

LAW AND OBLIGATION

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I. INTRODUCTION

In this article I discuss the ancient question of whether or not there is a general moral obligation to obey the law. The question of political obligation, as I shall call it, is a central issue not just for political philosophy but also for jurisprudence, by which I mean the philosophical study both of the nature of law and of the various concepts that are closely bound up with law in our own culture. It is with jurisprudential aspects of the question that I will be particularly concerned here. I do not attempt to provide an answer to the question of political obligation, either in general or for particular legal systems. I concentrate instead on clarifying the question itself and on elucidating the relationship between the concept of obligation as it applies to law and other important concepts in jurisprudence, including the concept of authority and, to some extent, the concept of law itself.

The concept of "obedience" involves, among other things, doing what somebody else tells you to do. Although the idea of doing what somebody else tells you to do is clearly a significant dimension of our concept of law, our notion of what a law is nonetheless cannot be reduced to the idea of either an order or a command. This was made abundantly clear by H.L.A. Hart in his critique of John Austin's theory of law.¹ An order can be issued by someone who neither has nor claims to have the authority to issue the order. Commands have the color of authority, but a command cannot include the commander within its scope, it cannot have normative content other than the imposition of an obligation, and so on. Hart's insights have led to a tremendous flowering of legal philosophy in the last 50 years. Writers of both a positivist and an antipositivist bent have put forward theoretical claims that could barely have been expressed in the limited theoretical vocabulary that

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1. H.L.A. Hart, *The Concept of Law*, 2d ed. (Oxford: Clarendon Press, 1994); hereafter referred to as *CL*.

was available to Anglo-American jurisprudence in the period before Hart wrote. These claims include, for example, the following: law includes principles as well as rules; law claims moral authority for itself; the organizing principle of law is the coordination of social activity. The fact that law can have normative content other than the imposition of obligations is now as universally obvious to theorists as it always was to lawyers. And theorists now take for granted that law can come into existence by means other than the deliberate prescription or enactment of obligation-imposing norms (although there is deep disagreement over how this can be so).² But despite all this the idea of one person telling another person what to do has, quite understandably, continued to draw much attention from legal philosophers. Now, however, this idea is discussed not with a view to giving us an exhaustive characterization of what a "law" is, but rather with a view to showing how, if at all, political authority can be justified.

It is, as I said earlier, a fundamental aspect of our concept of law that somebody tells somebody else what to do. It may or may not be fundamental to the concept that the person doing the telling is in a position to use coercive force to back up his demands and is prepared to do so. But whatever the truth may be regarding this latter point, it cannot be denied that law involves (among many other things) one person or group of persons, under authority or color of authority, telling another person or group of persons what to do.³ To tell another person what to do under authority or color of authority is to impose, or at least to attempt to impose, an obligation on that other person. It is thus quite understandable that the ideas of authority and obligation are often treated by contemporary legal theorists as essentially two sides of the same coin.⁴ Suppose for a moment that the content of a particular legal system consisted, apart from any foundational rules or arrangements such as a rule of recognition, entirely of obligation-imposing directives that had been deliberately issued *as* obligation-imposing directives by some organ or agent of government. If the government possessed legitimate authority, then it would have a normative power to obligate those over whom it held authority; persons

2. Some writers emphasize that laws or legal norms can be customary in nature. Hart himself thought that a customary legal norm, which he called the rule of recognition, lay at the foundation of every legal system. Some writers, including Jules Coleman and Ronald Dworkin, argue that the content of at least some laws can or must be determined by reference to moral considerations.

3. Where groups are involved, it is of course possible, as Hart pointed out, that the group doing the telling overlaps or coincides with the group being told what to do. This is an issue that for present purposes we can ignore. See Hart, *CL*, at 73-78.

4. See, e.g., Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 24 (hereafter referred to as *MF*).

who fell within the scope of a governmental directive would be bound by it, which is just to say that they would have an obligation to obey it. A government which claims to have legitimate authority claims, at the very least, to possess a power to obligate its subjects. This important point has a similarly important corollary. Since the exercise of such a power by an entity as powerful as a government is capable of affecting peoples' lives in very significant ways and possibly against their will, governments are claiming not just practical authority in some general sense but *moral* authority.⁵ The normativity of the law is, in other words, moral normativity, which means, among other things, that when governments or their agents attempt to impose obligations they are attempting to impose moral obligations.⁶

Joseph Raz has argued, correctly, in my view, that every legal system claims that it possesses legitimate authority in the sense described above, i.e., it claims to possess a moral power systematically to obligate its subjects by issuing morally binding directives.⁷ In fact he makes the stronger argument that such a claim to authority is part of the nature of law, and here again I believe that he is correct. Of course any given legal system may fail, either partly or entirely, to have such moral authority, but in order to be a legal

5. Raz has made this point, and variations on it, many times. For a recent statement see e.g. Raz, "Incorporation by Law," *Legal Theory* 10 (2004) 1, 6.

6. It is perhaps worth noting that even if the normativity of the law were not moral, so that the obligation it seeks to impose would have to be regarded either as *sui generis* in nature or as an instance of some kind of non-moral social normativity, it would still make sense to ask whether or not there is a general moral obligation to obey the law. Hart thought that the normativity of law was non-moral in the second sense just noted, but that did not prevent him from inquiring into whether or not there is a general moral obligation to obey. The question clearly makes sense, just as the question of whether or not there is a moral obligation to comply with the rules of a game makes sense. But the question of whether or not there is a general moral obligation to obey the law would presumably have a different meaning if the normativity of law were non-moral in character. In addressing it we would not be concerned with determining the truth of a general and systematic claim to moral authority that inheres in the very nature of law. We would be asking, rather, whether or not legal systems typically possess a certain kind of moral property that might well be contingent in character. Even if it turned out that all legal systems (or all legal systems that meet certain plausible minimal conditions) necessarily possess the moral property of to-be-obeyedness, it would still require further argument to show that this property was an aspect of the nature of law rather than, say, a property that all legal systems necessarily possess in the scientific rather than in the conceptual sense of necessity. (For example, perhaps all empirically realizable legal systems necessarily possess, in the scientific rather than in the conceptual sense, a certain empirical property F, and it is the possession of F that gives rise to the moral property of to-be-obeyedness. Conceptually speaking we could imagine a legal system that lacked the property F, even though no such system could ever empirically exist.)

7. See e.g. Raz, *Ethics in the Public Domain* (Oxford: Clarendon Press, 1994), 199. (Hereafter referred to as *EPD*)

system it must necessarily claim to have it. It is of course no easy matter to spell out with any degree of exactitude what it means to say that a legal system “claims” authority, let alone what it means to say that “law” claims authority. Raz has suggested that the law’s claim to authority is manifested by certain characteristic beliefs and attitudes on the part of officials,⁸ and he has suggested further that while it is a useful habit to personify the law, in the end what the “law” requires, claims or authorizes is a matter of what the organs of government, and in particular the courts, require, claim or authorize.⁹ There is obviously much more to be said about what it means to say that the “law” claims authority (or indeed to say that the “law” does anything).¹⁰ I am not entirely convinced, for example, that such locutions are only metaphors and that jurisprudence can do without a moral personification of the community of the kind that has been discussed by Ronald Dworkin.¹¹ But I cannot take up such issues here, and for present purposes I follow Raz in referring very loosely and more or less interchangeably to the law, the state, the government, and lawmakers and officials generally as claiming authority.

In sections III and IV of this paper I discuss the arguments of two pre-eminent legal theorists, Joseph Raz and John Finnis, each of whom attempts to elucidate the conditions under which governments possess the systematic moral power to impose obligations on their citizens and, hence, to elucidate the conditions under which citizens have, if they ever do have, a general moral obligation to obey the law. Before I come to the specifics of Raz’s and Finnis’s views, however, I first discuss in section II some preliminary issues that arise when we begin to inquire more closely into the relationship between the legitimacy of political authority on the one hand, and the existence of a general moral obligation to obey the law, on the other.

II. AUTHORITY, OBLIGATION, AND LIABILITY

There is undeniably at least a kernel of truth to the view that possessing legitimate political authority and being subject to a general moral obligation to obey the law are two sides of the same coin, since if one person has

8. *Ibid.*, 199-200. He also seems to suggest that attitudes and beliefs of those subject to law may also be relevant in this regard. See, e.g., *ibid.*, at 199: “I will assume that necessarily law, every legal system which is in force everywhere, has *de facto* authority. That entails that the law either claims that it possesses legitimate authority or is held to possess it, or both.”

9. Raz, *MF*, 70.

10. For another approach to this issue, see the interesting discussion in Timothy Endicott, “The Subsidiarity of Law and the Obligation to Obey,” *American Journal of Jurisprudence* 50 (2005) 233-48.

11. Ronald Dworkin, *Law’s Empire* (Cambridge, Mass.: Harvard University Press, 1986), 167-75.

legitimate political authority over another then the first has a normative power to obligate or bind the second. It is sometimes acknowledged that this systematic association of authority and obligation can be somewhat loose around the edges, since it is at least conceivable that a government might have, say, the legitimate authority to quarantine a diseased person without its being the case that the diseased person has an obligation to acquiesce in being confined.¹² But the common, if often implicit, assumption seems to be that such cases are exceptional and that as a general matter there is not much conceptual slack between legitimate authority on the one side and a general obligation to obey on the other. In this section I argue that this conceptual gap is wider than it is often taken to be, and that this fact may have important implications for our understanding of political authority.

In their respective discussions of the justification of political authority, both Raz and Finnis concentrate on the case of obligation-imposing norms¹³ that exist because they were enacted or prescribed by a law-maker who acted with the intention of imposing an obligation.¹⁴ Of course both theorists recognize that law can have normative content other than the imposition of an obligation: laws can, for example, create rights, liabilities, immunities, powers, and so on. And both recognize that laws can come into existence by means other than deliberate enactment, for example, through custom or the operation of a doctrine of precedent. Each of these points was established definitively by Hart in his critique of Austin's theory that all laws are at bottom, even if not

12. Cf. Leslie Green, *The Authority of the State* (Oxford: Clarendon Press, 1988), 234-40.

13. For the sake of convenience, in what follows I will often use the term "obligation-imposing" to describe directives or norms that *attempt* to impose an obligation, perhaps unsuccessfully, as well as to describe norms and directives that attempt to impose an obligation and succeed. Where it is necessary to differentiate between these two senses, context should generally make clear which I have in mind.

14. This is an oversimplification in the case of Finnis, who observes that lawmakers rarely use the language of obligation in drafting laws. Thus they ordinarily do not draft laws that say, "There is not to be killing," or "Do not kill." Rather they write "It is [or shall be] an offence to kill," or "Any person who kills shall be guilty of an offence." John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980; hereafter *NLNR*), 282. Finnis goes on to suggest that "it is quite possible to draft an entire legal system without using normative vocabulary at all." *Ibid.* This is far from obvious, however, since the term "offence" is clearly normative in character; to commit or to be found guilty of an offence is to be subject to a liability. The concept of obligation comes in, according to Finnis, in the following way: "[T]he professionally drafted legislative provision, 'It is an offence to kill,' contextually implies a normative direction to citizens. For there is a norm, so intrinsic to any legal ordering of community that it need never be enacted: criminal offences are not to be committed. Behind this idea the citizen need not go." *NLNR*, 283. This idea of a contextually-implied normative direction which is also "intrinsic to any legal ordering" is an interesting and complex one, which unfortunately I will not be able to discuss in the present paper.

on the surface, orders backed by threats. The truth of these points is obviously quite consistent with the claim that deliberately prescribed, obligation-imposing norms (which from now on I will call “directives,” for short) are the core of law and the key to whatever moral legitimacy law might possess. But if one’s argument for the (potential) legitimacy of legal authority focuses mainly on directives as thus defined, then the fact that law consists of much more than directives calls, at the very least, for comment.¹⁵

In order to draw out the theoretical implications of the fact that law can, normatively speaking, do much more than impose obligations, it will be helpful to begin with the example offered earlier of a legal system whose normative content consists, apart from foundational arrangements, entirely of directives in the sense defined above. In the case of such a legal system, the question “Is there a general moral obligation to obey the law?” is completely unexceptionable. It obviously makes sense to ask whether or not there is a general obligation to obey all the laws of a legal system which consists of nothing but attempts to impose obligations. Of course, questions arise about what it means to “obey” a directive, as well as about what it means to say that an obligation to obey is “general.” But in answering these questions we can draw on a well-developed and sophisticated literature on the general issue of political obligation.

The modern consensus on these questions is, I believe, along the following lines.¹⁶ A general obligation to obey the law of a legal system which consists

15. In the text, I discuss at length the implications of the point that law can have normative content other than the imposition of obligations. Throughout the paper I stick with the example of deliberately enacted or prescribed norms, and hence do not discuss the (relatively slight) complications that are introduced when we recognize that there are other kinds of legal norms, for example, customary norms. A more serious omission is my failure to consider the possibility that at least some legal content might not take the form of norms at all, where by “norm” I mean a standard of behavior whose existence conditions refer in some way to human behavior or attitudes. I fail to consider, in other words, the possibility that some legal content is provided, either necessarily or contingently, by morality. This is, of course, an important (if not always entirely clear) point of division between positivist and ant-positivist theories, as well as between different theoretical strands within positivism itself. At first glance this failure might not appear to be a serious one, since legal standards that are drawn directly from morality presumably have normative force just by reason of having been drawn from morality, so that the question of “obligatoriness” would seem to have already been answered. In fact I believe that the connections between theories of the “grounds” of law and theories of the normative “force” of law, to employ a useful distinction of Dworkin’s, are much more complex and interesting than this suggests. I have offered at least a preliminary exploration of some of these issues in Perry, “Associative Obligations and the Obligation to Obey the Law,” forthcoming in *Exploring Law’s Empire*, ed. Scott Hershovitz (Oxford: Oxford University Press, 2006).

16. This consensus is, for the most part, skeptical about the existence of a general obligation to obey the law. See particularly John Simmons, *Moral Principles and Political Obligations*

entirely of directives exists if and only if everyone who is subject to the system has a moral obligation to obey each and every one of its laws simply because they are laws. To say that one has an obligation to obey a law simply because it is a law does not mean that one's reason for action in doing as the law requires must be that the law requires it; for the most part, the law is indifferent to why one complies with the law just so long as one does so. To say that one has an obligation to obey the law because it is the law means, rather, that at least one sufficient ground or basis of the obligation is the fact that the law exists. The law need not be the only basis of the obligation. We clearly have independent moral obligations not to assault and murder people, for example. However, if one has a general moral obligation to obey the law then each of the law's directives must be a basis of obligation even when there is an independent moral ground for doing what the directive requires. Often, of course, the law modifies (or at least purports to modify) independent moral obligations, or to make them more precise where they are indeterminate, and there would not be much point to law if it was not capable of at least sometimes doing this. But it will not suffice to establish a general moral obligation to obey the law to show that the law has had some effect on one's moral obligations. The consensus is, as I said, that in order to establish this it is necessary to show that everyone subject to the relevant legal system has an obligation to obey each and every one of its laws simply because it is a law. This challenge must be met not just where the law reproduces independent moral obligations, but also where the law makes moral mistakes, for example mistakes about what justice requires. Theories of political obligation almost always place limits on the extent to which the law can make moral mistakes and still give rise to a general obligation to obey the law, but it is nonetheless no easy matter to show that there is *ever* an obligation to obey an unjust law. Some theorists acknowledge that both a general obligation to obey the law and the specific obligations that one may have to obey particular laws can be *prima facie* and defeasible by other moral considerations; it is possible, in other words, that a *prima facie* obligation to obey an unjust law can be overridden by the independent requirements of justice itself.¹⁷ But, parti

(Princeton, N.J.: Princeton University Press, 1979), particularly chs. 3-5; Leslie Green, *The Authority of the State*, particularly ch. 8; and Raz, *EPD*, particularly ch. 14.

17. I believe that Raz and Finnis differ somewhat on this point. As I understand him, Raz accepts that a *prima facie* but overridden obligation is nonetheless an existing obligation that happens, under the circumstances, not to affect what a person ought to do. Raz, *The Authority of Law* (Oxford Clarendon Press, 1979), ch. 12. Finnis, on the other hand, seems to believe that an overridden obligation is no obligation at all, and leaves no moral residue in the actual moral world. Unjust laws are therefore laws only in some special, formal sense. See Finnis, *NLNR*, 354-62. Assuming I have got their respective views right, I do not think that, for purposes of

cularly since no legal system is ever completely just, a theory of political obligation would not have shown very much if it relied too extensively on this escape route and failed to show that there is, at least sometimes, a genuine moral obligation to obey at least some unjust laws.

It is worth pointing out that a certain ambiguity occasionally sneaks into our talk of a “general obligation” to obey the law. Sometimes we use this expression to mean something like the aggregate of all the specific obligations to obey each of a legal system’s individual directives, considered one by one. Often, however, we clearly have in mind a more abstract obligation to obey the directives of the system, *whatever they are*. This is the sense of a general obligation that people presumably have in mind when they speak of an obligation to obey even the content-independent laws of a legal system, i.e. those laws whose status as law does not depend at all on the (moral) content of the law but only on, e.g., what somebody said or did.¹⁸ As I believe the discussion in the preceding paragraph suggests, it is this latter, abstract sense of a “general” obligation to obey the law that holds the greatest theoretical interest for us. This is because the most theoretically interesting justification for a general obligation to obey will be, so to speak, top-down rather than bottom-up. A top-down justification would begin with the fact that we are dealing with a *system* of directives and then ask which moral property or properties of the system, considered as a whole, might give rise to an obligation to obey each of its directives regardless of their individual moral content. A bottom-up justification would begin with the individual directives of the system, ask whether there is a moral obligation to obey each one of them considered on its own, and, if the answer in each case was affirmative, conclude that there was, in the case of this particular system, a general obligation to obey the law. The conclusion that there is a general obligation

the present paper, anything of significance turns on this difference.

18. John Gardner has pointed out that what theorists (or at least non-confused theorists) generally mean by content-independence is independence from moral content, not content as such. See John Gardner, “Legal Positivism: 5 ½ Myths,” *American Journal of Jurisprudence* 46 (2001) 199, 208-09. He points out, for example, that jurisdictional constraints on the validity of laws often involve content-dependence of a non-moral kind. In my view the truth conditions of legal propositions need not be completely free of moral considerations, and hence need not be content-independent in even Gardner’s restricted sense. That is, however, too large an issue to be considered in this paper. For present purposes, and for present purposes only, I have assumed that all laws are norms, i.e. standards of conduct with existence conditions that are at least partly social in character. See note 15, *supra*. In this paper I will simply leave open the question of whether the content of at least some legal norms might be partially specified by non-social means, i.e. by reference to morality. As was observed in note 15, it is a further question again as to whether part of the content of law in general might be drawn directly from morality, and hence not consist of norms at all.

to obey that had been arrived at in this aggregative, bottom-up fashion would not appear to be of great theoretical interest for the reason that there is no obvious way for such an approach to establish that there could be an obligation to obey a given law just because it is a law. The only remotely feasible route for showing that a given law obligates just because it is a law requires us to look to the fact that the law belongs to, or has been generated by, a system of laws. It requires, in other words, a top-down approach of some kind. There is of course nothing controversial here, and both Raz and Finnis clearly recognize that any plausible justification for a general obligation to obey the law must begin with law's systematicity.¹⁹ Given the assumption that the relevant legal system consists entirely of directives, this might be regarded as just another way of saying that the issue of political obligation and the issue of the legitimacy of political authority are two sides of the same coin.

Recall that I stipulated that, for present purposes, all the laws of the hypothetical legal system we are considering are directives, meaning they are all obligation-imposing norms that have been deliberately prescribed or enacted by an authorized person or body (for example, a legislature). Let me now discard the assumption that the content of each law is obligation-imposing, although I will continue to assume for the time being that every law is a norm that was deliberately prescribed or enacted by an appropriately authorized entity. Now, however, the content of the law can include not only norms which (attempt to) impose an obligation, but also norms which (attempt to) create a power, norms which (attempt to) create a right, and so on. In the preceding paragraph I distinguished between the aggregative obligation that one might come under to obey the directives of a legal system considered one by one, and the abstract obligation that one might have to obey all the directives of a system whatever they require. Once we give up the assumption that the norms of the system all have to be obligation-imposing, it obviously no longer makes sense to speak of a specific "obligation to obey" that arises or might arise in the case of each and every individual legal norm. The concept of obligation (together with the concept of obedience) is specific to norms that (attempt to) create obligations. It has no direct application to norms that (attempt to) create a right, a power, a permission, an immunity, etc. The important question that arises when we consider the norms of a normatively heterogenous legal system one by one would thus seem to be this: Did the creators of the norm succeed in accomplishing what they intended to accomplish, normatively speaking, in creating the norm they created?²⁰ If they

19. See, e.g., Finnis, *NLNR*, ch. 11; Raz, "About Morality and the Nature of Law," *American Journal of Jurisprudence* 48 (2003) 1.

20. It is possible that a lawmaker might intend to create a legal norm without intending to

intended to bring an obligation into existence, did they succeed in creating an obligation? If they intended to bring a power into existence, did they succeed in creating a power? And so on.

Consider once again the distinction between the aggregate of specific obligations that one might have to obey the norms of a legal system considered one by one, and the abstract obligation to obey all the norms of a system considered as a whole. For the reasons we just explored, there can be no specific obligation to obey a norm that does not create or attempt to create an obligation. To think otherwise is to commit a conceptual error of a particularly egregious kind; in the case of a permission or power, for example, the question of obedience does not even arise. But what about the abstract obligation to obey all the norms of the system considered as a whole? Is there some analogue to *this* sense of a general obligation to obey the law, even when the normative content of the law is not restricted to directives which impose obligations? It is in this direction that we should be looking in any event, given our earlier conclusion that this is the sense of a general obligation to obey that is of greatest theoretical interest. Admittedly the concept of “obedience” seems out of place here. But might it not make sense to speak of a general obligation “to conform one’s behavior to” all the norms of a legal system, or an obligation “to act in a way that is consistent with” all those norms, or something along these lines? There are many variations on this theme that might be proposed, but I will not discuss the specifics of any of them because I do not think there is any such proposal which can hope to succeed. The abstract general obligation to obey that we rightly think might arise within a legal system consisting only of directives simply has no analogue in a legal system whose content is normatively heterogenous. The main reason for this is not the difficulty we would undoubtedly encounter in formulating the content of the obligation, i.e. the difficulty we would have in determining whether the obligation would require one to “obey” the specific norms of the system, or “conform one’s behavior to” those norms, or “act consistently with” them, or whatever. The most fundamental difficulty, rather, is with the very idea of an *obligation* that took anything like this form.

To see this, consider once again what it means to say that a government possesses legitimate authority over some group of persons. It means, as we

create this or that type of legal norm, so that the question of what type of norm was in fact created becomes a question of interpretation. It is also possible that a lawmaker might be mistaken about the type of legal norm that he or she created. While these complications must be addressed by a complete theory of legal norm creation, I do not believe they call into question the intuitively appealing idea that a lawmaker who intends to create a legal norm also ordinarily intends to create, by means of the lawmaking act, a particular type of legal norm (i.e., one that imposes an obligation, creates a power, and so on).

have seen, that the government has the normative power to create morally valid norms for those persons. In the case of a legal system that consisted entirely of directives, this power would be limited to the enactment of norms which impose obligations. But in a normatively heterogenous legal system the power of a legitimate government would be much broader: it would authorize the government to enact not only obligation-imposing norms, but also right-creating norms, power-creating norms, permission-creating norms, etc. The power which such a government both claims and possesses is, if it is not subjected to any restrictions, a power to affect the normative situation of the relevant persons in almost any conceivable way. This means, for reasons analogous to those we discussed earlier in connection with the power to impose obligations, that such a government both claims and possesses the power to affect those persons' *moral* situation in almost any conceivable way.²¹ How are we to describe this general state of affairs from the perspective of those who are subject to having their normative situation affected? It seems to me to be a mistake to characterize their overall normative relationship to the government by reference to a general obligation of any kind. The most appropriate description of this relationship is, rather, that they are under a general *liability* to have their normative status affected by the government. A liability rather than an obligation is, after all, the precise Hohfeldian correlate of a power. In a normatively heterogenous legal system the analogue of a general obligation to obey the law is not an obligation at all. It is, instead, a general liability.

To consider an example, think of the various laws that create and regulate the power to contract. These laws are only valid, morally speaking, if the government has the moral authority to enact them. To say that the government has such authority is not to say that it has the power to place anyone under an obligation. It is to say, rather, that it has the power to create a power. Odd though it may sound to put the point this way, the government can only have this power if citizens are under a general moral liability to have these sorts of powers conferred upon them. I have no doubt that Finnis is correct to suggest that the normative relationship of citizens with their government is *partly* defined, even in the case of non-obligation-imposing laws, by obligation-

21. Particular legal systems might impose local restrictions, usually of a constitutional nature, on the powers that governments may have within that system. Although I will not have time to discuss the issue in this paper, I believe that the concept of law may itself impose restrictions on the legitimate moral powers that any government may possess. It is a further question, of course, whether the result of a purported exercise of power that exceeds a lawmaker's inherent jurisdiction is a "law" or not. See further the discussion in Finnis, *NLNR*, 359-60.

imposing norms such as “Perform contracts.”²² But this cannot be the whole story, or even the most theoretically fundamental part of the story. At the moment a government with legitimate authority enacts a law which confers a power to contract, the citizen’s normative situation has been altered, and that is true even though no one has at that point exercised the power to contract and thereby come under an obligation to another person. The justification of the government’s power to impose a power may well have something to do with the fact that the government also has the power to impose obligations, but it is not obvious that this is so, and in any event it would seem that this cannot be the full or complete justification of the possession of the power to confer a power. One cannot hold a moral power to create a power unless the existence of the latter power would be morally valuable, and presumably the value that would be served by this latter power must also figure, perhaps in some fairly indirect way, in the justification of the former power as well. I will return to this example in section III.

At least in the case of normatively heterogenous legal systems, then, the genuine flip side of legitimate political authority is not general moral obligation but, rather, general moral liability. To this it will undoubtedly be responded that if this claim is true of a normatively heterogenous legal system, then it must also be true of a legal system consisting purely of directives. The Hohfeldian correlate of a power is *always* a liability, regardless of whether the power is comprehensive or merely a power to impose obligations. This response is entirely correct. In the case of a normatively heterogenous legal system it does not even make sense, strictly speaking, to claim that there is a general moral obligation to obey the law. It only makes sense to ask whether the law has general normative force, or something along those lines. In the special case of a legal system consisting entirely of directives it does make sense to say that there is a general moral obligation to obey the law, in either the aggregative or in the abstract sense that I spoke of earlier. But it is only in the abstract sense that the claim has much theoretical interest, and in order to justify the abstract claim we must ultimately look to whether or not persons are under a certain kind of general moral liability. This is because we can only justify the abstract claim by looking to the systemic nature of law, which in this context means the social or institutional potential of law to generate, modify, and discard norms over time. Legal systems generate, modify, and discard norms through the exercise of a certain kind of moral power which

22. See Finnis, *NLNR*, 286. For Finnis, “Perform contracts” is one of a number of “contextually-implied normative directions” which are “intrinsic to any legal ordering.” See further note 14 above. Other such directions include “Do not commit offenses,” “Abstain from torts,” “Pay debts,” and so on.

they claim for themselves. In the case of a legal system that for some reason could only generate obligation-imposing norms, this power would not extend beyond the creation, modification, and extinction of obligations. From the point of view of the subjects of such a system we could certainly speak loosely of an abstract general obligation to obey all the norms which the system generates. But they can only have such an abstract obligation if they are already under a prior moral liability to have obligations thrust upon them. The most fundamental theoretical question about the normative relationship between citizens and their government asks, therefore, whether such a general moral liability exists. It is only after we have answered this question affirmatively that we can conclude that there is a general moral obligation to obey the law in anything other than an aggregative sense.

If legal systems consisted entirely of directives, then the distinction between a general obligation to obey the law and a general liability to have one's normative situation altered would probably be of technical interest only. But legal systems are never like this. They are always, as Hart made vividly clear, normatively heterogenous. In the following sections of this paper I will discuss two theories which attempt to state the conditions under which political authorities are morally legitimate. Both of them conclude that moral legitimacy depends on the existence of a morally valid power to impose obligations, the flip side of which is a general moral obligation to obey. But legal systems in fact claim to possess much broader moral powers, and the flip side of those powers is not an obligation to obey but rather a liability to have one's normative situation altered. Although I will have space in what follows to address such matters only briefly, we should as we examine these two theories of political obligation (and, of course others theories that I do not discuss in this paper) bear in mind such questions as what they would or could say about the justification of political authority in the broader sense. I have no doubt that the power to impose obligations is a central case—indeed almost certainly *the* central case—of political authority. But how is that central case related to, e.g., a power to create a power or a power to create a permission? One possibility is that the justification of the power to impose an obligation can be generalized in some way, so that the same *form* of justification can be extended to the justification of other powers. Another possibility is that possession of the power to impose an obligation is a central case because it directly figures (sometimes, often, or always) in the justification of other powers: In other words, the fact that the government has the power to impose obligations may be a necessary (but perhaps not sufficient) element of the justification of the government's possession of, e.g., a power to create a power. And there may be still other possibilities as to what the relationship

is between the power to impose obligations and the power to change people's normative situation in other ways.

III. RAZ ON POLITICAL AUTHORITY AND POLITICAL OBLIGATION

Raz defends a theory of political authority which he calls the service conception. The details of that view are, I hope, sufficiently familiar that I do not have to review them in detail here. The basic idea is contained in the so-called normal justification thesis, which holds that one person is a (practical) authority over another if the second will do better in complying with the reasons that apply to him if he defers to the judgment of the first person than if he tries to act on his own judgment of what ought to be done.²³ Political authority is, according to Raz, just a special case of practical authority thus understood. Political authority in its most central manifestations involves the government or one of its agents issuing a directive which claims to impose a moral obligation, and a directive of this kind is, for Raz, the central case of law. The normal way to show that the alleged obligation exists is to show that the normal justification thesis applies. If it does, then the person or persons who fall within the scope of the directive have an obligation to obey it. If they have an obligation to obey every directive which the government issues, then they have a general moral obligation to obey the law. As this summary suggests and as Raz has acknowledged, the service conception of political authority focuses on "the authoritative imposition of duties."²⁴ Raz holds that "all the other functions authorities may have are ultimately explained by reference to the imposition of duties."²⁵ This claim touches on some of the questions about the justification of authority that I raised in the preceding section, and I will return to it briefly later. For the time being, however, I wish to take the service conception of authority on its own terms.

Raz is skeptical about the existence of a general obligation to obey the law. He does not think that there is any legal system in which the normal justification thesis can be shown to hold for every person and for every law which the system has in fact generated. But he does not deny that in reasonably just legal systems at least some people have an obligation to obey at least some laws just because they are the law. According to the service conception of authority, they have such obligations when the normal justification thesis applies. As this suggests, Raz does not regard the legitimacy of political authority as an all-or-nothing matter. A government can have partial

23. See e.g. Raz, *EPD*, 198; *MF*, 53.

24. Raz, *MF*, 44.

25. *Ibid.*

authority, both in the sense that only some of its laws are ever justified and in the sense that any given law can be justified for some people but not for others. As he writes, “the normal justification thesis invites a piecemeal approach to the authority of governments, which yields the conclusion that the extent of governmental authority varies from individual to individual to individual, and is more limited than the authority governments claim for themselves in the case of most people.”²⁶ Raz does not think that this is a morally untenable situation, however, because even governments which do not possess authority or which possess authority only partially can do a great deal of moral good.

I will return to the question of partial authority later. First, however, I want to discuss a certain conceptual dimension of the service conception of authority. Even though, as a practical matter, no legal system ever possesses the full authority it claims, it must, according to Raz, be *capable* of possessing such authority. If that were not the case then the officials and institutions which claim authority would be conceptually confused, and while they can occasionally be confused they cannot be confused systematically. This is because the claims and conceptions of officials “are formed by and contribute to” the concept of authority itself.²⁷ It might be added that, because of the centrality of the concept of authority to the concept of law, those same claims by officials are formed by and contribute to the concept of *law*. If officials were as confused as they would have to be if they were wrong in thinking that the law is capable of having the full moral authority it claims, then the very idea of law would not make sense. Because the concepts of law and authority are used by officials to describe their own practice of claiming systematically and comprehensively to impose obligations on others, and because those same officials believe that they not only claim to impose obligations in this way but actually succeed in doing so, something would have gone seriously wrong with the concepts if there could not, in fact, be any such systematically-obligating practice.

In order for a legal system to be capable of possessing the full authority that it claims, it must, according to Raz, *in fact* possess certain non-moral properties, such as the attribute of being able to communicate.²⁸ More importantly for present purposes, however, it must also be capable of possessing, in principle if not in fact, the moral property of comprehensively and systematically obligating in just the way that it claims to do. Fortunately for the concept of law, the normal justification thesis saves the day. Even

26. Raz, *MF*, 80.

27. Raz, *EPD*, 201.

28. Raz, *EPD*, 199-204.

though it never justifies *in practice* all the obligations that the law claims to impose, it shows that, in principle, those obligations are at least capable of being justified. If, implausibly, each and every person would happen to comply better with the reasons that apply to him if he were to obey each and every law on each and every occasion to which it applies, a general obligation to obey would exist. This is enough to show that officials are not confused in making the claims about their practice that they make, and this is so even though they are invariably mistaken, at least to some degree, in making those claims. In principle they could be right, and this is enough to rescue the concept of law from confusion.

I believe that Raz is correct to make the conceptual claims that he does about the concepts of authority and law, and that is one reason why the question of whether or not there can be a general obligation to obey the law is central not only to political theory but also to jurisprudence. But I have some doubts as to whether these difficulties can be avoided quite as easily as Raz suggests. The service conception of authority succeeds, I believe, in showing how the law can give rise to reasons for action that people would not otherwise have. But it is nonetheless not entirely clear to me that it can bear all the moral and conceptual weight Raz tries to place on it. To put the difficulty in a nutshell, the service conception of authority may not be the law's conception of authority. The reason for this is that the reasons for action that are underwritten by the normal justification thesis do not seem to be, so far as the law's own self-understanding is concerned, the right kind of reasons. To show this, I want to focus on one type of case that Raz discusses at length, namely, the type of case in which one person has authority over another because the first possesses more expertise about some subject than the second.²⁹ Consider the following example. Suppose that we all have moral reason not to engage in action that would endanger the survival of a certain species of fish, for example cod. It doesn't matter for present purposes what the basis of the underlying moral reason is, but suppose it is the preservation of the food supply for future generations. Cod fishermen therefore have an underlying moral reason not to overfish. They may, however, lack the knowledge that would permit them to continue to fish without rapidly depleting the cod stocks. Suppose the government, following appropriate consultation, correctly determines that cod stocks can be sustained indefinitely if cod fishermen follow certain rules. These rules might impose quotas, or they might require that cod only be taken in certain months or if they are of a certain size. Raz's idea is that, if the government issues directives giving effect to these rules, the directives *replace*, for the fishermen, their underlying

29. See, e.g., *ibid.*, 332.

moral reason not to endanger the survival of cod. Raz maintains that the directives are, for the fishermen, new moral reasons. They have these reasons because they are more likely to do what they ought to do if they act on the directives than if they try to figure out for themselves how to avoid endangering cod. Notice that even though the directives are said to give rise in this way to new moral reasons, the directives are justified because they reflect the underlying moral reasons of conservation that we assumed apply independently to the fishermen.

In giving this example, I assumed that the government was correct in its assessment of what was required to preserve fish stocks. What if this assumption does not hold? Raz argues that the directives will still bind the fishermen, provided the government is more likely to be correct than they are, across some specified range of cases, about what right reason requires. If Raz is right about this, then legal directives can be binding even when they are substantively mistaken or unjust. Much depends, obviously, on how the appropriate range of cases is to be specified. Perhaps it concerns all matters pertaining to cod, or all matters pertaining to fishing, or all matters pertaining to conservation. There are some difficult issues here, but let me set them aside.³⁰ The important point for present purposes is that, according to Raz, the law makes a general claim that it is *always*, in *all* types of cases, more likely to get matters right than its subjects are. Of course, as Raz says, this claim is extremely unlikely to be correct as an empirical matter, but it is *conceivable* that it might be correct. If it were correct, then all law would be, according to Raz, obligatory in just the way that it claims to be. It is important to emphasize that this claim to comprehensive obligatoriness on the part of the law is *systemic*. The claim is not that each and every directive, considered one by one, correctly reflects the appropriate underlying reasons. The claim is, rather, that each and every directive is obligatory because it belongs to a system of content-independent directives that is, taken as a whole, morally authoritative.

The first question that I wish to raise about this very elegant set of arguments is this. Even if it is true that, in a broad range of cases, the normal justification thesis gives rise to new reasons for action, it is far from clear that those reasons are, as the law itself insists, obligations. Suppose that I will, in fact, do better in complying with the cod reasons that apply to me if I follow the government's directives regarding quotas, catch size, etc. than if I try to figure these matters out for myself. It seems correct to say that I have a new reason, and even a new moral reason, that I did not have before. Moreover

30. I have discussed some of these issues in Perry, "Second-Order Reasons, Uncertainty and Legal Theory," *Southern California Law Review* 62 (1989) 913.

this new reason is, as Raz says, exclusionary or preemptive in character, because in order to avoid the double-counting of reasons, I have to act on the directive alone and not simply take it into account in my assessment of what the underlying reasons require. Granting all this, what basis is there for saying that the directive is not only an exclusionary (moral) reason for me, but that it is also an *obligation*? All that Raz seems to say about this issue is that I have an obligation *because* my reason for action is an exclusionary reason, i.e., because it preempts the reasons that the new reason is supposed to replace.³¹ If this were so, however, then presumably all exclusionary reasons would be obligations, including e.g. decisions (which Raz has elsewhere argued, correctly in my view, to be exclusionary reasons).³² But this is to use the term “obligation” in a rather weak sense, and, more importantly, in a sense which does not fully capture the sense of obligation that is implicitly presupposed by the law’s claim to authority.

One reason for saying that the service conception of authority does not fully capture the law’s understanding of obligation is the following. On the service conception of authority, we do not seem to have any ground for regarding the government as anything other than a moral resource that is, so to speak, just there for me. Indeed Raz says that, in expertise cases like the cod example, “the law is like a knowledgeable friend.”³³ But the law is not just informing or advising me that I ought to do X, and thereby giving me (if it happens to be a practical authority for me in the relevant area) a new exclusionary reason to do X. The law not only tells me what to do in the sense of informing me what to do; it tells me what to do in the sense of *commanding* me what to do. Friends do not ordinarily issue commands to one another, but a knowledgeable friend can nonetheless inform me what to do and thereby give me, in accordance with the normal justification thesis, a new exclusionary (and possibly moral) reason that I did not have before. If this is all that Raz means by saying that I come under a new obligation, then the law is certainly capable of giving me obligations. But the law claims that I have an obligation to do X because it has commanded me to do X, and the obligation that arises from a command appears to be different in kind from the obligation that I might

31. *MF*, 60. I should note that I am not distinguishing, for present purposes, between obligation and duty. In remarks offered in conjunction with a seminar I presented at Columbia Law School, Raz made clear that by “duty” he means reasons which are not only exclusionary but also categorical, i.e., independent of one’s optional goals and aspirations. I believe that the points I make in the following paragraphs in the text are unaffected by this clarification. This characterization of duty (and hence, in my usage, of obligation) does not fully capture the sense of obligation presupposed by the law.

32. Raz, *Practical Reason and Norms* (London: Hutchinson & Co., 1975), 65-71.

33. Raz, *EPD*, 332.

come under as a result of being given good advice by a friend. In commanding me, the law purports to exercise a power to obligate me. If the law's command and the friend's advice gave rise to obligations in the same way, presumably we would have to say that the friend, in giving her advice, has likewise (perhaps unknowingly) exercised a power to obligate me. It seems very odd, however, to say that the friend has done any such thing. If, on the other hand, the friend's advice gives rise to an obligation without involving the exercise of a normative power, then it would seem that the normal justification thesis does not fully capture the sense of the law's claim to obligate by commanding.³⁴ It is also worth mentioning the following, related point. The law may well be correct in telling me what I have moral reason to do, but why does this give it the normative power to demand of me that I comply with that reason, let alone back up that demand with coercion?³⁵ There may be a way to close this gap, but it is not immediately evident what it is.

Even if Raz is correct that any reasons for action which are generated by the normal justification thesis are properly characterized as obligations, there

34. It is of course true that the advice of a friend resembles the command of the law in that both take the form of normative propositions. But it is worth pointing out that the normal justification thesis (or at least some appropriately generalized version of it) can give rise to reasons for action whose source is not even a person, let alone a person asserting normative propositions. If, for some reason, I will do better in complying with the reasons that apply to me by reading the entrails of birds than by trying to exercise my own unaided judgment, then it would seem that I have an obligation, of the same general kind that the normal justification thesis involves, to do whatever it is that the entrails "tell" me to do. Obviously the entrails could not be said to be exercising a normative power, but the important point here is that the reasons for action to which the normal justification thesis gives rise are really just a special case of a much broader category of epistemically-oriented reasons that has nothing in particular to do with the concept of authority. This suggests, although it is not enough by itself to establish, that the service conception of authority does not in fact capture the essence of authority, where by "authority" we mean the possession of a power to obligate.

35. In his Comment on this paper, Gideon Rosen rightly points out that for many theorists, the question of whether or not the law has "the authority to enforce the laws" is the most urgent question of political authority. He goes on to observe that "the authority to impose obligations ... is one thing, enforcement obligation another," adding later that "I see no reason ... to suppose that Raz's account is incompatible with the law's possessing this sort of authority." One of the issues raised by the general problem of political authority is, however, whether the normative power to impose obligations and the normative power to enforce obligations are as distinct from one another as Rosen appears here to suggest. According to the Thomist tradition, which attempts to justify political authority by looking (in part) to governmental power in the non-normative sense, i.e. by looking to the sheer fact that governments can get people to behave as the government directs, the two kinds of normative power necessarily go hand in hand. I discuss Finnis's version of the Thomist approach in the following section. I suggest there that this aspect of the Thomist view, along with other aspects, brings its conception of the law's authority closer to the law's own conception.

is another way in which this sense of obligation does not fully capture the understanding of obligation presupposed by the law. This can be brought out by asking the following question: To whom, if to anyone, are these obligations owed? Recall that Raz says that, in the expertise cases, “the law is like a knowledgeable friend.” Perhaps in the right circumstances one has an obligation to do as one’s friend advises, but surely one does not owe that obligation to the *friend*. One owes it, if to anyone, to oneself; one has an obligation to oneself to get the matter right, so to speak. The law, however, does not look on the situation that way. Not only does it regard me as being under an obligation, it regards me as owing that obligation to the government or community or state.³⁶ I do not simply have the obligation in the air or owe it solely to myself.³⁷ Relatedly, legal authorities regard themselves as having

36. The point I am making here has been very loosely phrased, and it requires much more elaboration than I can offer in this paper. At the Conference on *Natural Law and Natural Rights* John Finnis rightly pointed out that it is very implausible to say that legal obligations are owed to the *government*. He went on to add, however, that in his view legal obligations are owed to the *community*, and this is sufficient for my purposes. I believe that the correct view is, very roughly, something along the following lines. The government, claiming to act on behalf of the community, attempts to impose an obligation which it further claims is owed to the community in whose name it says it is acting. I thus agree with Gideon Rosen when he writes in his Comment that “the obligation is not owed to the lawgiver *qua* lawgiver,” although I think he goes too far when he adds that “[i]t is a *coincidence* that the source of the authoritative command and its ‘beneficiary’ [in Rosen’s example, the community] coincide.” (Emphasis mine.) The government (or lawmaker) regards itself as an agent acting on behalf of the community, its principal. As I say, much more elaboration of this view is required, but bear in mind that the basic idea is in the first instance simply that the lawmaker *claims* to impose an obligation that is owed not directly to itself but to the community it represents. If this is correct, it may well be that political authority can only be justified in a way that makes sense of the kind of claim the law is making if the proposed justification involves a strong moral personification of the community, along the lines discussed by Dworkin in *Law’s Empire*, note 11, *supra*. In fact, as I noted in section I, it may be that we can only make sense of the idea that “the law” (as opposed to the government or an official) makes “claims” by appealing to a moral personification of the community, but that is another matter.

37. In his extremely interesting discussion of what he aptly calls in his Comment the problem of “directedness,” Gideon Rosen suggests, in effect, that the directedness of legal obligations follows the directedness of the underlying moral reasons to which the normal justification thesis appeals. Thus the law against treason (if it is morally valid) creates an obligation that is owed to the community because the underlying reasons “include the obligations that I owe to my fellow citizens to maintain the peace, preserve just institutions, and so on.” There is clearly much about this suggestion that is right, but I believe that a great deal more needs to be said before we could be in a position to conclude that it is sufficient to solve the problem of directedness (at least as this problem arises for the service conception of authority.) I can here offer only the very briefest of remarks. The main point I wish to emphasize is that the law claims to impose obligations which are owed to the community in a much wider set of circumstances than Rosen’s suggestion would appear to permit. Thus the law claims to impose obligations that are directed in this way even when the underlying moral

a right to demand compliance with the law (which is not the same thing as having a right to *enforce* the law), just as parents have a right to demand compliance with commands they issue to their children. In both cases, it seems correct to say that there is a duty owed to the parent in the one case, and the appropriately characterized collective entity in the other case.

A final reason to think that the law's conception of authority may not be that of the service conception has to do with the scope of the authority that the law claims for itself. Take the cod example once again. The law regards me as bound by its directives on cod even if I am the world's greatest living expert on the subject.³⁸ Similarly, the state of New Jersey regards me as bound by its directives on cod even if I would comply much better with the cod-reasons that apply to me if I were to follow the laws of Massachusetts instead. In short, the law does not allow for the kinds of exceptions that seem to be unavoidably built into the normal justification thesis itself. If the law's conception of authority were that of the service conception, then it would presumably acquiesce gracefully, like a friend, whenever it was clear that someone else knew more than it does. But that is never the attitude the law takes. This difficulty can be put in another way. Raz is quite right to insist

reasons for a given law do not include obligations at all. This might well be true of the cod example that I discuss in the text, where the underlying reasons might simply be various first-order reasons which do not possess a quality of directedness. (Whether or not first-order reasons can be directed is perhaps an issue in its own right, although it is not one that I can take up here) It is likewise plausible to think that the central prohibitions of the criminal law, such as the prohibition on murder, create or at least attempt to create obligations that are owed to the community as a whole and not just to other individuals. These prohibitions of course reflect the underlying moral obligation that we owe to all other individuals (and not just to members of our own community) not to kill them without justification, but owing an obligation to an individual is quite different from owing it to a community. Let me add, finally, a small quibble about the example that Rosen offers in support of his claim that "[it] is an exaggeration to say that the law always construes its commands as generating obligations owed to the community." Rosen suggests that the law of contracts involves a conditional command that gives rise, when a contract is formed, to an unconditional obligation that is owed not to the state but to the promisee. I agree completely that contractual obligations are owed to the other party and not to the state. As Raz has pointed out, however, it may well be that, even though such obligations are legally enforceable, they are not actually part of the law. See e.g. Raz, "Incorporation by Law," *supra* note 5, 14. More importantly, the law of contracts does not issue a conditional command but rather creates a normative power which private persons then mutually exercise so as to confer obligations on one another. The law never purports to claim that these privately-created obligations are owed to the community or to the state, but since the law of contracts does not involve a directive or a command this cannot be a counterexample of the kind Rosen seeks. See further my discussion of the contracts example later in this section.

38. It is of course possible for the law expressly to create exceptions on this or indeed on any other ground. In the discussion in the text I am assuming that the cod law has not itself created such an exception to its own application.

that the law's claim to moral authority is both comprehensive and systemic. The law does not claim that it gets the matter right now and then or from time to time; it insists that it gets the matter right all the time, in all types of cases, and for everyone. In other words, the law's own self-understanding insists that its authority is an all-or-nothing matter. As Finnis puts the point, the law presents itself as a seamless web.³⁹ But, I wish to suggest, precisely because the service conception of authority permits obligations to arise in a piecemeal fashion, it cannot be the conception of authority that inheres in the concept of law.

Let me say something, finally, about the set of questions that I raised in the preceding section. I argued there that because governments claim to do much more than impose obligations, it is not necessarily sufficient to justify the legitimacy of political authority in its entirety to show that governments can have the moral power to impose obligations. Raz of course recognizes that governments do much more than impose obligations, but as I noted earlier he argues that "all the other functions that authorities may have are ultimately explained by reference to the imposition of duties."⁴⁰ I will assume that when Raz says that all the functions of authorities besides the imposition of obligations can be "explained" by reference to the imposition of duties, he means, at least in part, "justified." The justification of the authority to confer powers, create permissions, etc., must clearly be dealt with on a case by case basis, so it will be helpful to consider a concrete example, such as the contracts case that was briefly discussed in the preceding section. At the end of section II, I considered two possible ways in which the power to impose obligations, which is clearly a central case of governmental authority, might

39. Finnis, "The Authority of Law in the Predicament of Contemporary Social Theory," *Notre Dame Journal of Law, Ethics and Public Policy* 1 (1984) 115.

40. *MF*, 44. Raz elaborates as follows: "Rights ... are grounds for holding others to be duty bound to promote certain interests of the right-holder. Legal personality is the capacity to have rights and duties. In every case the explanation of the normative effect of the exercise of authority leads back, sometimes through very circuitous routes, to the imposition of duties by the authority itself or by some other persons. Therefore, while it is impossible to 'reduce' rights, status, etc. to duties, it is possible to explain 'authority' by explaining the sense in which authorities can impose duties." It is not entirely clear to me what Raz means by this. In a case in which the explanation of the normative effect of an exercise of authority leads back, not to the imposition of an obligation by the authority but only to an obligation that is imposed "by some other persons," how does this contribute to an explanation of authority in terms of the power of authorities to impose obligations? To advert to the example discussed in the text, the law of contracts creates a normative power which individuals can mutually exercise so as to create new obligations for themselves. But it seems to me that the *government's* power to impose obligations, as opposed to the power of individuals to confer obligations on themselves, only becomes relevant to, e.g., the justification of the power to create the power when we bring in the question of enforcement. See further the discussion in the following paragraph in the text.

be related to the justification of other governmental powers. One possibility is that the justification of the power to impose obligations is generalizable to these other powers. There is, however, no obvious way to generalize the normal justification thesis so that it could justify a power to confer e.g., a power to contract, so let me set that possibility aside. The other possibility I mentioned is that the possession of the power to impose an obligation might directly figure in the justification of other governmental powers. This approach sounds much more promising, and I would like to discuss its application to the contracts case in some detail. For purposes of this discussion, I will assume that the normal justification thesis is, as Raz argues, the normal way to justify governmental authority to impose an obligation.

Suppose the government passes a law which claims to confer a power to contract on its subjects. It can only do this if it has the moral power to confer such a power (and hence only if its subjects have a liability to have such powers conferred upon them.) How might the government's power to confer a power be justified by reference to the power to impose obligations (which for present purposes I will assume the government has)? Suppose that two persons purport to exercise their newfound powers to contract, and hence come to regard themselves as under new mutual obligations to one another. (They are only *actually* under such obligations if the contract law was justified, which is what we are trying to determine.)⁴¹ The mere exercise by private citizens of the power to contract does not seem in any way to implicate the *government's* power to impose obligations, so it would appear that the government's moral power to impose a power can only be justified by reference to its power to impose obligations if contractual obligations are legally enforceable. Suppose that one of the parties breaks his contract and the other party successfully sues him in court and obtains an award of damages. In issuing this award of damages the government, through the court, does clearly claim to impose a moral obligation on the contract-breaker. I assume it is Raz's view that the normal way to show that the contract-breaker in fact has this moral obligation is to invoke the normal justification thesis. The normal justification thesis only applies if the contract-breaker would better comply with the reasons that apply to him if he were to obey the damages award than if he were to act on his own judgment of what to do in these circumstances. The "reasons that apply to him" must presumably be, in this context, his obligation to comply with his contract (and the reasons which

41. It is possible that their contractual obligations coincide with obligations that they would have anyway because contract law simply reproduces their independent moral power to promise. In that case, the question of whether or not the contract law is morally justified is not answered by showing that it confers a new moral power, but rather by showing that it is a new ground for a moral power that already exists. For present purposes, we can ignore this complication.

flow from that obligation when he broke it). Of course he only has these reasons if the government had the power to confer the power to contract on him in the first place, which is what we are trying to determine. The argument must therefore presumably be that the justification of the government's power to confer the power requires us to look ahead, so to speak, to the fact that the government will enforce contracts and can be shown, under the normal justification thesis, to have the moral authority to do so. This would all seem to be perfectly in order even though the reasons for action to which the normal justification thesis will eventually apply—namely, the obligation to comply with contracts and the associated obligation to rectify the situation if one does not—would not exist unless the government had the moral power to confer a power. This latter point suggests that the justification of the government's power to confer the power cannot look *solely* to the government's power to impose obligations, but I assume that Raz would not take issue with this. As was noted in section II, a person cannot hold a moral power to create a power unless the existence of the latter power would be morally valuable, and presumably the relevant value or values figure in some way in the justification of the former power as well. Raz, of course, has made important contributions to the literature on the values that are served by the possession of powers to promise and contract.⁴² My suggestion is that these values should, in one way or another, also figure in the justification of the power to confer the power to contract.

The example suggests that one reason—there of course may be others—that the power to impose obligations is the central case of political authority is that the justification of the other normative powers that governments claim for themselves normally involves, and perhaps even requires, appeal to the power to impose obligations. The example is only an example, of course, and while it may be suggestive in this regard, it would be necessary to examine these various other powers one by one in order to establish this point in a more definitive way. Even if, however, it could be shown to be true that the justification of the full range of the government's claimed moral authority—its power to confer powers, create permissions, etc.—requires appeal to the power to impose obligations, the example suggests that such powers cannot be justified *solely* by reference to the power to impose obligations. This point may well be an obvious one, but the emphasis on obligation means that it often gets overlooked in jurisprudence (even if not in the philosophy of contract, the philosophy of torts, etc.).

42. See Raz, "Promises and Obligations," in *Law, Morality and Society: Essays in Honour of H.L.A. Hart*, ed. P.M.S. Hacker and J. Raz (Oxford: Clarendon Press, 1977), 210, 226-28; Raz, *MF*, 86-87.

IV. FINNIS ON POLITICAL AUTHORITY AND POLITICAL OBLIGATION

Finnis's theoretical characterization of political authority is in many respects similar to Raz's. Finnis agrees that the central case of political authority involves the deliberate issuance of a directive which attempts to impose an obligation. He agrees that such a directive, if morally valid, creates an exclusionary reason for those to whom it applies. And he agrees that the law claims to obligate not on a piecemeal or case-by-case basis but rather systematically. As Finnis puts the point, it is part of the law's own self-understanding that "each obligation-stipulating law is a member of a system of laws which cannot be weighed or played off one against the other but which constitute a set coherently applicable to all situations and which exclude all unregulated or private picking and choosing amongst the members of the set."⁴³

There are other important similarities between Raz's and Finnis's accounts. Both think that political authority is a special case of a more general concept of practical authority, although, as will become clear, they have quite different views about what that more general concept is. Both also agree that one of the moral premises which is presupposed by the concept of authority, at least in the political context, is that the activity of governments in issuing obligation-stipulating directives has the capacity to achieve moral good. And both agree that this moral premise is true. As we have seen, Raz thinks that governments have the capacity to do good by making it possible for people better to comply with the reasons that already apply to them by giving them new reasons of a special, intermediate kind. On this view an actual government is only legitimate if, and to the extent that, its subjects would better conform with right reason by complying with the government's directives than by acting on their own judgment. It is important to note that the applicability of Raz's normal justification thesis does not, *in general*, appear to depend on whether or not anyone actually pays any attention to the government. There may well be cases, for example various kinds of coordination problems, to which the normal justification thesis cannot apply in the absence of a general disposition on the part of a government's subjects to follow its directives. But this is not so for the expertise cases, since the publicly-issued directives of even an habitually-ignored shadow government are capable, if the government is sufficiently well-informed about, say, cod, of changing people's reasons for action with respect to their cod-related activities.⁴⁴

43. Finnis, *NLNR*, 317.

44. As Jeremy Waldron points out, if we take the normal justification thesis as it stands, then it is quite possible that millions of other people have authority over me in at least some

Finnis, like Raz, accepts that it is in the nature of law for governments to issue directives that claim to impose obligations on the government's subjects, and he accepts that it is a moral fact that this kind of activity on the part of governments can achieve moral good. But Finnis offers a fundamentally different account from Raz of the manner in which the activity of issuing obligation-stipulating directives can achieve moral good. Instead of basing his argument in a general theory of how anyone can, in principle, be a practical authority for anyone else, Finnis, who is writing in the Thomist tradition, defends a general theory according to which the crucial determinant of both authority and the obligation to obey is that the persons to whom directives are issued will *in fact* do what the person who is issuing those directives is directing them to do. As Finnis puts the point, "[t]he sheer fact that virtually everyone *will* acquiesce in somebody's say-so is the presumptively necessary and defeasibly sufficient condition for the normative judgment that that person

aspects of my life, since it is quite possible that I would do better in complying with the reasons that apply to me if I were (either always or in some range of cases) to do what any one of those persons were to tell me to do than if I were to act on my own judgment. See Jeremy Waldron, "Authority for Officials," in *Rights, Culture, and the Law*, ed. L. Meyer, S. Paulson, and T. Pogge (Oxford: Oxford University Press, 2003), 45, 63-65. Consider one such person, George. It does not matter, so far as the applicability of the normal justification thesis is concerned, that I do not habitually do what George tells me to do, and indeed it is not obvious that it matters that I do not even know of the existence of George. All that seems to matter is that I would do better in complying with right reason if I were (in some range of cases) to do what George directs than if I were to act on my own judgment. It is also worth noting that while Raz formulates the normal justification thesis so as to presuppose that the would-be authority is issuing "directives" (see *EPD*, 198), this does not appear to be a necessary condition for the basic idea to apply. Consider my friend Abigail, who never gives me advice or otherwise tells me what to do. It is in principle possible that I might do better in complying with right reason if I were able to predict what Abigail would tell me to do and then act on these predictions than if I were to act on my own judgment. Presumably, my predictions about what Abigail would tell me to do give me new exclusionary reasons, and if these reasons are also categorical in nature then they are in addition obligations or duties for me. See further notes 31 and 34, *supra*. Waldron suggests that the normal justification thesis does not capture the "public" or "official" dimension of authority, and this seems to me to be correct. It is true that Raz holds, at least in the case of political authority, that an entity cannot be a "legitimate" authority unless it is already a "de facto" authority. A de facto authority "either claims to be legitimate or is believed to be so, and is effective in imposing its will on many over whom it claims authority, perhaps because its claim to legitimacy is recognized by many of its subjects." *EPD*, 195. Fidelity to our concept of (political) authority does no doubt require that a legitimate political authority must be a de facto authority. But in the case of the service conception of authority this restriction seems somewhat arbitrary, since it has no grounding in the normal justification thesis itself. In this respect the service conception of authority differs fundamentally from Finnis's conception of practical authority, since for Finnis part of the justification of the legitimacy of an authority is precisely that the authority is, in Raz's words, "effective in imposing its will."

has (i.e., is justified in exercising) authority in that community.”⁴⁵ Following Finnis, let me refer to this kind of anticipated acquiescence as “effectiveness.” How do we get from effectiveness to obligation? Although this is not quite how he formulates the idea, I believe that Finnis is making something like the following claim: Because members of a certain group will, for the most part, *in fact* follow the directions of a given person in a situation where his directing them can achieve some good that is morally of great importance to the group as a whole and that would not otherwise be achievable for them, the person so situated has not just a moral duty to issue directions of an appropriate kind, but a moral power to do so. The fact that he has this power transforms his directions into justified commands, so that those to whom he issues directions have a moral obligation to follow them. Applied to the special case of political authority, an effective government which claims legal authority for itself actually has moral authority (together with a responsibility to exercise that authority properly) because it is in a position, owing to the fact that people for the most part will do what it says, to advance the common good in certain ways that would not otherwise be achievable.⁴⁶

This argument has a great deal of appeal, although there is admittedly something slightly mysterious about why effectiveness grounds not only a duty to direct responsibly but also a moral power to obligate by one’s directions. By hypothesis the government already has the ability, in a non-normative sense, to get people to behave in the way that it directs; that’s just what effectiveness is. So why is it ever the case, morally speaking, that the government also possesses a power to obligate? The answer may simply be that I

45. Finnis, *NLNR*, 250.

46. Finnis, unlike Raz, does not hold that the law claims *moral* authority for itself. He holds only that it claims *legal* authority, which on the law’s self-understanding is not equivalent to moral authority. However, the law’s internal “schema of practical reasoning” can, according to Finnis, be read not just in this “restricted, legal sense,” but also in an “unrestricted, moral sense.” *NLNR*, 319. According to the restricted, internal reading, the law imposes legal obligations which are always invariant in their normative force. When we adopt the unrestricted, external reading, we see according to Finnis, that the law does in fact create moral obligations, although these are variable in normative force and only presumptively and defeasibly binding. Nonetheless, viewed from the external perspective, central cases of legal systems give rise to a *prima facie* general moral obligation to obey. It is interesting to observe that Raz, who holds that the law claims moral authority for itself, does not think that it gives rise to a general moral obligation to obey, whereas Finnis, who denies that the law claims moral authority, nonetheless argues that it does, at least presumptively, give rise to a general moral obligation. For two reasons, Finnis presumably does not share Raz’s worry that the law’s claims might involve conceptual confusion: (1) The law is not only capable in principle of giving rise to a general obligation to obey, but in central cases of legal systems it does in fact give rise to such an obligation, albeit a defeasible one; and (2) the worry is not in any event a real one, since the law does not claim *moral* authority for itself in the first place.

have a moral obligation, because of the great good that might be achieved, to do something that, as it happens, I would have done anyway, i.e. follow a certain persons's directions. Or it may be that the obligation is grounded in the fact that "effectiveness" means simply that people will *for the most part* do as they are told, and that the existence of a moral obligation will increase the incidence or likelihood of compliance. I do not enter into such questions here. The basic argument from effectiveness has, as I say, a great deal of intuitive appeal, and for present purposes I will simply assume that it is capable of justifying the moral conclusion that, *at least sometimes and in some cases*, people have a moral obligation to obey the law.

To say that effectiveness at least sometimes grounds a moral obligation to obey the law is of course not to say that the obligation is indefeasible. Finnis is very clear on this point.⁴⁷ And the fact that effectiveness at least sometimes grounds a moral obligation to obey the law does not entail that there is a *general* obligation to obey, in the sense of general obligation defined in section II above. It is of course true that there could be independent moral reasons, based for example on considerations of fairness and reciprocity as these arise within a large-scale coordination problem, why the subjects of an effective government might have at least a *prima facie* general obligation to obey every single one of its directives, and Finnis defends the existence of a general moral obligation to obey the law on just these kinds of grounds.⁴⁸ But such independent moral reasons, if they exist, might well ground an obligation to obey that was much more extensive than any obligation that could be derived from a power to obligate which was itself based solely on effectiveness.

I will return in a moment to the question of just how extensive an obligation to obey the law could ever be justified by appealing to effectiveness alone. First, however, I wish to point out that the understanding of obligation which is associated with Finnis's effectiveness account of authority seems much closer to the law's own understanding of obligation than the one associated with Raz's service conception. The most important reason for this is that, on Finnis's view, effectiveness is supposed to *directly* ground a power to obligate, so that legal obligations must, to be legal obligations, derive from the exercise of just such a power. As we saw in section III, however, obligations arise under the normal justification thesis because of epistemically-oriented considerations which do not depend on the exercise of a normative power by

47. *NLNR* at 246.

48. See particularly, Finnis, "The Authority of Law in the Predicament of Contemporary Social Theory," *supra* note 39. Raz criticizes Finnis's argument in this article in Raz, *EPD*, 334-36.

another person. Suppose that subject A comes under an obligation to do X because she will generally do better in complying with right reason by listening to government B than by acting on her own judgment. But this could be true whether or not government B actually *commanded* A to do X, as opposed, say, to simply advising her to do X, as a friend might do. So far as the normal justification thesis is concerned, A will come under the obligation whether the government commanded her or simply advised her. Only a command, however, can be said to involve an attempt to exercise a normative power; giving advice cannot plausibly be understood in this way. The fact that governments do see themselves as commanding rather than advising is, for Raz, an essential aspect of the nature of law, but there is something odd about this view given that the fact that the law commands rather than advises plays no necessary role in his explanation of how the law might actually give rise to obligations. For Finnis, by contrast, it is absolutely essential for the creation of legal obligations that governments issue commands and thereby attempt to exercise a power to obligate. That governments are attempting to exercise a normative power is crucial to Finnis's account of authority in a way that is not true for Raz's account, and for this reason Finnis's view makes better sense than Raz's view does of the law's own understanding of what it is doing when it claims to impose obligations on others.

I believe that Finnis's view of authority and obligation will also turn out to be better able to deal with some of the other difficulties that Raz's view encounters in trying to explicate the law's own understanding of its obligation-stipulating activities. For example, Finnis's view seems better positioned to explain why the law might regard those whom it commands as owing an obligation to the government, or at least to the community the government represents,⁴⁹ rather than as simply having a new obligation that is not necessarily owed to anyone in particular. Although much more obviously needs to be said here, one reasonable view of the nature of commands suggest that when B commands A to do something, any obligation that A thereby comes to have is owed to B (or at least to the principal on whose behalf B is acting), and that this is so just by virtue of the fact that B commanded her. The analogy of a parent commanding a child is instructive here, since we do normally seem to think that if a child who is commanded by his parent to do X thereby comes under an obligation to do X, he owes that obligation to the parent. The possibility that commands might give rise to obligations that are "directed"⁵⁰ in this way does at least seem to be, as I said, a reasonable view of the nature of commands, and that this is so might well

49. See further notes 36 and 37, *supra*.

50. The term is Gideon Rosen's. See *supra* note 37.

explain why the law regards its directives in just this way. The relentlessly individualistic nature of the normal justification thesis would, however, tend to preclude any such view of the matter. The normal justification thesis underwrites an obligation to do whatever will enable individuals better to comply with right reason. It is not essential to the existence of this kind of obligation that it have its source in the exercise of a normative power by another person. Indeed, as we saw earlier in Section III, an obligation of this same general kind could, in principle, arise from reading the entrails of birds, if for some odd reason it were empirically the case that one would better comply with right reason by acting on what the entrails "said" to one than if one were to attempt to act on one's own independent judgment.⁵¹ The particularity of the normative relationship between one who commands and one who is commanded thus plays, at best, only an incidental role in the justification of obligation under the normal justification thesis.

Recall our discussion in section III of Raz's contention that if legal systems were not capable in principle of possessing the full moral authority they claim, and hence if they were not capable in principle of comprehensively and systematically obligating in just the way they claim to do, then the officials and institutions which claim authority would be suffering from deep conceptual confusion. If this were the case, then something would have gone seriously wrong with our concept of authority and, indeed, with our concept of law. As we saw, Raz argues that there is not, in fact, any such conceptual confusion because, among other things, the normal justification thesis show how legal systems could in principle, however implausibly in fact, give rise to a general obligation to obey the law. Since it is at least conceivable that each and every person would do better in complying with the reasons that apply to him if he were to obey each and every law on each and every occasion to which it applies, a general obligation to obey could in principle exist. If, however, I am correct in arguing that the service conception of authority is not the law's conception of authority and that, relatedly, the obligations underwritten by the normal justification thesis are not the kind of obligations the law is attempting to impose, then the threat of conceptual confusion arises once again. But if I am also correct in arguing that Finnis's conception of authority, together with its related conception of legal obligation, is much closer to the law's own self-understanding than is Raz's, then it is natural to suggest that the threat of conceptual confusion can be warded off by Finnis's theoretical account even if not by Raz's. If Finnis's account is to play this role, however, then the argument from effectiveness, which is supposed to ground the normative power of political authorities to

51. See *supra* note 34.

impose obligations, must be sufficient to establish that legal systems, or at least central cases of legal systems which meet certain plausible general conditions, are capable of possessing the full moral authority that they claim for themselves. This amounts to saying that the argument from effectiveness must in principle be capable of grounding a general obligation to obey all the laws of central cases of legal systems. It must, moreover, be capable of doing this without appealing to independent moral considerations, such as fairness and reciprocity, of the kind that Finnis invokes when he advances what might be called an “external” moral justification of a general obligation to obey.⁵² It is, however, no easy matter to show that the argument from effectiveness is capable of bearing this much weight.

Raz has argued that any obligation to obey the law that can be established by the Thomist argument for authority, which I am here calling the argument from effectiveness, must be “doubly qualified”:

First, since [the argument] derives the authority of the state or government from the fact that it fulfills a job which needs doing, that authority must be limited to a government which *discharges the job successfully*. The authority of the government cannot derive from its ability to discharge the needed job; rather it must depend on success (or likelihood of success) in doing so. Second, the legitimacy of the government which derives from its success (actually or likely) in performing a job which needs doing must be confined to its actions aimed at discharging this job. The argument cannot endow governments with a general authority, an authority to do whatever the see fit, as it must if it is to vindicate a general obligation to obey⁵³

Consider first Raz’s “success” condition. “The job that needs doing” is, in Finnis’s terminology, advancing the common good. Since the essential technique of the law is to advance the common good *by means of* imposing an obligation, we cannot determine whether or not such an obligation has been created by first looking to whether a past governmental action (or series of such actions) succeeded in advancing some aspect of the common good and, if it did, *then* concluding, after the fact, that the relevant governmental action did in fact create an obligation. The law can only succeed *qua* law in advancing the common good if it first creates an obligation which is then discharged by one or more persons, whose actions result in some aspect of the common good being advanced. This is of course not to say that governmental action cannot succeed in advancing the common good without first creating

52. See Finnis, “The Authority of Law in the Predicament of Contemporary Social Theory,” *supra* note 39.

53. Joseph Raz, “About Morality and the Nature of Law,” *American Journal of Jurisprudence* 48 (2003) 1, 8.

an obligation; it is simply to say that such action cannot succeed *as law* without having first created an obligation. If the effectiveness argument is to be capable of *ever* establishing an obligation to obey, therefore, it must be on a forward-looking rather than a backward-looking basis. Raz acknowledges the possibility of evaluating success on a forward-looking basis when he adds the parenthetical phrase “or likelihood of success” after the word “success” in his argument. In fact, it is not success as such but, precisely, *likelihood* of success, meaning likelihood of success in the future, that is the key to the argument from effectiveness. According to the argument, an effective government has the normative power *now* to impose an obligation because, being effective, it is likely that governmental action of the right kind will advance the common good. Of course the common good will not in fact be advanced unless the government does, in fact, impose obligations “of the right kind.” The point however, is that if the effectiveness argument is *ever* correct, it must be capable of underwriting a power to obligate that exists even before the government has done anything at all. Perhaps it might be argued that if the government takes action that does not, for whatever reason, succeed in advancing the common good, then for that reason alone it could not have created an obligation. But this seems far too strong. There must be, as Finnis recognizes, substantive constraints on a government’s power to obligate. But if the argument from effectiveness has any bite at all (as Raz seems to assume it does), it must surely leave room for governments to make at least some mistakes, i.e. it must leave room for the possibility that governments can at least sometimes create obligations that ultimately do not succeed in advancing the common good and that might be morally defective in some other respect as well.

For the reasons given in the preceding paragraph, Raz’s “success” condition does not appear to establish any limits on the scope of an effective government’s power to obligate which are independent of whatever inherent moral constraints there might be on such a power. As I understand it, Raz’s second proposed qualification of the argument from effectiveness, according to which the legitimacy of a government’s authority must be confined to its actions aimed at “discharging the job,” is concerned precisely with such inherent moral constraints. It is undoubtedly true that an effective government’s power to obligate, assuming it exists at all, is subject to various kinds of moral limitations. The government’s authority to impose obligations is no doubt exceeded if its laws are (too) unjust. Perhaps its authority is also exceeded if it legislates too far outside its inherent moral jurisdiction to advance the common good. And there may be other moral constraints as well. So far as I can see, there are only two possible lines of response available to someone who wishes to argue that the argument from effectiveness can, at least in

principle, vindicate the law's full claim to moral authority over its subjects. The first is to argue that the law's claim, properly understood, is only that it possesses such authority as is inherently morally available to it. This line of response suffers from many defects, including what I take to be the fatal defect that the law's claims for itself simply cannot plausibly be construed in so limited a way. The second line of response is to argue that a law which was passed in excess of a government's inherent moral jurisdiction – for example, because it exceeds the threshold of tolerable injustice—is, while a law in some formal sense, not a law in the full-fledged sense, precisely because it does not create a moral obligation. This is a line of argument that is suggested by the Thomist thesis that, as Finnis phrases it, “an unjust law is not law in the focal sense of the term ‘law’ ... notwithstanding that it is law in a secondary sense of that term.”⁵⁴

Whether the Thomist thesis can be developed so as to vindicate the law's full claim to moral authority is not a question that I can attempt to answer here. I would simply point out that, if Raz is correct in holding that the law does in fact claim such authority for itself, then a great deal is at stake for jurisprudence. If Raz is right, the law can only coherently claim legitimate moral authority for itself if it could in principle possess such authority. A government only possesses such authority if its directives systematically obligate. But to say that its directives systematically obligate is just to say that there exists a general moral obligation to obey the law. If there could not in principle be such an obligation, then our practices are deeply confused, and something has gone seriously awry with our concepts of authority and law. That is the most important reason why the question of political obligation is central not just to political philosophy but also to jurisprudence.

54. *NLNR*, 364. It must be emphasized that Finnis himself does not regard the Thomist thesis as a response to a worry about potential conceptual confusion, because he presumably does not think that there *is* such a worry: The law does not claim *moral* authority for itself at all. See *supra* note 46. For reasons given in section I, I believe that Raz is correct to argue that the law claims moral authority for itself, and hence also correct to think that the worry about conceptual confusion is a real one.