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DEFERRING

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THE ETHICS OF DEFERENCE: LEARNING FROM LAW'S MORALS. By Philip Soper. Cambridge: Cambridge University Press. 2002. Pp. xvi, 189. \$23.

Many academics, upon encountering a book on deference by a leading legal theorist, would assume that the book was still another contribution to a long and prominent debate about the existence (or not) of an obligation to obey the law.¹ But that would be a mistake. In fact, this is a book not about obligation or obedience but about deference, and it is precisely in that difference that the significance of Philip Soper's² book lies. Especially in law, where the Supreme Court (sometimes) defers to the factual, legal, and even constitutional determinations of Congress and administrative agencies, where appellate courts (sometimes) defer to the findings of fact and law of trial courts, and where trial courts (sometimes) defer to the judgments of juries, conflating deference with obedience is plainly an error.³ It is

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1. The literature starts at least as early as Plato's *Crito*. PLATO, THE COLLECTED DIALOGUES 27 (Edith Hamilton & Huntington Cairns eds., Land Cooper et al. trans., 1961). It also includes CHAIM GANS, PHILOSOPHICAL ANARCHISM AND POLITICAL DISOBEDIENCE (1992); JOSEPH RAZ, THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY (1979); Michael Davis, *Smith, Gert, and the Obligation to Obey the Law*, 20 S. J. PHIL. 139 (1982); John Finnis, *The Authority of Law in the Predicament of Contemporary Social Theory*, 1 NOTRE DAME J.L. ETHICS & PUB. POL'Y 115 (1984); Gerald J. Postema, *Coordination and Convention at the Foundations of Law*, 11 J. LEG. STUD. 165 (1982); John Rawls, *Legal Obligation and the Duty of Fair Play*, in LAW AND PHILOSOPHY 3 (Sidney Hook ed., 1964); Donald H. Regan, *Authority and Value: Reflections on Raz's Morality of Freedom*, 62 S. CAL. L. REV. 995 (1989); Donald H. Regan, *Law's Halo*, in PHILOSOPHY AND LAW 15 (Jules Coleman & Ellen Frankel Paul eds., 1987); Donald H. Regan, *Reasons, Authority, and the Meaning of "Obey": Further Thoughts on Raz and Obedience to Law*, 3 CAN. J. L. & JURISPRUDENCE 3 (1990); Frederick Schauer, *The Questions of Authority*, 81 GEO. L.J. 95 (1992); A. John Simmons, *The Principle of Fair Play*, 8 PHIL. & PUB. AFF. 307 (1979); and M.B.E. Smith, *Is There a Prima Facie Obligation to Obey the Law?*, 82 YALE L.J. 950 (1973). For a recent and comprehensive analytic overview, see William A. Edmundson, *State of the Art: The Duty to Obey the Law*, 10 LEGAL THEORY 215 (2004).

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3. The domains of deference are larger than even those listed in the text, and would certainly include the "margin of appreciation" that international law gives to national decisions, see Eyal Benvenisti, *Margin of Appreciation, Consensus, and Universal Standards*, 31 N.Y.U. J. INT'L L. & POL. 843 (1999), and perhaps even the vast area of private lawmaking that takes place in the making of contracts, wills, trusts, and much else.

the signature contribution of this book that it analyzes in great depth and with impressive nuance a concept so central to law, yet so often ignored because of the arguably disproportionate attention that legal philosophy has paid to the question of obedience.

I.

Soper builds his analysis of and argument for deference⁴ by adding an important gloss on an ongoing debate in contemporary legal philosophy. This debate starts with the assumption that law is necessarily normative.⁵ That is, law demands (or at least claims) our obedience, so it is said,⁶ with the interesting debate being about whether citizens do or do not have an obligation to do what the law demands just because the law demands it.⁷

On both sides of this debate, there is a further assumption that the obligation to obey the law, if it exists, is a content-independent one,⁸ and that what law claims is that there is indeed such a content-independent obligation to obey its directives. Law's normativity is thus law's claim of authority in the strong sense, with law claiming that the fact of a directive being a legal one is itself a (moral) reason (although

4. This Review will at times include fewer page references than is perhaps typical, largely because I am, here, reconstructing an argument that Soper builds in a somewhat nonlinear way. A lengthy Introduction analyzes in nonintroduutory fashion the important concepts and then proceeds to lay out major parts of the argument itself. See pp. 3-34. This is followed by three substantial chapters dealing with issues of authority and of law's normativity. See pp. 35-99. These chapters, as I will suggest presently, are of interest in their own right, but they are also, and primarily, the foundation for Soper's central discussion of deference. That discussion is itself built upon four separate examples of deference in moderately discrete settings, see pp. 103-67, and it is only in the concluding part of the book that the full account of deference finally emerges. Pp. 168-83.

5. See Jules L. Coleman & Brian Leiter, *Legal Positivism*, in A COMPANION TO THE PHILOSOPHY OF LAW AND LEGAL THEORY 241 (Dennis Patterson ed., 1996); Gerald J. Postema, *The Normativity of Law*, in ISSUES IN CONTEMPORARY LEGAL PHILOSOPHY: THE INFLUENCE OF H.L.A. HART 81 (Ruth Gavison ed. 1987).

6. See Jules L. Coleman, *Second Thoughts and Other First Impressions*, in ANALYZING LAW: NEW ESSAYS IN LEGAL THEORY 257, 276 (Brian Bix ed., 1998); William A. Edmundson, *Social Meaning, Compliance Conditions, and Law's Claim to Authority*, 15 CAN. J.L. & JURISPRUDENCE 51 (2002); Leslie Green, *Law, Legitimacy, and Consent*, 62 S. CAL. L. REV. 795, 797 (1989); J. Raz, *Hart on Moral Rights and Legal Duties*, 4 OXFORD J. LEGAL STUD. 123, 131 (1984).

7. See *supra* note 1.

8. The *locus classicus* of the idea that content independence lies at the heart of the concept of authority is H.L.A. HART, *Commands and Authoritative Legal Reasons*, in ESSAYS ON BENTHAM: JURISPRUDENCE AND POLITICAL THEORY 243 (1982). Among the sources of further discussion, explication, and critique are ROGER SHINER, *NORM AND NATURE: THE MOVEMENTS OF LEGAL THOUGHT* 52-53 (1992); R.A. Duff, *Inclusion and Exclusion*, 51 CURRENT LEGAL PROBS. 247 (1998); Kenneth Einar Himma, *H.L.A. Hart and the Practical Difference Thesis*, 6 LEGAL THEORY 1, 26-27 (2000); and P. Markwick, *Independent of Content*, 9 LEGAL THEORY 43 (2003).

not necessarily a conclusive one) for citizens to obey it.⁹ Consequently, law asserts that its authority exists independently of the content, and therefore the substantive correctness, of any particular directive. And because the bite of such a claim, if the claimed obligation actually exists, is most obvious when the law is perceived by its subject as directing that which is wrong, it is central to understanding this view of law's authority that accepting law's authority means accepting the (not necessarily conclusive) obligation to do the (substantively) wrong thing. And although some argue that there is in fact such an obligation and others deny it, there is little disagreement that this is what law claims,¹⁰ and that this is what an obligation to obey the law, if it existed, would amount to.

Soper, however, wants to challenge this widespread agreement about the kinds of claims that are implicit in law's normativity.¹¹ It is true, he argues, that there is a difference between a claim of authority and a claim of correctness (pp. 56-61). And in that sense Soper accepts the *idea* of content independence. But it is not true, he argues further, that law necessarily claims authority in this content-independent way as opposed to simply claiming correctness (as well as a right to enforce) in a plainly content-dependent way (pp. 71-88). A parent who tells a child to go to bed at ten might at some point resort to "because

9. There are interesting questions to be raised about whether a concept, like law, can claim anything, as opposed to the claims that might be made by particular individuals and institutions at particular times. But the disembodied voice and attitude of the law is such an omnipresent feature of contemporary legal theory that questioning it — and there is much to be said for questioning it, see Andrei Marmor, *Authorities and Persons*, 1 LEGAL THEORY 337 (1995) — is best left for another occasion.

10. This is not to say that there is no disagreement whatsoever. Matthew Kramer and I, for example, have in different ways offered a thin and thus more Austinian account of the idea of law, one in which normativity then becomes a contingent but not a necessary feature of legality. See MATTHEW H. KRAMER, IN DEFENSE OF LEGAL POSITIVISM (1999); Frederick Schauer, *Positivism Through Thick and Thin*, in *Analyzing Law*, in ANALYZING LAW: NEW ESSAYS IN LEGAL THEORY 65 (Brian Bix ed., 1998); Frederick Schauer, Critical Notice, 24 CAN. J. PHIL. 495 (1994) (reviewing ROGER SHINER, NORM AND NATURE: THE MOVEMENTS OF LEGAL THOUGHT (1992)). Soper responds to this line of argument, pp. 62-71, but the issue is sufficiently tangential to my main theme in this Review that I will say no more about the issue here except to note that Soper relies largely on Hart in believing the Austinian account deficient for being unable to explain neither the concept of legal obligation nor law's claim to authority. Neither Hart nor Soper, however, explain why state-based systems of enforced norms become disqualified as law whenever they fail to claim authority or to generate obligation. Saying that the issue is conceptual and not empirical, p. 65, is true but not helpful, because the question is then one of determining which of the contingent features of most legal systems shall be understood as essential, a determination that in most of the existing debates seems to come down to little more than pounding one's fist on the table and insisting that some feature of most legal systems just *must* be essential to legality. Kramer and I do not deny that legal obligation is an interesting phenomenon worthy of philosophical examination. What we deny is that its existence, whether claimed or accepted or both, is a necessary component of any normative system entitled to the name "law."

11. Soper does not, however, as do others, challenge the position that *some* concept of normativity is an essential feature of law. See Hart, *supra* note 8.

I said so,"¹² but that is both a last resort¹³ and a move that is not, Soper insists, implicit in the initial request, instruction, or even order. The parent wants the child to go to bed at ten because ten is the right time to go to bed, and not because the parent (necessarily) thinks that the parent's order should be obeyed just because it is the parent's order. Some or many parents may indeed think that, but as long as it is possible to give (and enforce) an instruction that is solely a claim of correctness and not a claim of authority, then the giving of an instruction itself is not necessarily a claim of authority.

So too with law, Soper argues (pp. 71-88). Although he does not challenge the contemporary notion of what authority *is*, he does challenge the notion that law necessarily claims authority. Just as it is possible for parents to make (and enforce) requests, issue instructions, and give orders without necessarily claiming that those requests, instructions, and orders should be followed because of their source rather than because of their content, so too might law do the same thing. Law might, and often does, claim simply that what it commands is right, and thus might punish people, in effect, not for disobeying the law but instead for doing the wrong thing. When I am punished for driving in excess of the speed limit, Soper can be interpreted as arguing, it could be that I am being punished not for disobeying a posted speed limit but instead for driving too fast. Soper wisely refuses to enter into a discussion of the frequency with which law makes such claims, and that is because his argument is a conceptual and not an empirical one. Even if law does at times rely on its authority and not on its correctness, the fact that it could rely solely on correctness and not for that reason be any less law-like or any less normative is the distinctive contribution of this strand of the book's argument.¹⁴

12. See ROBERT PAUL WOLFF, *IN DEFENSE OF ANARCHISM* 9 (1970).

13. The example is mine and not Soper's, but, as a childless only child, I do not intend my empirical claims about parents or their children to carry much weight.

14. There is some possibility that Soper's analysis would weaken under the weight of thinking more seriously about the intersection between the theory of rules and Soper's theory of law. Law can avoid a claim of authority when it says to its subjects that they are doing the wrong thing on this particular occasion, but if that is all that law claims, then we are at a loss to account for all of the instances in which law claims the right to enforce a rule whose application on some particular occasion might not serve the deepest purposes lying behind the rule. Law can indeed claim the right to tell me that I should not drive too fast, but when the law instead tells me that I should not carefully drive over the speed limit even on a clear, dry, traffic-free day, on a good road, in a good car, it is telling me that I should obey the rule just because it is a rule. And once law does this, then it is claiming just the kind of content-independent authority that Soper argues is not an essential component of law's claims. But once we see the claim of authority implicit in the claim that citizens should not only do the right thing on particular occasions but also obey law's rules even in their areas of under- and over-inclusion, see FREDERICK SCHAUER, *PLAYING BY THE RULES: A PHILOSOPHICAL EXAMINATION OF RULE-BASED DECISION-MAKING IN LAW AND IN LIFE* (1991), the frequency of law's claims of authority grows substantially.

II.

I do not wish to engage here the question whether Soper's argument about the nature of law's claims is ultimately sound. That is in part because I am a conscientious objector to the entire debate about the nature of law's normativity,¹⁵ but it is also because my focus in this Review is elsewhere. And indeed not only for me but for Soper himself in this book, the argument about normativity is simply the precursor to the larger argument about deference. That larger argument does start with the argument about normativity, because if law can and does claim only that it is correct and not that it is authoritative, then we need to rethink the question of the citizen's attitude towards those claims. If law claims to be authoritative, we can get our minds around the question of whether and when we as subjects ought to recognize the content-independent authority of others, and when we as subjects ought to recognize the content-independent authority of the law. But if law does not even claim to be authoritative in this content-independent sense, does that mean that we have no obligation to obey it?

It is at this point in the argument that deference becomes crucial, in part because Soper's position is that although law does not in fact claim authority, it nevertheless has it, and people are morally bound to follow its lead. And it is in supporting this conclusion that Soper relies on and develops his broader account of deference. He acknowledges that people often defer to the views of others, and indeed frequently do so even when they perceive the views to which they are deferring as mistaken. So for Soper the universe of acceding to the views of others is not exhausted by acceptance of source-based authority, which he rejects as necessary to legality, and simple persuasion, in which we accede to the views of others because they have explicitly or implicitly persuaded us that those views are correct. We must explain, he insists, why people at times accede to views of others with which they disagree, and do so under circumstances in which they do not (and should not) accept that others have authority over them. This is the phenomenon of deference, he argues, and it is the phenomenon that remains in need of explanation.

If there is a genuine "Aha!" moment in this book, it is when, very early on, Soper points out that we frequently defer to those who are lower rather than higher on some scale of authority (pp. xii-xiii). Soper uses the examples of a higher court deferring to the findings of a lower one, and of one spouse deferring to the views of another, and we can add others to this list. Teachers sometimes defer to their students, parents sometimes defer to their children, and supervisors frequently

15. See note 10, *supra*.

defer to their employees, all in the face of actual belief by the deferrer that the decision being deferred to is erroneous. At times such deference is purely instrumental and strategic. Parents may defer to their children so that the children can learn from their own mistakes, or because deference is more conducive to family harmony and the avoidance of tears and screams. But at times something else is going on, and it is Soper's basic point that people often defer to their hierarchical subordinates and to their equals for reasons that are not simply strategic or instrumental.

With his simple but extremely important observation about downward (or parallel) deference, Soper uncouples the concept of deference from the bulk of the literature on obedience. In doing so, however, he imposes upon himself an obligation to explain why, if not for reasons of authority, and if not acting simply instrumentally, people would defer to the views of others even when they think those views wrong. The meat of this book is Soper's acceptance of this obligation, and his arguments in favor of the moral case for deference. And most of those arguments flow out of Soper's discussions of deference to the terms of a contract or the content of a promise (pp. 103-39), deference to the views of others in the context of what is called the principle of fair play (pp. 140-58), and deference to the commands and requirements of the state, whether expressed in formal law or otherwise (pp. 159-67). What joins all of these examples of deference, argues Soper, is that combination of self-respect and respect for others that comes from imagining oneself in the position of the agent whose views invite deference even in the face of disagreement. Imagining oneself in this way is not, for Soper, strictly or even largely instrumental. For him it is not just a question of things going better for everyone, on balance or in the aggregate, if we all behave in this way. And thus it is not a simple quid-pro-quo issue (nor a more complex variation) familiar from the literature on coordination problems and cooperative behavior.¹⁶ Nor is putting oneself in the position of another a matter of showing actual respect for the particular individuals or institutions to whom or to which we defer. Such causes for deference may indeed exist, but for Soper deference goes beyond "personal association" (pp. 169-72), and is thus better explained by the deference that we give to others not because, or at least not only because, of who *they* are, and not even only because of our actual relationship with them, but because we can, we do, and we should imagine ourselves in their shoes doing the best we can to serve some larger good in the context of a community, in the broadest sense, of which we are both members. Soper's noninstrumental argument for

16. For some of this literature applied to the question of the nature of law and legal obligation, see John M. Finnis, *Law as Co-ordination*, 2 *RATIO JURIS* 97 (1989); Postema, *supra* note 5; and Noel B. Reynolds, *Law as Convention*, 2 *RATIO JURIS* 105 (1989).

deference is thus partly an argument from self-respect, partly an argument from respect for others, and overarchingly an argument from community (p. 172).

III.

Although Soper's moral perspective on deference is imaginative, important, and arguably right,¹⁷ it is still in some sense only part of the picture, and a part that may fail to explain many of the most important systemic and institutional features of law. As William Twining, more than anyone else, has insisted,¹⁸ legal theory can only be understood by appreciating the *standpoint* of a particular theory. Just as a Holmesian perspective on the "bad man"¹⁹ or on law-as-prediction²⁰ may explain much of how subjects see the law but almost nothing about how legal actors such as judges see the law,²¹ and just as a theory aimed at actual or prospective lawyers wondering about their obligations inside the legal system may be very different from a theory designed for those who must evaluate the legal system from the outside,²² so too do most theories of law or accounts of particular features of law make much more sense from some standpoints than they do from others.

Once we see the unavoidable significance of standpoint, we can see that Soper's standpoint, like the standpoint of so much of legal and moral theory, is the standpoint of the autonomous moral agent deciding, on largely moral grounds, what to *do*. This agent, the

17. It is possible, however, that Soper moves a bit quickly from the existence of the practice of deference to the conclusion that there must be a moral argument supporting it. Numerous social practices, like alternate side of the street parking and packaging eggs in quantities of twelve, are the product of history, serendipity, or pure pragmatism, and there is nothing immoral or amoral about concluding that morality does not lie at the foundation of all of our social practices. Much of the actual practice of deference may be of this character, and, like the classic person with a hammer who sees every problem as a nail, Soper may be guilty of assuming that morality is the principal tool we need to employ, to explain, or to justify the institutions and practices of deference as we know them.

18. See, e.g., WILLIAM TWINING & DAVID MIERS, *HOW TO DO THINGS WITH RULES: A PRIMER OF INTERPRETATION* 64-71 (2d ed. 1982). For application of Twining's views, see David A. Schum, *Alternative Views of Argument Construction from a Mass of Evidence*, 22 CARDOZO L. REV. 1461 (2001).

19. "If you want to know the law and nothing else, you must look at it as a bad man . . ." O.W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897).

20. See Frederick Schauer, *Prediction and Particularity*, 78 B.U. L. REV. 773 (1998).

21. This is the standard critique first by Hart, H.L.A. HART, *THE CONCEPT OF LAW* 124-54 (2d ed. 1994), and then by Ronald Dworkin, RONALD DWORIN, *LAW'S EMPIRE* 34-37 (1986). For a broad discussion of the place of Realist claims within larger jurisprudential traditions, see Brian Leiter, *Legal Realism and Legal Positivism Reconsidered*, 111 ETHICS 278 (2001).

22. See Frederick Schauer, *Fuller's Internal Point of View*, 13 LAW & PHIL. 285 (1994); see also Brian Z. Tamanaha, *The Internal/External Distinction and the Notion of a "Practice" in Legal Theory and Sociolegal Studies*, 30 LAW & SOC'Y REV. 163 (1996).

omnipresent figure in modern and not-so-modern jurisprudence, is the addressee of various rules, norms, and other directives, but must in the final analysis make her own moral decision about what she is to decide and what action she is to take. Soper's puzzle is thus the puzzle of why this autonomous agent, having decided that the right thing to do is to ϕ , will then herself make the decision to defer to the decision of another, the import of which is that the agent will not ϕ even though she believes it right to ϕ . But note that in all of this there is only one important decisionmaker, the agent herself. She is deciding what is right; she is deciding that the decision of another is mistaken; and she is deciding that she will (or will not) defer to that mistaken decision. In important respects, it's all about me. And even though Soper's perspective on what that autonomous moral agent should do is shaped by how that agent should view the decisions of actual and hypothetical others within some shared community, it remains a persistently single-minded view.

I say "persistently single-minded" because there *are* other perspectives, and there *are* other standpoints. Consider, for example, the standpoint of one whose decision might be thought to be mistaken by someone else — call her Alice — and whose decision might nevertheless be the object of deference by someone else. Under such circumstances should Alice not reach the decision she thinks best because she would not want to put another person — call him Zeke — in the position of having to defer to a decision that he, Zeke, thinks wrong? Should Alice therefore engage in anticipatory deference, deferring to a decision by Zeke that she thinks wrong and thus making what she thinks is the wrong decision in the first instance because she, Alice, wants to defer to Zeke's decision and thus not impose upon Zeke, the deferrer, the burden of reaching a decision he thinks mistaken? Or should Alice instead respect (defer to) Zeke's expected decision to defer by simply reaching what she believes to be the best decision? In the large, therefore, should Alice's behavior be different — in one way or another — when she expects that behavior to be the object of deference as compared to when she does not expect that behavior to be the object of deference?

But of course there are more standpoints than just those of the deferrer and the deferee. Perhaps even more important is the standpoint of the institutional designer. Suppose as a member of Congress, or as a member of a Federal Rules Advisory Committee, Katherine believes that appellate judges, having read and internalized Soper's book, are likely to defer extensively, on questions of fact and also on questions of law, to the decisions of trial judges. And suppose Katherine believes as well that trial judges, partly because they have a much heavier workload and partly because they have, on average, less judicial experience, will make systematically worse decisions, including systematically worse moral decisions, than appellate judges. As a

member of Congress or the Rules Committee, therefore, Katherine believes that Soperian practices of deference, although embodying admirable sentiments on the part of appellate judges, will at the same time produce systematically morally worse decisions, and will do so to the detriment of the litigants and to the detriment of the judicial system. Under those circumstances should Katherine in her special official role strive to create a system of nondeference, or at least lesser deference, knowing that this will benefit countless litigants and the legal system as a whole? Or should Katherine instead engage in second-order deference, deferring to the views about deference of the appellate judiciary, not because she believes those views to be correct, but instead because all of the arguments for first-order deference as to matters of substance apply as well to second-order deference as to the question of deference itself?

I do not mean to be overly cute about this. The second-order issues are undoubtedly there, but there are always plausible stopping points, and the view that here is a “meta” argument about everything easily collapses into a shallow debater’s point.²³ But the larger point is not a point about second-order deference. Rather, it is a point about standpoint, and about the fact that the question about deference is not only about what the autonomous agent should do, and maybe not even primarily about what the autonomous agent should do, but is also about the behavior of other actors, and especially about the way in which the actor who is an institutional designer should take deference into account when designing decision-making institutions.

IV.

With Larry Alexander,²⁴ I have been exploring in a series of books and articles what he calls “The Gap”²⁵ and what I call “The Asymmetry of Authority.”²⁶ The idea in both, and an idea that Soper himself has resisted,²⁷ is that the question of authority looks very different from the perspective of the authority than it does from the perspective of the subject, and that it is perfectly sensible to imagine

23. The obligatory citation is to Leon Lipson, who said, “Anything you can do, I can do meta.” A.A. Leff, *Unspeakable Ethics, Unnatural Law*, 1979 DUKE L.J. 1229, 1230 n.2 (1979).

24. See Larry Alexander & Frederick Schauer, *On Extrajudicial Constitutional Interpretation*, 110 HARV. L. REV. 1359 (1997).

25. LARRY ALEXANDER & EMILY SHERWIN, *THE RULE OF RULES: MORALITY, RULES, AND THE DILEMMAS OF LAW* (2001); Larry Alexander, *The Gap*, 14 HARV. J.L. & PUB. POL’Y. 695 (1991).

26. SCHAUER, *supra* note 14, at 128-34.

27. PHILIP SOPER, *A THEORY OF LAW* (1984); Philip Soper, *Law’s Normative Claims*, in *THE AUTONOMY OF LAW: ESSAYS ON LEGAL POSITIVISM* 215 (Robert P. George ed., 1996).

that from the perspective of the subject there is no good reason to respect an authority as an authority but that from the perspective of the authority there may nevertheless be good reasons, moral and otherwise, for the authority to try to create a system of incentives, coercion, or persuasion in order to get the subject to do things that the subject, rightly from the subject's perspective, should see no reason to do. Although we have no shortage of moral theories addressed to the question of the morality of confronting authority, we await the well-worked-out theory addressed to the morality of imposing authority, especially in the context of a belief by the authority that the putative subjects of that authority are likely to cause harm to third parties.

Much the same applies to deference. The question of deference looks very different from the standpoint of those who give it than it does from the standpoint of those who receive it. Soper's extremely important book, in putting deference on the agenda of legal theory and in offering powerful arguments for engaging in it, has helped us enormously in understanding why autonomous moral agents do and should defer to the decisions of others. But on the questions of how autonomous agents as recipients of deference should behave, and how our institutions of deference ought to be designed, we await a quite different book from a quite different perspective. Indeed, at the conclusion of this book, Soper makes clear that his project is a moral one and that he is not engaging in empirical contingent policy analysis about the design of "artificially promulgated rules" to specify the exact contours of deference in any particular institutional setting (p. 175). But even if the inquiry is a moral one, it remains the case that the perspective of the autonomous agent confronted with the directives or decisions of others is not the only moral standpoint. What to do as the object of deference can itself be determined or guided by moral factors, and so too with more pervasive questions of institutional design. And as long as it is possible that the moral considerations governing deference will themselves look different from these other standpoints, then the comprehensive work on the morality of the practice of deference remains to be written. Soper's book, as a rigorous scholarly examination of deference from the point of view of an autonomous agent contemplating deferring to a decision she thinks erroneous, is a vital part of what is to be hoped will develop into a large and rich literature on deference. But it is to be hoped as well that at least some of that literature will recognize that deference, like numerous other social practices that have moral components and that can be evaluated and defended morally, may look very different from different vantage points. It is a trite slogan in the world of policymaking that "where you stand depends on where you sit," but to say that the same is true of morality is not to be a moral relativist. It is only to say that nonrelative morality itself may play out differently in the context of different roles, different decisions, and different

standpoints. With respect to deference, the moral inquiry into when and why to defer is a vital question. But it is not the only question.