expressivist can happily admit that unexpressed but incipiently communicative attitudes will often justify such responses. But here we may ask: Why is incipient communication necessary, even in principle, for blame to have its guiding role? In distancing myself from you, I *might* mean to protest, that is, to show you that you cannot treat me or others as you have. But I might also want our relationship simply to end. If I mean just to move on, I may have no message to send, and, indeed, it may be necessary that I not try to send one.⁶⁶

Darwall sometimes seems to assume that expressivism follows from the “wrong kind of reason” argument as against the consequentialist.⁶⁷ Or perhaps it is supposed to follow from the

63. T.M. Scanlon, *Blame* 8 (Nov. 9, 2006) (unpublished manuscript, <http://www3.law.nyu.edu/clppt/program2006/readings/Blame,NYU.pdf>).

64. *Id.* at 63 n.46.

65. *Id.* at 14.

66. This line of argument was suggested to me by Robin Kar.

67. Darwall asserts the centrality of accountability to moral obligation after making “Strawson's Point” as against the consequentialist. *E.g.*, DARWALL, *supra* note 1, at 15–16, 65–

66. The conclusion could instead be simply that impersonal desirability is irrelevant to whether

argument as applied to any interest-based justification of accountability relations, including the contractualist one I have outlined. As we have seen, however, the argument just does not have this force. The contractualist justifies relations of accountability squarely within the space of what is justifiable to persons on grounds which are of the right kind.⁶⁸

The dispute between expressivist and non-expressivist conceptions is at the moment relatively undeveloped. I do not mean to prematurely take sides. I do want to suggest that this dispute is of central importance for how we are to understand the essential governance function of moral principles, even from within the “second-person point of view.” If morality as equal accountability is to apply beyond the legal and other contexts in which it has natural application, a defense of expressivism should take center stage.

we are in fact morally responsible, whether there is any further general relation between moral responsibility and moral accountability.

68. I find Darwall’s use of the “wrong kind of reasons” argument more effective against Derek Parfit’s “Kantian Contractualism.” Parfit claims that Kantian Contractualism implies rule-consequentialism. *See id.* at 310–11. Darwall’s reply is that Parfit’s appeal to the rationality of self-sacrifice for the impersonal good does not provide a basis of mutual accountability; we cannot reasonably hold someone accountable for refusing to sacrifice themselves for the greater good. *See id.* at 311–13. But self-governance contractualists can make much the same claim without the appeal to accountability *per se*. It is enough that we cannot reasonably expect self-sacrifice for the impersonal good, whatever this says about accountability.

