

Authority, Obedience, and Justification

Michelle Madden Dempsey

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AUTHORITY, OBEDIENCE, AND JUSTIFICATION

Michelle Madden Dempsey *

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INTRODUCTION

We have a duty to think for ourselves—to conduct our “own lives” by our “own lights.”¹ This fairly uncontroversial premise has some troubling implications when it comes to law’s claim of authority over us and the (supposed) obligation we have to obey the law. Can law’s claim of authority be justified? If so, does justified legal authority entail an obligation to obey the law? If not, are we nonetheless justified in acting *as if* such an obligation exists? And, at least sometimes, might it be the case that we are duty-bound to obey law’s claim of authority over us?² While this Article is hardly the first to address these questions, it is the first to do so by combining elements of Joseph Raz’s prominent “service conception of authority,” along with John Gardner’s influential account of justification, to defend a modest version of philosophical anarchism. These philosophical resources illuminate new explanations regarding the justification of law’s claims to authority and our obedience to those claims.

This Article defends the following conclusions: (1) claims of authority call for justification; (2) obedience to claims of authority calls for justification; (3) both claims of authority and obedience to authority can, nonetheless, be justified; and (4) despite our duty to think for ourselves, we may also (at least sometimes) be duty-bound to obey the law’s claim of authority over us.

Primarily, this Article is an exercise in analytic legal philosophy. As such, its central aims are modest: to clarify the nature of authority and obedience and provide a framework for understanding when claims to authority and obedience to such claims are justified. However, this framework does have at least three important implications for how we

1. JOSEPH RAZ, *THE MORALITY OF FREEDOM*, 57 (1986) [hereinafter RAZ, *MORALITY*]. I borrow the phrasing from Raz, but it should be noted that Raz’s substantive point does not extend to our having a duty in this regard. Rather, Raz’s view is that acting according to our own lights is “intrinsically desirable.” My thanks to Michael Seval for raising this point.

2. The terms “obligation” and “duty” will be used interchangeably throughout the article. Thus, the phrase “having an obligation” and “being duty-bound” are equivalents.

engage with law in our current political climate. First, we should resist currently fashionable arguments grounded in the condemnation of “lawlessness” as such. Second, we should recognize that law, and its claim to authority, may be capable of (re)establishing the trust required to maintain our political community. Third, we should recognize and fulfill our obligations to law that go beyond the (supposed) obligation to obey.

This Article proceeds in four steps. Part I sets forth three puzzles concerning authority and obligation: (1) The Puzzle of Justified Authority; (2) The Puzzle of Entailment; (3) The Puzzle of Obedience. Part II unpacks a set of conceptual tools to solve these puzzles. Part III proposes solutions to each. Finally, Part IV explores the practical implications of this account on the way we should view the law’s claim of authority and behave toward the law in our currently fractious political climate.

I. THE PUZZLES

Sometimes people or entities issue directives that they claim are authoritative over others. Let us call the former group *sources* and the latter *subjects*. By *source*, I mean the person, entity, or thing that either issues a directive to a subject (claims authority over the subject) or is treated by a subject as having done so.³ The *subject* is either the person to whom the claim of authority is directed or the one who treats a source as having claimed authority over her.⁴

In modern municipal legal systems, typical examples of sources include legislators voting for new laws regulating the sale of handguns or

3. Leslie Green uses the word “superior” rather than source. LESLIE GREEN, *THE AUTHORITY OF THE STATE*, 42 (1990) [hereinafter GREEN, *THE AUTHORITY OF THE STATE*]. I avoid this use for fear that it may imply the existence of some pre-existing hierarchical relationship between the source and the subject – one in which the source is in a habit of issuing directives to the subject which she intends the subject to treat as authoritative, or the subject is in the habit of treating (at least some of) the source’s communications as authoritative directives – and thus may be thought to exclude the possibility of one-off instances of authority and unintentional authority, both of which I wish to include in my account. On unintentional authority, see the discussion of an authoritative alarm clock in STEPHEN DARWALL, *MORALITY, AUTHORITY AND LAW: ESSAYS IN SECOND-PERSONAL ETHICS I*, 161-163 (2013). Another reason to reject the word “superior” here is the muddle that may arise if that term is taken to suggest that the source has greater merit, power, knowledge, or other value than the subject. Since that assumption would beg one of the central questions an analysis of authority is meant to illuminate, it hardly seems right to build the assumption into our terminology at the start.

4. My use of the word ‘subject’ may give rise to similar difficulties raised in the previous footnote, but I plan to stick with it nonetheless. In so doing, I hope it is now clear that I do *not* mean to invoke the first definition offered in the Oxford English Dictionary: “subject: one who is under the dominion of a monarch or reigning prince; one who owes allegiance to a government or ruling power, is subject to its laws, and enjoys its protection.” Rather, I mean to invoke the sense of “subject” as a “conscious, thinking” subject – or, more specifically for my purposes, a practically reasoning subject. Subject, OXFORD ENGLISH DICTIONARY ONLINE, <http://dictionary.oed.com/cgi/entry/50240711> (last visited December 10, 2021).

police officers directing traffic at busy intersections, with corresponding subjects as potential handgun-sellers or drivers approaching those busy intersections. Outside the legal system, typical sources include parents, bosses, and coaches, with corresponding subjects children, employees, and athletes.

When a source issues a directive to a subject that the source claims to be authoritative, the source intends thereby to place the subject under an obligation to obey the directive. The central puzzle that has captured the imagination of legal philosophers regarding such directives has been, *when, if ever, does a source's claim of authority actually succeed in giving its subjects the kind of reason the source claims to give?* Let us call this the puzzle of genuine authority.

Many legal philosophers, myself included, do not regard the puzzle of genuine authority as terribly interesting, because we believe the obvious answer is “never.” Let us call this view philosophical anarchism. According to philosophical anarchism, a source's claim of authority never actually creates an obligation to obey on behalf of the subjects.⁵ Typically, this view is defended on grounds that any such obligation would violate the subjects' autonomy. As Robert Paul Wolff (in)famously explained it:

The primary obligation of man is autonomy, the refusal to be ruled...
Insofar as a man fulfills his obligation to make himself the author of his decisions, he will resist [a source's] claim to have authority over him.⁶

Let us call this the obligation of autonomy. According to this obligation, one must not obey, or, more precisely, one must not treat a source's directive as if it entails an obligation to obey. There are strong and weak versions of the obligation of autonomy. According to the strong version, the obligation is absolute, and therefore any breach is unjustifiable. Let us call this an absolutist version of philosophical anarchism. According to a weaker, more modest, version of this obligation, a subject's obedience may, under the right circumstances, be justified. This Article defends a modest version of philosophical anarchism: that is, it explains how it is possible that the obligation of autonomy (or something like it)⁷ is indeed a genuine obligation, while also explaining how breaches of the obligation can be justified.

5. DAVID MILLER, ANARCHISM 17-18 (1984) (“[P]hilosophical anarchism is the view that no one can ever have legitimate authority over another person, and conversely, no one can ever be under an obligation to obey.”).

6. ROBERT PAUL WOLFF, IN DEFENCE OF ANARCHISM 29 (1970). Wolff puts the point in terms of the state's authority, but our concern here regards practical authority generally.

7. Wolff's formulation takes on what might be regarded as a strongly Kantian orientation, focusing on subjects as self-legislators. Below, we will craft a less Kantian version of the obligation and refer to it as *the obligation to act according to one's own lights*. On whether Kant is best interpreted as defending a view of morality as self-legislation, see Pauline Kleingeld & Marcus Willaschek, *Autonomy Without Paradox: Kant, Self-Legislation and the Moral Law* 19(6) PHILOSOPHER'S IMPRINT 1 (2019).

Two points follow. First, because subjects breach the obligation of autonomy when they treat a directive as authoritative (when they *obey* claims of authority) it follows that *obeying claims of authority calls for justification*. Second, because sources *try* to get subjects to breach the obligation of autonomy when they issue directives (when they *claim* authority), it follows that *claiming authority also calls for justification*.

John Gardner's account of justification, alongside Joseph Raz's service conception of authority, provides an illuminating set of tools for thinking about the conditions under which such justification may be secured.⁸ By putting that combination of intellectual influences to work in what follows in Parts II and III, this paper recommends solutions for three puzzles regarding authority, obedience, and justification:

Puzzle #1: The Puzzle of Justified Authority

When, if ever, is a source's claim of authority justified?

Puzzle #2: The Puzzle of Entailment⁹

Do justified authoritative directives entail obligations to obey?

Puzzle #3: The Puzzle of Obedience

When, if ever, are subjects justified, or perhaps even duty-bound, in obeying claims of authority?

Before setting out to solve these puzzles, however, we must first acquaint ourselves with the shape and content of the pieces. The next Part explains the conceptual tools we will use to solve these two puzzles. Part III proposes a solution to each.

II. THE PIECES

This Part unpacks a set of conceptual tools developed in the work of Joseph Raz and John Gardner, which enable us to solve the puzzles identified in Part I. Each piece of the puzzle is grounded in a conceptual

8. See John Gardner, *Justification and Reasons*, in OFFENCES AND DEFENCES: SELECTED ESSAYS IN THE PHILOSOPHY OF CRIMINAL LAW, 91, 91-120 (2007) for an understanding of his account of justification. See also RAZ, *supra* note 1; JOSEPH RAZ, THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY (2009); JOSEPH RAZ, ETHICS IN THE PUBLIC DOMAIN: ESSAYS IN THE MORALITY OF LAW AND POLITICS (1995) [hereinafter ETHICS IN THE PUBLIC DOMAIN]; and Joseph Raz, *The Problem of Authority: Revisiting the Service Conception*, 90 MINN. L. REV. 1003 (2006) for an overview of the service conception of authority. While this paper draws on tools developed in Gardner and Raz's work, it makes no claim that either would endorse the way those tools are put to use here. Indeed, both are committed to the possibility of genuine authority in some cases, so it seems clear they would not endorse the weak version of philosophical anarchism assumed here.

9. Abner Greene refers to this puzzle as the "principle of correlativity." ABNER GREENE, AGAINST OBLIGATION: THE MULTIPLE SOURCES OF AUTHORITY IN A LIBERAL DEMOCRACY, 24-34 (2012). Greene endorses the principle of correlativity. As I have already outed myself as a philosophical anarchist, it will come as no surprise that I reject this principle.

tool concerning the philosophy of practical reasoning.

Sections A and B of this Part begin with accounts of reasons and reasoning, respectively. With these basics in view, Sections C and D of this Part address the particular problems grounded in obedience to authority and claims of authority, respectively. Finally, Section E identifies the conceptual tools (pieces of the puzzle) required to explain how both obedience to authority and claims of authority can be justified.

A. *Reasons: Normative and Explanatory*

Reasons can be normative or explanatory.¹⁰ Normative reasons count in favor or against one's performing an action, holding a belief, etc. They make something good or bad, right or wrong; they make it the case that we have reason to do or believe that thing. Explanatory reasons, as the name suggests, explain *why* one did or believed so. Let us take each in turn, focusing here on reasons for action.

Normative reasons inform the quality of our actions. For example, if I were to walk past a child drowning in a shallow pond, the fact that I could stop and save the child's life is a normative reason for me to do so. The existence of the normative reason does not mean that I *must* stop and save the child, all-things-considered. After all, I might have better things to do—such as saving ten drowning children in the next pond. Still, the fact that I could save the first child is a reason that speaks in favor of my doing so. The fact that I could save the child is a good-making feature of my doing so.

Normative reasons sometimes weigh in favor of taking or refraining from action. If my smiling at a grumpy stranger walking down the street would cheer him up, then it is a normative reason for me to do so; conversely, if my smiling at the stranger would simply irritate him further, then it is a normative reason for me not to do so.

Oftentimes, normative reasons conflict. If studying long and hard will contribute to one's intellectual flourishing and promote one's material well-being, these are normative reasons in favor of studying long and hard. Conversely, if studying long and hard will irreparably harm one's

10. See JOSEPH RAZ, FROM NORMATIVITY TO RESPONSIBILITY 16-20 (2011). The distinction bears similarities to the difference between what are called guiding reasons and explanatory reasons in Gardner, *Justification and Reasons*, *supra* note 8, at 91-95, and what Raz characterizes as the evaluative and guiding functions of reasons in JOSEPH RAZ, *The Truth in Particularism*, in ENGAGING REASON: ON THE THEORY OF VALUE AND ACTION, 218, 219 (1999) [hereinafter RAZ, ENGAGING REASON]. Some philosophers divide reasons into three: normative, explanatory, and motivating. Maria Alvarez, *Reasons for Action: Justification, Motivation, Explanation*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta, ed. 2017), <https://plato.stanford.edu/entries/reasons-just-vs-expl/> [<https://perma.cc/P9YN-L5LS>]. For our purposes here, the distinction between explanatory and motivating reasons is "excessively refined." *Id.*

important personal relationships and turn one into a miserable, socially alienated recluse, these are normative reasons against studying long and hard.

Acknowledging that normative reasons make actions good or bad, right or wrong, and so forth, is not to say that they do so in obvious or clear-cut ways. It is no easy matter to determine if facts are normative reasons. Popular candidates for facts that constitute normative reasons include facts about consequences, deontic constraints, as well as the cultivation and expression of virtues.¹¹ Moreover, as noted above, we often face conflicting normative reasons, making it difficult if not impossible to sort out which set of normative reasons prevails in any particular circumstance. Indeed, the incommensurability of some normative reasons often make them incomparable in terms of weight, strength, stringency, or any other criteria that would result in one reason (or set of reasons) defeating another.¹²

Many times, indeed, perhaps most times, we are unaware of the full range of normative reasons that apply to our actions. Consider the case of *driver vs. girl-on-bike*. As I drive down the street toward an intersection, a large building on the corner blocks from my line of vision a young girl on her bicycle approaching the intersection. If I carry on at my current speed, I will strike the girl and kill her. The fact that the girl is approaching the intersection is a normative reason for me to slow down—but, *ex hypothesi*, I am unaware of this normative reason because of my inability to see her approaching. My lack of awareness that she is approaching the intersection does nothing to remove the force of the normative reason I have to slow down to avoid hitting her. Granted, my lack of awareness may make it impossible for me to *act for* that normative reason, but the normative reason nonetheless exists and applies to me as I drive down the street.

Unknown and unknowable normative reasons for action are a common

11. We do not need a fully developed moral theory to motivate the arguments that follow, since the structure of thought set out in this paper can accommodate a variety of moral theories, including the “big three” – Kantian deontological ethics, consequentialism, and virtue theory. See MARCIA BARON ET AL., *THREE METHODS OF ETHICS* (1997). I tend to think that reasons for action are grounded in the values that can be realized through our actions (albeit not necessarily in an instrumental/consequentialist way) and that such values are plural and frequently incommensurable. This line of thought follows the account developed in RAZ, *ENGAGING REASON*, *supra* note 10. While I do not claim to have a fully developed moral theory, the general approach in this paper is consistent with many of the intuitions that motivate the “big three” methods in ethical theory.

12. It may be thought that such rational underdetermination speaks against a view of practical reasoning such as the one embraced here, which allows for unresolved conflicts of reason and incommensurability of reasons. To the contrary, however, such underdetermination is to be welcomed, since it is “primarily where matters are underdetermined by reason that we reveal and mould our distinctive individuality, our tastes, our imagination, our sociability, and many of our other, including our moral, characteristics.” RAZ, *ENGAGING REASON*, *supra* note 10, at 242.

feature of our moral lives. The constraints on our knowledge concern not only incomplete information regarding presently existing facts (such as the girl on her bicycle approaching the intersection), but the inability to predict with certainty what future states of affairs may be realized by our conduct. For example, I *suspect* that my smiling at the grumpy stranger will cheer him rather than irritate him, but at the moment I choose whether to smile, I can only predict the future impact of my action.¹³ Therefore, it is often impossible to know the normative reasons for acting in a given circumstance.

Even when we are aware of the full range of normative reasons that apply to our practical circumstances, those reasons do not necessarily determine what should be done. Normative reasons may underdetermine action in at least two ways. First, conflicting normative reasons may be evenly matched, such that no reason or set of reasons stands triumphant on our rational horizon.¹⁴ Second, as noted above, normative reasons may be incommensurable, such that they cannot be compared in terms that would make some reasons superior to others.¹⁵

Explanatory reasons, conversely, do not make an action good or bad, right or wrong.¹⁶ Rather, they *explain* one's action—they are the reasons *for which* one acts: “that I was tired” is the reason I went to bed early; “that I was hungry” is the reason I got out of bed for a midnight snack; “that it would assuage my guilt” is the reason I woke up early to get to the gym.

Often, let us hope, our normative and explanatory reasons match up well, such that one or more of our undefeated normative reasons features

13. Perhaps he will be cheered. If so, the fact that he will be is a normative reason for me to smile. Perhaps he will be irritated. If so, the fact that he will be is a normative reason for me not to smile. Perhaps he will be irritated at first, but cheered upon reflection later that day when he is feeling less grumpy. If so, I have a conflict of normative reasons: the fact that he will be irritated at first is a normative reason for me not to smile now, but the fact that he will be cheered later is a normative reason for me to smile now. In any event, note that some of the normative reasons that apply to me as I take or decline to take the action of smiling are sensitive to states of affairs that will exist in the future - states of affairs that I may (or may not) bring about through my action.

14. Various metaphors have been employed by philosophers to capture the sense in which normative reasons conflict with one another. Typically, the metaphors draw on notions of weight or strength: one set of reasons *outweighs* another; one set of reasons is *stronger* than the others. In what follows, I will follow Gardner and Macklem in referring to one reason or set of reasons *defeating* others. See John Gardner & Timothy Macklem, *Reasons*, in OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW 440 (Jules Coleman and Scott Shapiro eds., 2002).

15. The normative reasons in favor of studying long and hard may not defeat those against doing so, and visa-versa. Once the battle of conflicting reasons is finished, there may be nothing more to say for one side than the other – and, in such cases, normative reasons fail to determine (underdetermine) whether to push on with further studying or pack it in and go socialize with friends.

16. Explanatory reasons may, however, make it the case that we have reason to perform (or avoid performing) an action. For example, see Raz's discussion of Peter Winch's analysis of Billy Budd. Raz, ENGAGING REASON, *supra* note 10, at 239-246 (discussing Peter Winch, *The Universalizability of Moral Judgements*, in ETHICS AND ACTION 159 (1972)).

amongst our explanatory reasons. When a good friend requests a ride to the airport, I typically have any number of normative reasons to provide the ride. Reasons of friendship, beneficence, and others, all weigh in favor of giving her a ride and are therefore normative reasons to do so. Indeed, under the right conditions, her making the request itself gives me a reason to give her a ride.¹⁷ Yet, other reasons, although self-serving, might also weigh in favor of me giving her a ride, such as wanting to stop by the outlet shopping mall on the way home from the airport or ensure her indebtedness to me in the future.

We can see from this example that the moral quality of our actions consists not merely in whether we *conform* to our undefeated normative reasons, but also the reasons *for which* we act in so doing.¹⁸ Put simply, in practical reasoning, our explanatory reasons matter. If I drive my friend to the airport and take as my explanatory reasons only those that concern my own benefit, I stand in a different moral position than if my explanatory reasons are reasons of friendship, beneficence, etc. The self-serving explanatory reasons hardly show me to be a moral leper, but because my actions cannot be explained in terms of friendship or beneficence, I am in fact in a somewhat less commendable moral position.¹⁹

Agents can be mistaken, of course, about the normative reasons that apply to them. As discussed above in the case of the *driver vs. girl-on-bike*, one may be mistaken because she failed to recognize some of the normative reasons she had to stop her car. Conversely, an agent may also be mistaken because she followed normative reasons she actually did *not* have. During the first (too many) years of my marriage, for example, I would occasionally do the dishes after dinner because I thought doing so was doing a kindness to my partner. Little did I know that he enjoyed doing dishes, so there was no normative reason in favor of my doing dishes that fell under the heading “doing a kindness to my partner.” In doing the dishes, I mistakenly took myself to have an explanatory reason that I did not have.²⁰

In both of these ways, one may have explanatory reasons that do not

17. See David Enoch, *Giving Practical Reasons*, 11 PHILOSOPHERS’ IMPRINT 4, at 1 (2011) (explaining how requests can give reasons).

18. See discussion *infra* Section II.B.

19. While both reasons of friendship and beneficence, as well as self-serving reasons, are undefeated, the former are what Gardner calls “privileged reasons,” or reasons of the kind such that “acting for that reason lends special value to one’s action.” Gardner, *Justification and Reasons*, *supra* note 8, at 104 (explaining that “[b]y acting in the same way for different privileged reasons people normally exhibit their incomparably different virtues.”).

20. My dishwashing example is innocuous, but more troubling instances arise throughout the criminal law, as in cases where defendants in rape cases claim they acted on the (mistaken) belief that the victim welcomed the sexual intercourse. See *DPP. v. Morgan* [1976] AC (HL) 182.

match-up to her normative reasons: she may fail to see (and thus fail to act for) normative reasons she actually has or mistakenly believes she has (and thus act for) normative reasons that she actually does *not* have.²¹

Weakness of will is another common phenomenon resulting in a mismatch between one's normative reasons and one's explanatory reasons. It consists of being inadequately responsive to the rational force of one's undefeated normative reasons, and/or being overly responsive to the rational force of one's defeated normative reasons. Anyone who has skipped an early morning run on a chilly, dark winter morning understands this phenomenon. The fact that running will improve your energy and mood throughout the day, promote your overall health, and cultivate healthy habits are all normative reasons for you to get out of bed and go for a run. The fact that the bed is warm and comforting, and that you were having a good dream when the alarm went off, which you will be able to recapture if you keep your eyes shut, are normative reasons for staying in bed (albeit ones which, let us assume, are defeated by the reasons in favor of going for the run). As you lie there debating the matter, you find yourself drawn in by the rational force of the reasons for staying in bed. You do not kid yourself into thinking that these reasons genuinely defeat the reasons in favor of going for the run. Heck, you may even acknowledge to yourself the likelihood that you will feel guilty later for having blown off the run. But by this time, your fate is sealed. You roll over and snuggle into the warm blankets, taking defeated normative reasons as your explanatory reasons because of weakness of will.

With the distinction between normative and explanatory practical reasons now in view, we can clarify the obligation of autonomy that animates the concerns of the philosophical anarchists. As stated above in the quote from Wolff, the central obligation that philosophical anarchists insist upon is that we *make ourselves the author of our own decisions*. For Wolff, this obligation was tied up in a Kantian conception of moral

21. Another way in which a mismatch between one's normative reasons and one's explanatory reasons can arise involves misjudging the normative valence of a reason – such as a parent who explains inflicting a painful spanking on a child in terms such as “a good smack never hurt anybody - it does her good.” The normative valence of inflicting pain on the child is actually negative (let us assume) but the parent misjudges it to be positive. In other, hopefully rare cases, a mismatch between one's normative reasons and one's explanatory reasons can arise when one affirmatively chooses to act against her normative reasons. Consider the possibility of serial torture-killers, who treat the fact that their conduct causes agony and death as an explanatory reason to continue doing what they are doing, while nonetheless recognizing that the agony and death they cause are normative reasons against their actions. In such cases, one recognizes a reason as a normative reason *not* to do something, and yet takes that very reason as an explanatory reason to do that very thing. (Philosophers debate the possibility of such cases, with Socrates taking the view that no one willingly chooses to do wrong. See PLATO'S GORGIAS (Robin Waterfield trans., Oxford World Press 2008). Here, I set myself against the Socratic view.

autonomy²²—but we may approach the issue in a slightly different way, simply by emphasizing the values that can be realized through rational human beings engaging in moral deliberation and attentive to the salience and responsive to the force of the normative reasons that apply in many and varied circumstances.²³ For shorthand, let us refer to this (less Kantian and more modest) version of the philosophical anarchist's duty as an *obligation to act according to one's own lights*.

The distinction between normative and explanatory reasons helps further specify the content of this obligation: to act according to one's own lights is an obligation *to act according to explanatory reasons that one has discerned for oneself*. We will specify the content of this obligation further in the next Section.

B. Evaluating Practical Reasoning: What We Do and Why We Do It

When we engage in practical reasoning, we face at least two challenges: (1) to do the right thing,²⁴ and (2) to do so by our own lights. One may be justified in failing to meet one or both challenges, but the point is simply that there are two aspects of practical reasoning that must be assessed: *what* one does and *why* one does it.²⁵

Ideally, when one acts, she conforms and acts according to her normative reasons (that is, she takes them as her explanatory reasons) because she is both aware of and sensitive to the value-laden facts that make them normative reasons, and she is appropriately responsive to the rational force of those reasons.²⁶ In such cases, she does the right thing for the right reasons. No problem.

22. WOLFF, *supra* note 6. There is disagreement in the philosophical literature regarding the degree to which Wolff helps himself to a Kantian account of autonomy in defending his particular version of philosophical anarchism. On Wolff's reliance on Kant, compare MILLER, *supra* note 5, with Patrick Riley, *On the "Kantian" Foundations of Robert Paul Wolff's Anarchism*, 19 NOMOS 294 (1978). My thanks to Veronica Rodriguez-Blanco for pressing me on this concern. For another less Kantian version of Wolff's philosophical anarchism, see Matthew Smith, *Political Obligation and the Self*, 86 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH, 2, 384 (2011). Thankfully, however, we need not resolve the debate here to motivate the modest philosophical anarchism that informs this article.

23. Seana Shiffrin highlights the value of moral deliberation regarding the content of legal norms both for our individual "moral health and for an active, engaged democratic citizenry." Seana Shiffrin, *Inducing Moral Deliberation: On the Occasional Virtues of Fog*, 123 HARV. L. REV. 1214, 1217 (2010).

24. By 'right' here I mean weak-permissibility, which need not be the best choice under the circumstances, but may be merely a permissible choice. On the distinction between weak and strong permissibility, see MATTHEW KRAMER, *WHERE LAW AND MORALITY MEET* 280-283 (2004).

25. On a fuller account of practical reasoning, the question of excuse would arise. Excuses are a fall-back position, which block blameworthiness in cases where one's conduct is nonetheless unjustified all-things-considered. Excuses are beyond the scope of my concern here. For an account of excuse consistent with this view, see JOHN GARDNER, *The Gist of Excuses*, in OFFENCES AND DEFENSES, *supra* note 8, at 121 (2007).

26. On reasons as value-laden facts, see Gardner and Macklem, *supra* note 14.

In some cases, however, one might do the right thing for the wrong reasons. Consider the dilemma faced by a mother who, having read Amy Chua's BATTLE HYMN OF THE TIGER MOTHER, is faced with the challenge of deciding whether and how strongly to push her young daughter to continue practicing a song on the piano that the daughter finds difficult to master.²⁷ The daughter resists, cries, and stamps her feet. The hour grows late and her bedtime passes. Should the mother persist? According to Chua, the answer is yes. Citing her own experience in which she yelled at her daughter to the point of losing her voice, forced her daughter to continue practicing late into the night without bathroom or water breaks, and effectively turned their home into what she characterized as a "war zone," Chua stood triumphant in this epic battle of will between mother and daughter. In the end, the daughter learned the song, and her self-esteem was enhanced by learning she could do something she thought she could not.

Should our hypothetical mother continue to force her daughter to practice? *What should she do?* Given the discussion in Section II-A, the question is to be answered according to the normative reasons for and against the mother's persisting. Let us assume that the mother's persistence will ultimately result in the girl learning the song, gaining enhanced self-esteem, developing her talents, and contributing positively to a flourishing life; any upset caused by the mother's persistence will be quickly forgotten and not do any serious harm to the daughter or the mother-child relationship.²⁸ Under these stipulations, we can assume that the normative reasons in favor of persisting remain undefeated. If the mother persists, she has done the right thing.

A second question, regarding the quality of the mother's practical reasoning, remains: if persisting is the right thing to do in the above scenario, then *why did she do it?* The question here is not, however, *what makes it the case that persisting in forcing her daughter to practice the piano is the right thing to do?* That question was already answered by reference to the undefeated normative reasons in favor of persisting (her daughter's development of talent, self-esteem, and flourishing). Rather, the question of *why the mother persisted* speaks to the quality of her practical reasoning in terms of her *explanatory* reasons. On one version of the story, we might imagine that the mother treated Chua's advice as a directive to be obeyed. In this version, the mother persists only because

27. AMY CHUA, BATTLE HYMN OF THE TIGER MOTHER (2011). For a summary recounting the story set out here, see Amy Chua, *Why Chinese Mothers are Superior*, WALL STREET JOURNAL (Jan. 8, 2011, 12:01 AM), <https://www.wsj.com/articles/SB10001424052748704111504576059713528698754>.

28. And, even more artificially, let us assume that these considerations exhaust the range of normative reasons in play. Clearly, in real life, things are not so simple. I tend to think the reasons weigh up differently in most cases like the one Chua sets out, but perhaps this fact merely shows me to be a misguided or weak-willed mother.

Chua said so, thereby treating Chua's advice as an authoritative directive.²⁹ On another version of the story, we might imagine that the mother acted according to her own lights: she sorted out for herself the normative reasons that weighed in favor of persisting (her daughter's talents, self-esteem, flourishing), recognized the salience of those reasons, and was appropriately responsive to the rational force behind those reasons, such that she was sufficiently motivated to persist, despite her own exhaustion and desire to pack it in and go to sleep.

According to the idea presented here, the mother's practical reasoning stands to be evaluated according to both of these questions: the quality of *what* she did—and the quality of *why* she did it. Even if persisting is the right thing to do, if the mother treats Chua's advice as an authoritative directive to be obeyed, then the mother has thereby breached her obligation to act according to her own lights, and this breach calls for justification.

Note that there are two ways in which one might breach the obligation to act according to one's own lights. Above, we specified the *content* of this obligation as requiring one *to act according to explanatory reasons that one has discerned for oneself*. Yet, further recall that we identified the *grounds* of this obligation in terms that went beyond Kantian-inspired notions of self-legislation relied on by Wolff.³⁰ Instead, we identified the grounds of the obligation in terms of the values that may be realized through rational human beings engaging in moral deliberation, attentive to the salience and responsive to the force of the normative reasons that apply in many and varied circumstances. The obligation to act according to one's own lights is thus grounded not merely in refusing to be ruled by another's will but also engaging in our own practical reasoning: that is, there is value in exercising our human capacity to recognize and respond appropriately to the balance of genuine normative reasons applicable in any given circumstance. Acting according to one's own lights, thus, requires not merely that one act according to reasons already discerned for oneself (one's *own* lights); those reasons must be ones that genuinely illuminate the right course of action (one's *own lights*).³¹

We will return to this point below, but first let us examine how obedience to claims of authority constitutes breaching the obligation to act according to one's own lights.

29. See discussion of authority in Sections II. C and D *infra*.

30. I take no view on how genuinely Kantian Wolff's account is. See narrative text accompanying note 22.

31. RAZ, *supra* note 1 at 57, commenting on the "intrinsic desirability of people conducting their own life by their own lights."

*C. Obedience: Treating Directives as if They Were Genuinely
Authoritative*

When a source issues a directive that the source claims is an authoritative directive, the source intends thereby to place the subject under an obligation to obey the directive. The subject treats that directive as if it were authoritative insofar as the subject obeys the directive.

To obey a directive is to allow it to play a special role in one's practical reasoning. Specifically, to obey a directive is to treat it as a *protected reason* for action: a first-order reason to ϕ ³² plus an exclusionary reason not to refrain from ϕ -ing for (some set of) reasons the subject may have not to ϕ .³³ Another way to express this idea is to say that one treats the reason as if it has *mandatory* force.³⁴ Further, to obey directives is to treat

32. In the philosophical literature regarding practical reasoning, and especially in Raz and Gardner's work, the symbol ϕ is used as a universal placeholder for an unspecified action.

33. On protected reasons, see JOSEPH RAZ, PRACTICAL REASON AND NORMS 39-40, 178-199 (2nd ed. 1990) [hereinafter RAZ, P.R.N.]. In explaining the notion of protected reasons to my students, I invite them to think of reasons as children on a school playground. (I suspect the following metaphor is inspired by the idea of reasons being "in play" on one's rational horizons.) Some of the children favor playing baseball (option A), while others favor soccer (option B): which is to say, some of the first order normative reasons favor option A, while others favor option B. Think of a protected reason as the new kid who walks onto the playground, surrounded by protective force of his tough friends – and in response (at least some of) the other kids scatter off the playground. If the new kid favors playing baseball (that is, if the protected reason is a reason that favors option A), then the case for playing baseball just got that much stronger. Precisely, it got stronger in two different ways: (1) we now have a new kid who favors playing baseball (that is, the protected reason in favor of option A adds another first-order reason supporting the case for option A); and (2) some or all of the kids who favor playing soccer instead of baseball have scattered off the playground for fear of the new kid's tough friends (that is, the exclusionary force that accompanies the protected reason excludes some or all of the reasons that favor "not option A").

When all is said and done, the effect of adding the new kid, with his tough friends, into the mix makes it more likely that the case for playing baseball will prevail. (That is, the combination of the protected reason's first and second order normative force can go a long way toward making it the case that the reasons in favor of option A stand undefeated.) Still, the new kid's tough friends might not exclude every child who favors playing soccer, (That is, the scope of a protected reason's exclusionary force may be relatively narrow, such that some reasons against option A remain in play). And, so, it might be that the case for playing soccer prevails despite the effect of the new kid and his tough friends. As such, the fact that one has a protected reason in favor of option A does not fully determine the question of what should be done, all-things-considered.

Note, as well, that the new kid's tough friends merely kick-off other children from the playground - they do not kill them. (That is, the exclusionary force of a protected reason merely excludes reasons; it does not cancel the reasons.) The children who have been forced off the playground remain nearby, and while their case for playing soccer at that time and place may have been defeated, we may now have residual reasons to satisfy those children - say, by allowing them a turn to play soccer later – or taking them to a movie, ice cream, etc. In this way, even excluded reasons can bear residual normative force. Gardner explains these residual reasons in the context of his "continuity thesis." John Gardner, *What is Tort Law For? Part 1: The Place of Corrective Justice*, 30 LAW & PHIL. 1 (2011). For further discussion of the moral residue of excluded reasons, see Michelle Madden Dempsey, *Against Liability: Toward a Reasons-Based Account of Self-Defense*, in THE ETHICS OF SELF-DEFENSE (Christopher Coons and Michael Weber, eds., 2016).

34. Gardner and Macklem, *supra* note 14, at 465.

them as generating content-independent reasons. In so doing, the subject supposes that the directives are reasons “simply because they have been issued and not because they direct subjects to perform actions that are independently justifiable.”³⁵

Irrespective of whether a directive is genuinely authoritative (that is, whether it actually gives the subject the kind of reason for action that it claims to give), the subject can nonetheless *treat* the directive *as if* it has done so. That is, the subject can treat the directive as a content-independent protected-reason.

Putting these conditions together, we can understand what obedience entails in considering my son’s response to a directive I might issue to him such as, “Clean your room.” First, however, note the difference between a directive (“Clean your room.”) and a request (“Will you please clean your room?”) and a suggestion (“Hey, buddy, you really should clean your room.”). The form of words is not the key, because the speaker could intend any of the three formulations to constitute an authoritative directive.³⁶ But the distinction between claims of authority, requests, and suggestions still holds. In the first directive, the speaker (source) intends the audience (subject) to obey the request. In the second, the speaker intends the audience to take the request as a first order reason for cleaning the room. In the third, the speaker intends to impact the audience’s theoretical reasoning and not his practical reasoning.³⁷

If I say to my son, who sits happily playing Minecraft, “Clean your room,” and he treats the directive as if it were authoritative, he thereby obeys it. In so doing, he allows the directive to play a special role in his practical reasoning. He treats the directive as a content-independent reason to clean his room (“because mom said so”) which bears the force of a protected-reason, thereby excluding from his rational horizons reasons that weigh against cleaning his room (e.g., that playing Minecraft is totally awesome).

Obedying a directive is not merely doing what the directive would

35. Scott Shapiro, *Authority*, in OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW 383, 389 (Jules Coleman and Scott Shapiro eds., 2002). See also GREEN, THE AUTHORITY OF THE STATE, *supra* note 3, at 40-42; H.L.A. HART, *Commands and Authoritative Legal Reasons*, in ARTICLES ON BENTHAM 243 (1982).

36. The formulation of the request would thus be intended to mean, “I’m telling you to clean your room.” My partner frequently fails to grasp this distinction, which invariably results in our smart-aleck son *not* cleaning his room and later claiming the defense of “Well, you never *told* me to clean my room” - proving once more that legal philosophy is good training for effective parenting.

37. Theoretical reasoning concerns our thoughts/beliefs, whereas practical reasoning concerns our actions. R. Jay Wallace, *Practical Reason*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2014), <https://plato.stanford.edu/archives/sum2014/entries/practical-reason/> [<https://perma.cc/W46U-4RQ3>]. In making a suggestion, the speaker intends to influence the listener’s thinking about what to do – to plant an idea – specifically, here, the idea that my son should clean his room.

instruct one to do.³⁸ In the example above, my son does not obey my directive to clean his room *simply* by cleaning his room. Rather, before we can know whether he has *obeyed* the directive, we need to know *why* he cleaned his room. To clarify this point, compare obedience to two other ways a subject might respond to the source's directive: conformity or compliance.³⁹

Conforming to a directive is simply doing what the directive would have one do, without the directive playing a role in one's rational horizons. Imagine that my son was so enraptured with a game of Minecraft that he did not even hear me when I said, "Clean your room" (not hard to imagine, trust me). By shocking coincidence, shortly after I issue the directive, he gets tired of the game, goes upstairs, and cleans his room of his own volition—completely oblivious to the fact that I have directed him to do so. Such cases, impossibly rare with children cleaning their rooms, are common in other contexts. I drive down the road, unaware of the speed limit, but by coincidence I happen to drive within the limit. The question, "What is the speed limit?" never occurs to me; I just drive at what I take to be a safe and reasonable speed under the circumstances, and I manage to conform to the speed limit. Similarly, while I am aware of a legal directive with the content, "Do not murder," and I always *conform* to that directive, I have never once *obeyed* it. That is, I have never treated the prohibition on murder as a content-independent, protected reason for not murdering. Thankfully, I have never felt tempted to murder anyone, so in weighing up my first-order reasons for acting, it has always seemed to me that the option "Do not murder" has been the right way to go.

Complying with a directive falls somewhere between obeying and conforming. When one complies with a directive, she treats it as a reason for action, to be added to her other first-order reasons. She might treat the directive as a weighty reason or simply a ninety-eight pound weakling of a reason—either way, the gist of compliance is three-fold: (1) while the subject does indeed allow the directive to have some impact on her rational horizons, (2) she does not allow it to have the exclusionary force of a protected reason, and (3) the strength of the reason is assessed, at least in part, according to its merits and not merely its source. I suspect that most people regard most claims of authority as occasions for

38. However, compare this account of obedience to that of Michael Sevel, who argues that "to obey the law a person must act with some recognition that she is in fact doing an action which the law requires." This account of obedience requires no acknowledgment of laws special authority. Michael Sevel, *Obeying the Law*, 24 LEGAL THEORY 191, 194 (2018).

39. Whereas the account of obedience in Sevel, *supra* note 38, is at odds with what I present in this paper, his accounts of conformity and compliance are similar. "To comply with a reason is to act for that reason; to conform to a reason is simply to do the action for which the reason is a reason, but not to act for that reason." *Id.* at 197.

compliance rather than obedience. Speed limits and stop signs are treated as first order reasons to adjust one's speed or stop one's car—and these reasons are regarded as stronger or weaker depending on the circumstances. As such, while driving down a crowded street at midday, the directives to follow the laws of the road will be given far greater weight than they would while driving along an empty country road in the middle of the night.⁴⁰

According to the strong version of philosophical anarchism, it is always absolutely wrong to treat a directive as if it were authoritative. In other words, obedience is always unjustifiable. According to the more plausible, modest version of philosophical anarchism adopted here, treating the directives of others as if they were authoritative (that is, obeying others) calls for justification. Obedience may be justified or unjustified in any given case, but it is not always unjustifiable. The conditions establishing justified obedience will be discussed below in Section III.C. But first, let us examine *why* obedience calls for justification.

Obedience calls for justification because it violates the obligation to act according to one's own lights. It violates this obligation in two ways. First, treating a directive that has been issued by someone else (or something else⁴¹) as a content-independent reason for action calls for justification because, in so doing, the subject submits her will to the source's directive. Its *pro tanto* wrongfulness lies in the threat it poses to the moral autonomy of the subject who has submitted her will to the will of the source.⁴² Primarily, it is this aspect of obedience that vexes Wolff when he states that the “primary obligation of man is autonomy, the refusal to be ruled...”⁴³

Second, treating a directive as a protected reason calls for justification because, in so doing, the subject fails to weigh-up her first-order reasons for herself. Instead, she excludes (at least some of) her first-order reasons from her practical rational horizons. In a one-off situation, allowing

40. I am indebted to John Gardner for the example.

41. See Stephen Perry, *Two Problems of Political Authority*, 6 AM. PHIL. ASS'N. NEWSL. ON PHIL. OF L. 31 (2007) (discussing the authority of a black box) [hereinafter Perry, *Two Problems of Political Authority*], and Stephen Perry, *Political Authority and Political Obligation*, in 2 OXFORD STUDIES IN PHILOSOPHY OF LAW, 49 (Leslie Green & Brian Leiter eds., 2013) [hereinafter Perry, *Political Authority*].

42. On *pro tanto* wrongness, see GARDNER, *Justification and Reasons*, *supra* note 8, at 95-97. Gardner used the phrase “prima facie” (at first sight) rather than “pro tanto” (to an extent), but I follow Shelley Kagan here in thinking the phrase “pro tanto” captures the point more clearly. SHELLEY KAGAN, *THE LIMITS OF MORALITY* 17 (1989). “Calling an action [‘pro tanto wrong’] is intended to affirm that the action really is wrong, while leaving open the further question of whether the wrongdoing is justified. By the same token, an action that is ‘all things considered wrong’ is not merely a wrong action. It is a [wrong] action and also (a quite separate matter) an unjustified one.” JOHN GARDNER, *In Defence of Defences*, in OFFENCES AND DEFENCES, *supra* note 8, at 77, 78.

43. WOLFF, *supra* note 6.

protected reasons to structure one's rational horizons in this way is unlikely to have any substantial impact on one's ability to engage in practical reasoning—but when obedience to authority becomes frequent, it tends to weaken one's practical rational capacities. In this sense, rationality is like a muscle: use it or lose it. Our rational capacities, including the capacity to discern the salience of our normative reasons and appropriately respond to the rational force of those reasons are central to our humanity. As such, obedience to authority (or at least frequent or habituated obedience) has the tendency to weaken these capacities, thereby rendering one less fully human. For this reason, as well, obedience to authority calls for justification.⁴⁴

D. Claiming Authority: Claiming to Give Obligations to Obey

Sources issue directives that they claim are authoritative. Claims of authority are claims to give subjects reasons. Above, we characterized the kind of reason that sources claim to give subjects in terms of the intended impact on the subject's horizons. Namely, the source claims to be able to give the subject obligations to obey: to treat the directives as content-independent, protected reasons for action.⁴⁵ In this Section, we further unpack what it means to say that a source claims to *give* the subject obligations to obey and why sources that make such claims stand in need of justification for doing so.

As David Enoch has helpfully explained, when we say someone (A) gives a reason to someone else (B), we might mean any one of three distinct things.⁴⁶ First, we might simply mean that A identified for B the reasons that already applied to B. After a long house-hunt, you remain undecided about which house to purchase. Your friend observes, "You should buy the one on Mocking Bird Lane," to which you reply, "Give me a reason." The friend then lists all of the normative reasons that weigh

44. This dynamic is particularly acute in regard to the law's claims of authority. Law's claims over its subjects are typically diachronic in virtue of law's continuity and persistence. *See* H.L.A. HART, *THE CONCEPT OF LAW* 51-66 (3rd ed., 2012). Moreover, the law's claims of authority are typically comprehensive, in virtue of law's generality. LON FULLER, *THE MORALITY OF LAW* 46-49 (1964). Both of these qualities, of course, vary with respect to particular laws. Examples can be found in which law's claims of authority lack the continuity, persistence and generality typical of law in its central case (for example, a restraining order issued by a judge, applicable only to one person, for a limited time). Nonetheless, laws (as rules) are necessarily susceptible to being applied across more than one case and thus bear some hallmarks of continuity, persistence and/or generality. *See also* John Gardner, *The Legality of Law*, 17 *RATIO JURIS* 168, 180 (2004).

45. *Compare* NOAM GUR, *LEGAL DIRECTIVES AND PRACTICAL REASONS* (2018) (arguing against the generally Razian account that informs my approach, in favor of a view that law claims to give reasons to adopt a law-abiding attitude). *See also* Gur's discussion of Raz's account with non-Razian "weighing accounts." *Id.* 12-17.

46. *See* Enoch, *Giving Practical Reasons*, *supra* note 17; David Enoch, *Authority and Reason-Giving*, 89 *PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH* 296 (2012).

in favor of buying the house on Mocking Bird Lane (it is larger than the others, on a hill and thus less apt to flood, of newer and better construction, closer to work and excellent schools), and she explains why the reasons you perceive to weigh in favor of your other options are not as weighty as you think (yes, the neighbors on Magnolia Drive are nicer, but they might move soon; the house on James Road is less expensive on its own, but the property taxes at that location are very high). Enoch refers to this kind of reason-giving as “epistemic reason-giving.”⁴⁷ As he correctly observes, epistemic reason-giving consists in A’s simply pointing out the normative reasons that already apply to B, so that B comes to learn what was true for her all along.⁴⁸

Second, we might mean that A altered the circumstances that apply to B, triggering the application of a conditional normative reason that already applied to B. As Enoch explains:

By placing his foot on the road, a pedestrian can give a driver a reason to stop, but only because the driver had all along, and independently of the pedestrian’s actions, the conditional reason to-stop-should-a-pedestrian-start-crossing. By placing his foot on the road, the pedestrian thus triggers this pre-existing reason, thereby giving the driver a reason to stop.⁴⁹

Similarly, the fact that someone at a nearby university organizes an interesting legal philosophy conference gives me a reason to attend the conference. I correctly think to myself, “I should really attend that conference,” and I set out to see if I can manage to find the time to attend. The reason they give me is not merely epistemic. The organizers are not merely conveying to me that there will be an interesting conference that, all-things-considered, I should find the time to attend. Instead, by organizing the conference, they are creating the circumstance that an interesting legal philosophy conference will be conducted at a time and place that gives me a reason to attend.⁵⁰

Still, there seems to be an important difference between the way in which the organizers give me a reason to attend in the case where they simply make the conference a reality and *ask* me to attend the conference. Once my attendance has been requested, I seem to have a different kind of reason to attend, one that exists by virtue of their request. Enoch identifies this final category of reason-giving as *robust* reason-giving.⁵¹ On his account, robust reason-giving is a special case of triggering-reason

47. Enoch, *Giving Practical Reasons*, *supra* note 17, at 5.

48. *Id.*

49. *Id.* at 4.

50. The time and place are auxiliary reasons. The operative reason is the fact that it will be an interesting conference and, let us assume, the fact that there is intrinsic value in doing legal philosophy. On operative and auxiliary reasons, see RAZ, *P.R.N.*, *supra* note 33, at 33-35.

51. Enoch, *Giving Practical Reasons*, *supra* note 17.

giving, and it carries a kind of “magical normative force” shared by actions such as requesting, promising, and issuing authoritative directives.⁵² Unlike cases of ordinary triggering reason-giving, robust reason-giving involves cases where the request, promise, or authoritative directive are constitutive of the normative reasons for following the directive.

John Gardner helpfully clarifies Enoch’s framework with the following heuristic.⁵³ Starting with a practical syllogism in mind, we can think of epistemic reason-giving as simply pointing out the full practical syllogism; we can think of triggering reason-giving as making some change to a minor premise; and we can think of robust reason-giving as bringing into existence a new major premise.

The central claim of philosophical anarchism is that sources can never give the kind of reasons they claim to give in this robust way. That is, they cannot give content-independent, protected reasons. Directives issued by A cannot introduce into practical syllogisms that apply to B new major premises that bear exclusionary force on B’s rational horizons, and that exist in virtue of A’s say-so, without regard to the major premises’ merits.⁵⁴ Moreover, as discussed above, for B to *treat* A’s directive *as if* it had this power (that is, to obey the directive) is to violate B’s obligation to act according to her own lights, so obedience calls for justification.

Relatedly, when sources issue directives that they claim are authoritative, those claims stand in need of justification as well. The relation is best understood as parasitic upon the fact that obedience calls for justification. Given this fact about the moral quality of obedience, a claim of authority over potentially obedient subjects calls for justification in its own right. Thus, as noted previously, issuing directives which claim to be authoritative calls for justification, because such directives constitute *attempts* to get subjects to obey, and the issuance of such directives present a risk that the subjects will indeed obey.

Primarily, it is not a claim of authority alone that calls for justification

52. Enoch, *Authority and Reason*, *supra* note 46 at 300.

53. Gardner’s contribution is discussed at Enoch, *Giving Practical Reasons*, *supra* note 17, at 12.

54. Whether requests and promises can ever amount to robust reason giving is beyond the scope of this paper. Enoch makes a strong case for thinking that what he calls the “normative success conditions” for robust reason-giving can be present in many instances of requests and promises, and I do not disagree. Yet, when it comes to commands (directives issued by sources that the source claims are authoritative), the normative success conditions seem all but impossible to satisfy. It is difficult to imagine how there could be a pre-existing, independent, *general* reason for B to treat A’s order to ϕ as a content-independent, pre-emptive reason for ϕ -ing. For Enoch’s normative success conditions to be satisfied, it would have to be the case that B (generally and diachronically) should not reason for herself but should instead obey A. We could imagine such conditions being satisfied in special cases, such as where B is brain-damaged or otherwise rationally impaired in a profound way that defies rehabilitation – but it is difficult to imagine how these could be satisfied in the standard case. Enoch, *Authority and Reason-Giving*, *supra* note 46 at 313-314.

but instead the risk of obedience posed by such a claim. If each claim were wholly ineffective in inducing obedience, they would not need justification for the reasons outlined here. Consider the elder sibling who frequently tells her younger siblings how to live their lives, issuing directives rather than offering advice. If her claims of authority have no impact whatsoever on her siblings' practical reasoning, her conduct does not call for justification under the problem of authority (of course, it may call for justification under a different problem though, like nagging or being a buttinsky). The point is, wholly ineffective claims of authority make no practical difference to anyone and therefore do not call for justification *qua* claims of authority.⁵⁵

E. Justification: Distinguishing the Justifiable from the Justified

Pro tanto wrongdoings, including *inter alia* breaches of our obligations, call for justification.⁵⁶ If full justification is secured, then our *pro tanto* wrongdoing is not wrong, all-things-considered. Thus, as discussed below, while breaching a promise is *pro tanto* wrong, if doing so is justified, then the breach is not wrong all-things-considered. So too, as discussed below, cutting into the living body of another human being is *pro tanto* wrong, but in cases where the cutting is justified, it is not wrong all-things-considered.

The process of justification is two-fold. The distinction between the two steps in the process marks the divide between that which is *justifiable* and that which is *justified*.⁵⁷ To say that something is justifiable is, first, to say that it calls for justification at the outset, and second, that there were undefeated normative reasons weighing in its favor. Thus, while your breaching a promise to meet a colleague for lunch calls for justification, your child having a serious accident and needing you to rush her to the hospital is an undefeated reason in favor of missing the lunch, which makes your breach of the promise *justifiable*. So, too, while it is true that cutting into a living person's body calls for justification, it being part of a life-saving surgical procedure is an undefeated reason in favor of cutting.

55. When it comes to claims of authority made through legal directives, it is widely recognized, as a conceptual matter, that law must be a *de facto* authority in the sense explained here. Leslie Green, *Legal Obligation and Authority*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* (Edward N. Zalta ed., 2012), <https://perma.cc/F4VT-FV84>. Yet, of course, that law is treated as a *de facto* authority by many does not entail that law succeeds in robustly giving the kinds of reasons it claims to give (content-independent, protected reasons).

56. On *pro tanto* wrongdoing, see KAGAN, *supra* note 42.

57. See Gardner, *Justification and Reasons*, *supra* note 8. It should be noted at Gardner's view of justification is not without its critics. The thesis that being justified requires acting *for* certain reasons is controversial across various branches of philosophy, and even within legal philosophy. While I find Gardner's account illuminating, providing an independent defense of its plausibility is beyond the scope of this article. I thank Ruth Chang for pressing me on this point.

As such, the cutting is *justifiable*.

Still, the issue of justification is not yet fully resolved at this stage of the analysis. It remains to be seen whether the person who performs the act of cutting (the surgeon) is *justified* in doing so. It is not enough that she acts in the presence of undefeated reasons in favor of cutting—rather, she must act *for* one or more of these reasons. To borrow from the distinction discussed above, *conformity* to her undefeated reasons will not suffice; she must *comply* with those reasons. In the breach-of-promise-to-lunch example, if the parent acts for the undefeated reason of saving her child, then not only is her conduct justifiable (as explained above), but moreover, she is *justified* in missing the lunch. So, too, in the cutting example, if the surgeon acts *for* undefeated reasons (the fact that doing so will contribute to saving the patient's life), then not only is her conduct *justifiable* (as also described above) but the surgeon is *justified* in cutting. If instead persons act for reasons that are either defeated or weigh against their conduct, then while their conduct remains justifiable, they themselves are not justified. For example, if the parent acts for reasons that are defeated (say, that the hospital is near her favorite outlet mall and this trip will give her an excuse to do some shopping after the child is treated) or reasons that weigh against the breach (say, that she wants to hurt her colleague's feelings by skipping lunch), then while her breach of the promise is still justifiable, she is not justified in the breach. So, too, if the surgeon acts for reasons that are defeated (to refine her surgical skills in hopes of getting a raise) or that weigh against cutting (the fact that cutting will feed her sadistic desire to mutilate bodies), then while her conduct would still be justifiable, she is not justified in performing it.

In other words, to bridge the divide between the justifiable and justified, our explanatory reasons matter. As Gardner observes:

An action is *justifiable* if the reasons in favour of it are not defeated by the reasons against; but it is *justified* only if the agent acts for one or more of those undefeated reasons.⁵⁸

As explained above, sources stand in need of justification when they issue directives that they claim are authoritative. In other words, claiming to (robustly) give someone else an obligation to obey your directive is the kind of action that calls for justification. Meanwhile, subjects stand in need of justification when they treat a source's directive as if it were authoritative. By breaching the obligation to act according to one's own lights, the obedient subject commits a *pro tanto* wrong.

In the next Part, we will employ these pieces of the puzzle to identify

58. JOHN GARDNER, *Crime: In Proportion and in Perspective*, in OFFENCES AND DEFENCES, *supra* note 8, at 227. One's reasons may be mixed: some defeated, some undefeated. The key to justification is that undefeated reason(s) feature among the reasons for which one acts.

the following: the conditions under which sources may be justified in claiming authority, the normative force justified claims of authority may have on subjects' rational horizons, and the conditions under which subjects may be justified in treating directives as if they were authoritative.

III. THE SOLUTIONS

This Part offers solutions to three puzzles regarding authority, obligation, and justification. Each Section of this Part begins by recounting the puzzles under investigation and then uses the conceptual tools examined in Part II to attempt to solve each puzzle.

A. Solving the Puzzle of Justified Authority

The puzzle of justified authority asks *when, if ever, is a source's claim of authority justified?* According to the analysis of justification discussed above, this puzzle directs our attention to two distinct but related sets of questions.

First, did the source have undefeated normative reason(s) in favor of claiming authority?

Second, in so doing, did the source act for those undefeated reasons?

If both questions can be answered in the affirmative, then we have identified a case of justified authority.⁵⁹ Below, this Section draws on Gardner's distinction between justifiable and justified claims of authority to set up the framework for answering these questions and examines Raz's service conception of authority for answers.⁶⁰

1. Justifiable Claims of Authority

An answer to the first question above, *whether the source had undefeated normative reason(s) in favor of claiming authority*, is suggested by the central thesis in Joseph Raz's famous service conception of authority, the Normal Justification Thesis (hereinafter "NJT"). Raz

59. That said, it is best not to get too excited about what justified authority entails. *See supra* Section III.B. for a deflationary solution to that puzzle.

60. For a standard gloss of the relationship between satisfaction of NJT and the fate of philosophical anarchism, *see* BRIAN LEITER, NATURALIZING JURISPRUDENCE: ESSAYS ON AMERICAN LEGAL REALISM AND NATURALISM IN LEGAL PHILOSOPHY 172 (2007). "The anarchist thesis, in Razian terms, is simply the claim that law always fails to satisfy the Normal Justification Thesis." *Id.* In this article, I offer an alternative version of the anarchist thesis – albeit one that builds on a broadly Razian (and Gardnerian) framework.

posited:

[T]he normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.⁶¹

Three points are worth noting about Raz's formulation. First, it is somewhat odd that a thesis called the "normal justification thesis" does not mention anything about justification. Given Raz's formulation, it would be better entitled, "the normal way to establish that a person has authority over another person thesis." Granted, that's a mouthful, but at least it would not beg the question of what precisely calls for justification. Putting this quibble to the side, we will treat the NJT as offering a partial solution to a genuine question of justification.

Second, by formulating the thesis in terms that imply justified claims of authority actually *succeed* in doing what the sources claim they do, Raz's formulation begs the question posed by the puzzle of entailment, *whether justified authoritative directives entail obligations to obey*. We will leave this matter for further discussion below.

Third, a point of terminology: while Raz's formulation of the NJT in the cited passage is phrased in terms of the subject better *complying* with the reasons that apply to her, the thesis is better interpreted as speaking to the subject's better *conforming* with these reasons.⁶² On its own terms, the NJT envisions a situation in which the subject is not acting *for* the reasons that apply to her (she is not *complying* with those reasons). Instead, the subject is acting out of obedience to the directive: she is treating the directive as authoritatively binding and thus acting for that (purported) reason. Where the conditions of the NJT are satisfied, the subject better *conforms* to the reasons that apply to her when she obeys the directive. As such, it makes more sense to phrase the matter in terms of conformity rather than compliance.

With these points clarified, we can now identify a partial solution to the puzzle of justified authority. Recall that the first question posed by this puzzle is *whether the source had undefeated normative reasons in favor of claiming authority*. Where the NJT is satisfied, the answer is yes. Provided that the subject would better conform with reasons that apply to

61. RAZ, MORALITY, *supra* note 1 at 53; see also, RAZ, ETHICS IN THE PUBLIC DOMAIN, *supra* note 8 at 214.

62. While it is not clear in this formulation of the NJT whether Raz had in mind the distinction between conformity and compliance that I spelled out above. In latter articles, however, he uses the term conformity as I intend it. See JOSEPH RAZ, *Explaining Normativity: Reason and the Will*, in ENGAGING REASON, *supra* note 10.

her if she accepts the source's directive as authoritatively binding and tries to follow it, rather than trying to follow the reasons that apply to her directly, then normally, the source *does* have undefeated normative reasons in favor of claiming authority. Put simply, if the subject would do better by obeying the source's directive rather than acting according to her own lights, then the NJT is satisfied. Where the NJT is satisfied, the source's claim of authority is *justifiable*.

When might the NJT be satisfied? The most common instances involve cases where the source has greater knowledge than its subjects, is in a better position to resolve coordination problems, or the subjects suffer from weakness of will. Let us take examples of each in turn.

First, consider cases involving epistemic guidance, such as my dilemma in *driver vs. girl-on-bicycle*.⁶³ If someone sees the girl and yells a directive to me ("Stop!"), then that claim of authority satisfies the NJT on grounds that the person who yelled had greater knowledge than I did under the circumstances. As such, it is justifiable for the source to issue the directive and claim authority over me in so doing.

Second, consider cases involving coordination problems. Such a problem can be illustrated by considering the main staircase at the London School of Economics. Indeed, it is a natural experiment in coordination problems: a highly diverse international student body frequently finds it impossible to resolve the matter of which side of the stairs ought to be used. Americans tend to walk on the right, British on the left, with various other students either selecting a side or walking in the middle in hopes of avoiding collisions. It is time-consuming and frequently dangerous to walk that staircase, never knowing whether someone will come bounding around a corner, smacking dead into someone heading the opposite way. Let us call this hypothetical *staircase mayhem*. If some bold soul were to post a sign at the base and top of the staircase with a directive such as "Walk On The Left," and people obeyed this claim of authority, the stairs would be much safer.⁶⁴ Such is an example of satisfying the NJT on grounds of successful coordination and, given the stipulations here, the sign-poster's claim of authority was justifiable.

Finally, consider cases involving weakness of will, such as the would-be runner, who is tempted to snuggle back into her warm blankets on a chilly winter morning. Let us call this hypothetical, *weak-willed runner*. If her coach calls to direct her, "Get out of bed and start running," and in

63. See *supra* Section II.A.

64. The example is drawn from my experience as a student at the London School of Economics. Some bold soul did manage to resolve this problem by posting signs, thus coordinating the flow of stair-traffic. Eventually, however, the signs fell down and the bold soul's coordination solution did not stick, which just goes to show that satisfying the NJT on grounds of coordination requires effective cooperation by the subject group. (That is, it requires *de facto* authority. See *supra* note 55).

so doing, the coach manages to strengthen the weak-willed runner's resolve such that she goes for her morning run, then the coach's directive satisfies the NJT. Again, then, his claim of authority over the runner would be justifiable.

In all of these cases, there are normative reasons that apply to the subjects (safety of the girl, safety of the students, fitness of the runner) that make it the case that the subjects ought to do what the sources are telling them to do. If the subjects would better conform to these reasons by treating the sources' directives as if they were authoritatively binding, then the conditions of the NJT are satisfied and the sources' claims of authority are justifiable.

2. Justified Claims of Authority

The second question in the puzzle of justified authority asks *whether, in claiming authority, the source acted for those undefeated reasons*. If so, the source is *justified* in issuing the directive. An answer to this second question is suggested by another thesis from Raz's service conception of authority: the dependence thesis. According to the dependence thesis:

[A]ll authoritative directives should be based, among other factors, on reasons which apply to the subjects of those directives and which bear on the circumstances covered by the directives.⁶⁵

What we learn from the dependence thesis is two-fold: (1) those who claim authority, and who wish to be fully justified in so doing, must issue their claims of authority for the right reasons, and (2) the right reasons for claiming authority are the undefeated normative reasons that apply to the subjects under the circumstances. *Those* reasons must feature amongst the source's explanatory reasons when issuing the directive. Otherwise, the source's claim of authority is, at best, *justifiable* but not *justified*.⁶⁶

We can illustrate how these pieces fit together by considering a small village separated from the City Center by a single road. All of the jobs in the area are located in the City Center, so it is crucial that people from the small village are able to travel the road into the City Center. Many of the parents in the village have to drop off their children at school in the morning and then rush off to work in order to arrive to the City Center on time for work. There is no speed limit set by law, so people drive at whatever speed they judge as appropriate to get to and from the City Center. Because people are often rushing to work, they often fail to

65. Raz, *supra* note 8 at 214.

66. Of course, if they get the calculation wrong, then the NJT is not satisfied, and thus their claim of authority is not even justifiable. It may, however, be excused. See GARDNER, *The Gist of Excuses*, in OFFENCES AND DEFENSES, *supra* note 25. Here, it is assumed that they got the calculation right and issued a directive that satisfies the NJT.

conform to the safety-reasons to drive more slowly. And because of the high traffic congestion and short timeframes available for travel from the village to the City Center in the morning, the road is often dangerous to travel, with many accidents, injuries, and occasional deaths.

Upon becoming aware of this situation, two people in the village post signs on the road stating, “Speed Limit: 25 MPH.” Travelers on the road obey the directives. Accidents, injuries, and deaths are reduced—although a considerable number of villagers are more frequently late for work, resulting in docked pay in several instances. Let us assume that the safety-improvement reasons in favor of driving the speed limit defeat the late-to-work reasons against driving the speed limit. Let us further assume the villagers better conform to their undefeated safety-improvement reasons by obeying the speed limit than they would do if they tried to conform to those reasons directly—that is, they drive better by obeying the directive than by their own lights.

So far, the hypothetical illustrates two *justifiable* directives: both of the signs posted are directives that claim to be authoritative, and by obeying the speed limit, the villagers better conform to their undefeated normative reasons in favor of staying safe.

To evaluate whether either directive is fully *justified*, we must look to the reasons *why* the two people posted the signs. Assume that sign-poster #1 is the village busybody who frequently goes around telling other people what to do. She posted the sign, at least in part, for altruistic reasons—because she was concerned about the safety of the people traveling down the road. Compare her position to that of sign-poster #2, an unemployed job-seeker, whose reasons for posting the sign had nothing to do with concerns about the safety of people traveling down the road. Rather, sign-poster #2 simply wanted to slow-up the pace of travel on the road, in hopes of causing villagers to arrive late to work and lose their jobs.

According to the analysis set out here, sign-poster #1’s claim of authority is justified, while #2’s claim of authority is not. Consider further a situation in which the village council decides to post a speed limit sign—that is, it makes and publicizes a speed limit law for their subjects, the road travelers. According to the hypothetical, this claim of legal authority is justifiable. However, consider a distinction between two council members. Council member #1 votes in favor of the speed limit on grounds that it will promote safety, while council member #2 does so on grounds that doing so will slow the pace of travel on the road for people coming from the village, most of whom (for purposes of the hypothetical) are members of an ethnic or racial group against which council member #2 is biased. On the account offered here, the claim to legal authority is justifiable in both cases, but only council member #1 is justified in

claiming that authority. This solution strikes me as the correct answer to this problem—combining the service conception of authority with the analytic distinction between justifiable and justified action explains why.⁶⁷

B. Solving the Puzzle of Entailment

The puzzle of entailment asks *whether justified claims of authority entail obligations to obey*. As previously noted, I share the philosophical anarchist's intuition that the answer here is "no." This Section briefly reviews the conditions under which the answer may be "yes", then I will consider what rational force justified claims of authority might have for sources short of giving them obligations to obey.⁶⁸

First, however, note one implication of the framework developed thus far: the moral condition of each party—the source and the subject—requires a distinct analysis. Stephen Perry correctly calls for such a distinct analysis in debunking what he calls the "reverse entailment problem."⁶⁹ A belief in reverse entailment is a belief in the proposition that a subject's obligation to obey a source (say, on grounds that the subject has promised to do so) justifies the source's claim of authority over the subject.⁷⁰ As Perry correctly argues, reverse entailment is false.

So too, because a source's claim of authority over a subject is justified does not mean that the subject has an obligation to obey the source's directive. Call this the "forward entailment problem."⁷¹ Forward entailment, just like reverse entailment, is false, because being justified in claiming something does not make that thing true. Sources *claim* to (robustly) give subjects obligations to obey the source's directives. Under the conditions outlined above, sources may sometimes be justified in making those claims. Yet, this justification does not entail that the subjects actually *do* have such obligations.

To see why this is so, consider the example of a child's miserable birthday party: the cake is stale, the balloons are all popped, the bouncy house has deflated, and the clown is scary. It is a bad party, and no one is having fun. As the children fall apart into tears and begin asking to go

67. See *supra* note 8.

68. For an exploration of somewhat similar themes recognizing the exercise of legitimate authority, see Arthur Isak Applbaum, *Legitimacy without the Duty to Obey*, 38 PHIL. & PUB. AFF. (2010).

69. Perry, *Political Authority*, *supra* note 41, at 4.

70. *Id.* ("[T]he existence of a general obligation to obey the law does not, in and of itself, entail legitimate political authority.").

71. It is not clear to me whether Perry actually endorses forward entailment, but there is some reason to suspect he does. He claims, "it is true that legitimate political authority (in the sense of a moral power) entails the existence of a general obligation to obey the law." *Id.* If by "legitimate" here, Perry means "justified," then on this point, Perry and I part ways.

home, the desperate parents of the birthday boy respond enthusiastically, “Hey now... this is a great party! Everyone is having lots of fun!” The parents’ claims are untrue and, as such, call for justification. There are surely normative reasons in favor of making the untruthful claims (for example, the possibility that the power of positive thinking will eventually change the reality, to stall for time while they figure out what to do to save the party).⁷² Assume these normative reasons are undefeated and the parents act for them—that is, they take those normative reasons as their explanatory reasons in making the false statement rather than, for example, making the statements in a sarcastic announcement of frustration at how lame the party has become. If all of these conditions obtain, then the parents’ false claims are both justifiable and justified. Still, just because the parents’ claims are justified does not magically change the reality of the situation: the party stinks.

This conundrum also arises with justified claims of authority. As explained below, not even justified claims of authority can actually give subjects the kind of reasons that sources claim to give (content-independent, protected reasons) in the way sources claim to give them (robustly).

1. What Justified Authoritative Directives *Cannot* Do

Directives which claim authority, even when they are justified, cannot give subjects the kinds of reasons they claim to give, in the way they claim to give them—that is, they cannot give sources duties to obey the directives. The best attempt in the philosophical literature to defend the plausibility that justified claims of authority entail obligations to obey is David Enoch’s work, discussed above.⁷³ Framed in Hohfeldian terms, Enoch’s account identified the claim made by sources as a claim to have a power, which corresponds to the subjects’ liability to be placed under a duty upon the source’s say-so.⁷⁴ As discussed above, according to Enoch,

72. So, too, others at the party may very well be justified in believing the parents’ false claim, albeit for normative reasons concerning making the party more festive, rather than the truth-value of the parents’ claim. Compare, Monti’s discussion of his “Prize for a Belief” hypothetical, in which “an eccentric billionaire is willing to give John a prize enabling him to better provide for his children if he just believes that *p*.” As Monti correctly notes, “John has a practical reason to bring it about that he believes that *p* (i.e., that he will win the prize), but that reason does not make believing in *p* a fitting attitude (only truth-related reasons are of the right kind).” Ezequiel Horacio Monti, *On Darwall’s Case against the Normal Justification Thesis*, 128 ETHICS 432, 435 (2018).

73. See, e.g., Enoch, *Giving Practical Reasons*, *supra* note 17; Enoch, *Authority and Reason-Giving*, *supra* note 46.

74. See Hohfeld’s famous analysis of rights offered in two articles, Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L. J. 16 (1913); Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L. J. 710 (1917).

the source claims the power to give subjects duties “robustly,” rather than merely triggering the conditions that would make the subject have the relevant duty.

Drawing on an example of a passenger who takes the initiative in an emergency and issues orders to her fellow passengers, “everyone stay on the left!”, Enoch explains that some people (including him) view the passenger as exercising a special moral power to create duties for her fellow passengers to obey her directive, in virtue of her say-so, much as some people (including him) believe that parents and states have such power over children and citizens. Enoch acknowledges that some of us resist the idea that the passenger (or the state, or even the parent) has this power:

[T]hose of us who reject this claim seem to reject it because they think that the passenger, while clearly being able to create duties (if she shouts “everyone stay on the left!”, and if people are likely to do as she says, and if the best way to prevent loss of lives is if everyone stays on the same side, then you have a duty to stay on the left), still creates duties by merely triggering them, not by robustly giving them.⁷⁵

Call this view the *triggering-reasons* account of authority (as distinct from the *robust-reason-giving* account). While I find that Enoch’s work helpfully clarifies the conceptual landscape regarding claims of authority and conditions under which those claims may do what they claim, the triggering-reasons account seems far more plausible than the robust-reason-giving account. This is because it is difficult to conceive of sources doing much more than trigger duties in the way that the above passage illustrates (e.g., through implementing successful coordination solutions).⁷⁶ Again, the implausibility of the robust-reason-giving account is grounded in the unlikelihood that there could be a pre-existing, independent, general reason for B to treat A’s order to ϕ as a content-independent, pre-emptive reason for ϕ -ing.⁷⁷ For that to be the case, it would have to be true that B (generally and diachronically) should not reason for herself but should instead obey A. While, as noted above, we could imagine such conditions being satisfied in special cases (e.g., severe rational impairment), it seems unlikely that rational beings, as a general

75. Enoch, *Authority and Reason-Giving*, *supra* note 46, at 15.

76. That is, triggering reasons through implementing successful coordination solutions strikes me as the most sources can do through justified claims of authority. They can, of course, do other things – such as give subjects reasons epistemically, such as the person who yells, “Stop!” as I drive toward the unseen girl on the bike, or assist weak-willed subjects, as in the case of the lazy runner. The yeller does not trigger any reason I did not otherwise have; she merely informed me of the conclusion to the full practical syllogism that already applied to me. Similarly, the coach does not trigger any new reason for the runner, he simply makes it possible for the runner to bypass her own weak-will in favor of obeying the coach’s directive.

77. *See supra* note 54.

matter, should not think for themselves.⁷⁸ As a result, I find myself amongst the “those of us” to whom Enoch refers, who view successful claims of authority as giving reasons merely by triggering them, not by giving them robustly.

Even though sources do not give subjects the kind of reasons they claim (or better put, sources do not give subjects the kind of reasons they claim to give *in the way they claim to give them*—that is, *robustly*), it remains true that subjects should nonetheless always do what justified claims of authority would have them do. That is, subjects should always *conform* to a source’s justified directive. Indeed, according to the argument set out above, subjects should conform to directives that are merely *justifiable*, no matter whether the sources are also *justified* in issuing those directives. For instance, the villagers should drive the speed limit no matter who set it or why they did so, because we should always conform to our undefeated normative reasons. We should always do what justifiable claims of authority would have us do—because, *ex hypothesi*, if we do not, then we are failing to conform to our undefeated normative reasons.

All of this is true, but only in one sense. We should do what a justifiable directive would have us do—but only in the sense that we should take the action the directive would have us take. However, we should *not, pro tanto*, do what the justified source would have us do in another sense: we should not take the authority’s directive *as the kind of reason the source claims it to be*. That is, *pro tanto*, we should not treat the source’s directive as a content-independent, protected reason, since doing so violates the obligation to act according to our own lights. So, in the villagers’ case, while it is true *ex hypothesi* that they should drive at twenty-five miles per hour or less down the road, they should do so for reasons discerned for themselves, according to their own lights.⁷⁹ If they decline to be “the author of their own decisions” and instead obey the directives, they stand in need of justification for so doing.

To summarize, the obedient subject stands in need of justification in virtue of her obedience, even if her obedience is to a justified directive. The justification she needs concerns not *what she did* (since, *ex hypothesi*, she got that part right), but instead, *why she did it*. Ideally, one will do the right thing for the right reasons.⁸⁰ That is, ideally, one will act *for* undefeated reason(s) that she has discerned herself: she will act according

78. *Id.*

79. For a discussion of the sorts of values that might be realized by the villagers sorting matters out for themselves, see Shiffirin’s discussion of the Shared Space movement. Shiffirin, *supra* note 23, at 1219-21.

80. Sometimes, however, one does the right thing (conforms to what a justifiable directive would have one do) for the wrong reasons (out of obedience). Such is the position of one who obeys justified authoritative directives. These cases will be considered *infra*, Section III.C.

to her own *lights*, and she will act according to her *own* lights.⁸¹ Even justified directives cannot make it otherwise.

2. What Justified Authoritative Directives *Can* Do

While justified claims of authority might not give sources obligations to obey, they can get sources off the moral hook for issuing directives that claim authority. Also, such a directive can, in at least some cases, provide a service to subjects engaged in practical reasoning, placing them in a better moral position than they would be without the justified directive. This Section considers the former, while Section C below considers the latter.

In one of the best-entitled legal philosophy articles regarding authority, Kenneth Himma boldly declares, *Just ‘Cause You’re Smarter Than Me Doesn’t Give You a Right to Tell Me What to Do*.⁸² If the analysis set out so far is correct, the proper response to Himma is something along the lines of, “If you mean ‘right’ in the sense of a Hohfeldian power corresponding to a subject’s liability to be placed under duties to obey according to a source’s say-so (that is, to be subject to robustly-given, content-independent, protected reasons issued by the source), then yes, you’re correct... I *can’t* do that...no one can do that.” This answer is consistent with the philosophical anarchist’s view that sources can never create the kind of reasons they claim to create, in the way they claim to create them.

A more interesting response to Himma, however, might be something along the lines of, “If you mean ‘right’ in the sense of a Hohfeldian *permission* to claim authority over you, then you are incorrect. Provided that what I told you to do satisfied the conditions of the NJT, and I told you to do it based on explanatory reasons that track the dependence thesis, then I am fully justified in telling you what to do and, thus, I am permitted to do so.”⁸³ This answer tells us what the justification of authority can do for the *source*: it can get the source off the moral hook for bossing people (subjects) around and trying to get them to breach their obligation to act according to their own lights. That is, it can transform what would

81. “[I]t is a basic principle of practical rationality that one should always act for some undefeated reason, i.e. that at least one of the [normative] reasons in favour of doing as one did should have been one’s (explanatory) reason for doing it.” GARDNER, *Justification and Reasons*, supra note 8, at 100. Where the subject fails to secure full justification, she may still have an excuse for breaching the obligation to act according to one’s own lights. See GARDNER, *The Gist of Excuses*, in OFFENCES AND DEFENSES, supra note 25.

82. Kenneth Einar Himma, *Just ‘Cause You’re Smarter Than Me Doesn’t Give You a Right to Tell Me What to Do: Legitimate Authority and the Normal Justification Thesis*, 27 OXFORD J. LEGAL STUD. 121 (2007).

83. See supra Section III.A.1 for discussion of Raz’s NJT and dependence thesis.

otherwise be morally wrongful behavior into morally permissible behavior. By issuing directives that conform to the NJT for reasons that track the dependence thesis, the source is thereby transformed from a morally unjustified buttinsky into a morally justified provider of a rational service. Indeed, the idea of an authority offering a service to its subjects—to assist or enable them in better conforming to what their practical reasons would have them do—explains why Raz’s theory is called the “service conception of authority.”⁸⁴

What, however, can the source’s justification do to improve the moral position of the *subject*? To begin answering this question, recall that the obedient subject stands in need of justification in virtue of her obedience, even if her obedience is to a justified directive. To review, if one is justified in committing a *pro tanto* wrong (here, obedience to authority), then that means she is justified all-things considered and her conduct (obedience) is therefore permissible. Securing justification is a two-step process: one’s conduct must be *justifiable* (that is, one’s normative reasons in favor of obeying must defeat the reasons against doing so), and one must act *for* one (or more) undefeated normative reasons (that is, one or more undefeated *normative* reasons must feature amongst one’s *explanatory* reasons).

In seeking the first step of justification, the obedient subject can identify that the directive she obeyed was itself justified (or even merely justifiable). This is to say the directive satisfied the NJT: the subject was likely better to comply with the reasons that applied to her if she accepted the directives as authoritatively binding and tried to follow them, rather than try to figure out what to do on her own. In other words, the subject *needed the service offered by the authoritative directive* to fulfill the first of the two challenges of practical reasoning: to conform to her undefeated normative reasons. *Ex hypothesi*, had she tried to follow her own lights, she would have gotten things wrong. She would have hit the girl on the bike, crashed into someone walking on the stairs, and blown off her morning run.⁸⁵ Instead, by using the service provided by the directives, she managed to conform to the normative reasons that applied to her with respect to her actions. As such, her obedience to the directive is *justifiable*.

Still, as discussed above, to be permissible, the subject’s obedience must not merely be *justifiable*—it must be *justified*. In the next Section, we consider the conditions under which a subject’s obedience to authority can be justified and also whether a subject can ever be duty-bound to obey claims of authority.

84. Raz, *Service Conception*, *supra* note 8.

85. *Id.*

C. Solving the Puzzle of Obedience

The puzzle of justified obedience raises a two-part question: *when, if ever, are subjects justified, or perhaps even duty-bound, in obeying claims of authority?* This Section takes each issue in turn, identifying the conditions under which a source's obedience to authority is justified all-things-considered (and thus permissible) and the circumstances under which a subject may come to have a duty to obey.

1. When is Obedience Justified?

To review, according to the modest philosophical anarchism defended above, we have an obligation to act according to our own lights. As such, if a subject obeys a source's claim of authority, such obedience calls for justification. More specifically, there is an obligation *not* to obey the law. This formulation, however, is subject to misunderstanding. The point is not that there is an obligation to *disobey* the law but merely an obligation *not to obey* the law.⁸⁶

If a subject is justified in obeying the law, then her obedience is permissible. Securing justification is a two-step process: one's conduct must be justifiable (that is, one's normative reasons in favor of doing what one did must defeat the reasons against doing so), and one must act *for* one (or more) undefeated normative reasons (that is, one of more undefeated normative reasons must feature amongst one's explanatory reasons).

In circumstances where the subject will better conform to her undefeated normative reasons by treating a directive as authoritative, rather than trying to sort out what to do for herself, her obedience is *justifiable*. That is, by obeying the directive, she manages to conform to the normative reasons that already applied to her regarding that action. In those cases, the authoritative directive offers her a normative service: it helps her to better conform to what her normative reasons would have her do. This normative service, resulting whenever the authoritative directive satisfies the NJT, enables subjects to better conform to the demands of practical reason. As noted above, it is also the reason why Raz's theory is called the "service conception of authority."⁸⁷

While the subject's obedience is justifiable whenever the NJT is satisfied, we must also address whether the subject's obedience was *justified*. For, the subject's breach of the obligation to act according to her own lights is only permissible if it is *justified*, rather than merely

86. An obligation to disobey the law implies an obligation not to conform to law's directives. See *supra*, Section II.C. on the distinction between conformity, compliance, and obedience.

87. Raz, *Service Conception*, *supra* note 8.

justifiable.

To determine whether the subject's obedience is justified, we must turn our attention to the subject's *explanatory* reasons for obeying the source's directive. Why, we must ask, did she treat the source's directive as a reason to do what it directed, to exclude reasons to do otherwise, and regard the directive as such a reason just because the source said so? In other words, why did she treat the directive as if it gave her a protected, content-independent reason to do what it told her to do?

Consider two sets of cases. The first is populated with subjects who adopt what can be called a "slavishly obedient mentality" when confronted with claims of authority. Too lazy to bother trying to sort out their normative reasons for themselves, too fearful of the possibility of getting it wrong and having to own their mistakes, or too lacking in self-respect to believe that they have a right (indeed, on this account, an obligation) to be the author of their own lives, these subjects treat the sources' claims of authority over them as content-independent, protected-reasons, and they do so for no good reason. Their explanatory reasons for obeying the directive have nothing to do with the considerations that make the directive worth obeying: they have nothing to do with the service that is being provided by the justified claim of authority.

The second set of cases involves subjects who adopt what we might call a "service-conception mentality" when confronted with claims of authority. While these subjects do breach the obligation to act according to their own lights (because *ex hypothesi*, they are *obedient* subjects), they commit a *pro tanto* wrong in breaching this obligation—these folks do so for the right reasons. They obey the directive because they (correctly) believe that if they treat the source's directive as genuinely authoritative (if they obey it), they will better conform to the normative reasons that apply to them. They recognize their own lack of knowledge, weakness of will, etc., and they correctly believe that obeying the source will help them better conform to what their normative reasons would have them do.

Based on the analysis in this Article so far, we can reach the following conclusions about two different groups of obedient subjects. The first group, those subjects who obey out of a "slavishly-obedient" mentality, fail to bridge the gap between justifiability and full justification. As such, their *pro tanto* wrong of obedience is not saved from the fate of being wrong all-things-considered. Although they did the right thing (they avoided hitting the girl on the bike, did not smack into anyone on the stairs, and completed their morning run), they did so for the wrong reasons. That is, they did so because, when confronted with a source's claim of authority over them, they responded with a slavishly obedient mentality. The second group, subjects who adopt a "service-conception" mentality toward claims of authority, *do* bridge the gap between justifiable

obedience and justified obedience. They obey for the right reasons: because they (correctly) believe that doing so will help them better conform to the normative reasons that apply to them under the circumstances. In claiming the source's justified directive as their explanatory reason for action, they not only manage to do the right thing but also do so for the right reasons. As such, their obedience is morally permissible all-things-considered.

2. When is Obedience Obligatory?

Thus far, this Article has focused primarily on the obligation to act according to one's own lights, and how that *pro tanto* obligation impacts the moral position of both sources claiming authority and subjects obeying such claims. The conclusions reached so far are two-fold. First, sources may be justified in claiming authority when two conditions are jointly satisfied: the directives conform to the NJT and the reasons *why* the source issues such directives (the source's explanatory reasons) track the dependence thesis.⁸⁸ Second, subjects may be justified in obeying directives where two conditions are jointly satisfied: the directives conform to the NJT and the reasons *why* the subject obeys such directives (the subject's explanatory reasons) track a "service conception mentality," rather than a "slavishly-obedient mentality."

So much then for the justification for obeying authority. At this point, another question presents itself: *when might a subject have more than just a justification for obeying a directive and also have an obligation to obey the directive?* Before launching into this inquiry, consider a point about conflicting duties. If it is possible for a subject to have both an obligation to act according to one's own lights *and* an obligation to obey a source's claim of authority, then our duties can conflict. This is because if there is *ever* a duty to obey a directive, this duty would necessarily conflict with the duty to act according to one's own lights.

As we have already seen, duties can indeed conflict. Consider the case of the parent who breached a promise to meet a colleague for lunch because she took her injured child to the hospital.⁸⁹ In virtue of her promise to meet her colleague, she had a duty to attend the lunch. In virtue of her role as parent, she had a duty to take her child to the hospital. She faced conflicting duties because it was impossible for her to do both. No matter what she did, she would breach one of her duties.

As this case illustrates, conflicting duties are not only possible but a common feature of our moral lives.⁹⁰ When our duties conflict, we need

88. See *supra* Section III.A.2.

89. See *supra* Section II.E.

90. See generally, Terrance McConnell, *Moral Dilemmas*, in STANFORD ENCYCLOPEDIA OF

not despair. It is possible to conform to one duty, while being fully justified, all-things-considered, in breaching the other. In such cases, we do nothing morally impermissible. Such was the case with the parent who breached her obligation to meet her colleague for lunch. In fulfilling her duty to aid her child, she breached her obligation to meet her colleague, but her breach was (*ex hypothesi*) fully justified. Her normative reasons to help her child in a medical emergency defeated her reasons to meet her colleague for lunch. As such, breaching her duty to meet her colleague was justifiable all-things-considered. Moreover, the reason why she failed to meet her colleague (her explanatory reasons) tracked her normative reasons. She breached her duty to her colleague because of the (normative) reasons she had to help her child. As such, she was fully *justified* in breaching her duty to her colleague and thus, her breach was not wrong all-things-considered. In other words, her failure to meet her colleague was morally permissible.

Applying this framework, we can now identify the circumstances under which obedience to a claim of authority is obligatory. Recall the hypothetical driver who stands in need of the service offered by a justifiable claim of authority (regarding speed limits) to avoid hitting the girl on a bike.⁹¹ In this case, the subject confronts a conflict of duties. The driver has both a duty not to hit the girl on the bike and to act according to her own lights (thus, not to obey the source's claim of authority). If the speed limit directive conforms to the NJT, that means the driver needed the service offered by that directive to avoid hitting the girl. In such circumstances, it is not only justifiable to obey the directive, but the driver has an obligation to do so. The nature of the obligation to obey is thus best understood as a duty to use the rational service that is on offer when one is confronted with a justifiable authoritative directive.⁹² *Ex hypothesi*, if the driver failed to make use of the service offered to her, she would have breached her duty not to hit the girl on the bike. By treating the speed limit directive as authoritative, the driver managed to conform to her duty

PHILOSOPHY (Edward N. Zalta, ed., 2018) (surveying various accounts and explanations of conflicting moral duties).

91. See *supra* text accompanying notes 12-13.

92. This account of the obligation to obey is not in competition with accounts that ground their explanation in terms of voluntary commitments (e.g., consent-based account, social-contract accounts), gratitude or fairness-based accounts, or the necessity of obey just institutions. As it happens, I doubt any of these accounts provide a plausible grounding for a general obligation to obey, but one might embrace one or more of these accounts and still acknowledge the normative grounding of the obligation to obey set out here. Moreover, my account does not deny that one or more of these accounts can explain piecemeal obligations to obey – such as when one comes to have an obligation to obey the law in virtue of having promised to do so (e.g., by taking a citizenship oath, or swearing an oath upon assuming legal office). For a survey of these alternative grounds of an obligation to obey, see Leslie Green, *Law and Obligations*, in *THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW* 525-539 (Jules Coleman & Scott Shapiro, eds. 2002).

not to hit the girl. Moreover, if the driver obeyed out of a service-conception mentality, then she is also fully justified in breaching her obligation to act according to her own lights. In that case, she will have done nothing morally impermissible, all-things-considered.

The obligation to obey, thus understood, is an obligation that arises from a service conception of authority. Importantly, however, this account denies that claims of authority actually give us the kinds of reasons they claim to (protected, content-independent reasons) in the way they claim to do so (robustly). Even when a source is fully justified in issuing a directive that it claims to be authoritatively binding, the source's say-so does not ground a resulting obligation to obey. Rather, the obligation to obey, where it exists, is "piecemeal." That is, it exists in some cases with respect to some subjects under some circumstances, but it does not exist generally with respect to all subjects on all occasions. Moreover, where the obligation to obey does exist, its grounding is not best explained in terms of whether the source's claim of authority is justified. As we have seen, claims of authority can be fully justified, without entailing any obligation to obey on the part of subjects. Instead, the obligation to obey is grounded in the subject needing the service the directive offers. If the subject does not treat the directive as if it created an obligation to obey, the subject will fail to conform to her other duty (e.g., the duty not to hit the girl on the bike).

Putting these considerations together, then, we can reach the following conclusions. Ideally, subjects will do the right thing for the right reasons, which the subjects have discerned for themselves. That is, they will conform to the normative reasons that apply to them—such as not hitting girls on bikes—for explanatory reasons that track their normative reasons. In such circumstances, one manages to live according to one's own lights in both senses: according to one's own *lights* and according to one's *own* lights.⁹³ Yet, of course, things are rarely ideal. We are often ignorant of the normative reasons that apply to us (such as when we do not know that we are heading into a collision course with the girl on the bike).⁹⁴ Or we require someone else to create a coordination solution that will both trigger new normative reasons and enable us to conform to our normative reasons (such as when someone posts signs on a staircase where people are otherwise running into each other). Or we require someone to help us overcome our weakness of will, which will otherwise result in our failure to conform to our normative reasons (such as when a coach directs his athlete to go for her morning run). In each of these cases, if we are confronted with a justifiable claim of authority (one that conforms to the

93. See *supra* Section II B.

94. See *supra* Section II.A.

NJT), then not only would it be justifiable for us to obey those directives, we would have an obligation to do so. Again, the obligation to obey is best understood as grounded in a duty to make use of the rational service offered to us when we are confronted with a justifiable authoritative directive. Moreover, if we obey the directive out a service-conception mentality, then we are fully justified in breaching our *pro tanto* duty to act according to our own lights. In such cases, there is no moral wrong, all-things-considered: both our actions and our obedience are morally permissible.

IV. THE IMPLICATIONS

The anarchist thesis, in Dempsey's terms, is the three-part claim that:

- (1) The law might very well satisfy the NJT in some particular circumstances;
- (2) In those cases, the law is justified in claiming authority over the subject for whom the NJT is satisfied;
- (3) Still, even in those cases, the law does not actually manage to give the subject the kind of reason it claims to give (a duty), in the way it claims to give it (robustly).

This three-part claim is perfectly consistent with the view that law creates first-order reasons for its subjects and can even trigger duties in some (perhaps many) cases. It simply never does so robustly. Moreover, a law that satisfies the NJT can provide its subjects with the grounds needed to justify their obedience to law. While an obedient subject breaches the duty to act according to one's own lights, that breach is justifiable because the law at issue satisfies the NJT.

One significant implication that follows from the framework set out in this Article concerns the attitude we should adopt toward the law. That is, claims of authority (including law's claims of authority), should be viewed with a heavy dose of skepticism.⁹⁵ Even when fully justified, such claims do not create obligations to obey simply because of the source's say-so. As such, the law never does what it claims to do, in the way it claims to do it.⁹⁶ Still, according to the framework set out in this Article, there is (at least sometimes) significant value to law's subjects justifiably treating the law *as if* it created obligations to obey the law.⁹⁷

Adopting an attitude of skeptical vigilance toward the law implies three

95. In previous work, I have labelled the appropriate practical attitude to law's claim of authority as an attitude of "skeptical vigilance." Michelle Madden Dempsey, *On Finnis's Way In*, 57 VILLANOVA L. REV. 827 (2012).

96. That is, it does not robustly give us protected, content-independent reasons. *See supra* text accompanying notes 46-49.

97. *See supra* Section III.C.2.

more practical implications regarding how we should conduct ourselves with respect to the law. First, we should eschew fashionable rhetoric attacking “lawlessness,” as if an absence of “lawfulness” is, in and of itself, worthy of condemnation. Second, we should conform to, comply with, and sometimes even obey laws that enable us to (re)establish the trust necessary to maintain a political community. Third, we should both recognize and fulfill those obligations to the law that go beyond mere obedience: obligations to both *know* and *improve* the law.

A. Resisting “Lawlessness”

The framework developed in this article underscores and illuminates a fundamental tension in the law: it is both morally fallible and morally valuable. This Section considers the implications that follow from law’s moral fallibility, reserving reflections on its moral value to the next Section.

Law is morally fallible in at least two senses. First, it sometimes directs us to do the wrong thing, such as when it claims authority to require us to fight in unjust wars.⁹⁸ Second, it sometimes directs us *not* to do the *right* thing, such as when it claims authority to prohibit us from leaving water in the desert for vulnerable asylum seekers.⁹⁹ Given law’s moral fallibility, we should avoid making arguments grounded in a critique of “lawlessness” as such. That is, we should not criticize a lack of conformity to, compliance with, or obedience to law in and of itself, as if an absence of “lawfulness” were in and of itself, worthy of condemnation.¹⁰⁰

Arguments grounded in claims regarding the supposed evil of “lawlessness” have exploded in recent political discourse.¹⁰¹ These

98. MICHAEL WALTZER, *JUST & UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* (5th ed., 2015).

99. Jason A. Cade, “*Water Is Life!*” (*and Speech!*): *Death, Dissent, and Democracy in the Borderlands*, 96 IND. L. J. 261, 264 (2020) (discussing criminal prosecutions of humanitarian protesters for providing life-saving water to asylum seekers crossing the Sonoran Desert). These two ways are hardly a comprehensive survey of the law’s moral fallibility, but they are suitable here for framing our discussion. The law’s moral fallibility arguably extends to situations where it claims authority over matters that are simply “none of the law’s business,” and where it fails to offer a justifiable claim of authority that would prevent atrocities. On the former kind of moral fallibility, see H.L.A. HART, *LAW, LIBERTY AND MORALITY* (1963) (discussing The Wolfenden Report’s famous quote regarding the scope of “the law’s business.”) JOHN FREDERICK WOLFENDEN & KARL A MENNINGER, *REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION* (1963). On the latter kind of moral fallibility, see Jeremy Waldron, *Torture and Positive Law: Jurisprudence for the White House*, 105 COLUMBIA L. REV. 1681 (2005).

100. “Although it is not a particularly inspiring or romantic description, the law is, in the end, an instrument. And like all instruments, it can be used for good or bad purposes.” SCOTT SHAPIRO, *LEGALITY* 399 (2011).

101. A search of Lexis major newspapers database turns up 29 and 25 hits for the search term,

critiques are being offered by all sides of our fractured political community. Take two recent examples. From conservative commentator, Buck Sexton, writing in the most widely circulated newspaper in the United States (USA Today), invoking a critique of “lawlessness” in both the title and twice a single paragraph, as if in fear that some inattentive reader might miss his point:

Someone needs to step in and crack down on the *lawlessness*. Either it will be local and state police — or military forces. If the unrest continues, there will be no third option left. For days, rioters have been on a spree of looting, arson and attacks on law enforcement and innocent bystanders. They are emboldened, and increasingly *lawless*.¹⁰²

Concerns regarding the threat of “lawlessness” are on display in the following, as well, from the libertarian think-tank, Bluegrass Institute:

Advancing liberty-minded policy solutions in a *lawless* society ruled by thugs would, in fact, be meaningless – an exercise in futility. Freedom and liberty cannot exist without law and order.¹⁰³

And lest we think this rhetoric is only a tool used by the right-wing, consider the critique of “lawlessness” in President Joseph R. Biden’s Inaugural Address:

Today, on this January day, my whole soul is in this: Bringing America together. Uniting our people. And uniting our nation. I ask every American to join me in this cause. Uniting to fight the common foes we face: Anger, resentment, hatred. Extremism, lawlessness, violence. Disease, joblessness, hopelessness.¹⁰⁴

One unifying tendency in these critical invocations of “lawlessness” is that no one ever bothers to really explain what they mean, except by limited ostension to “bad stuff we should fear and reject.” In one sense, then, the increasingly popular critique of “lawlessness” as such is effectively sound and fury signifying nothing.¹⁰⁵

However, a more worrying tendency is that the opposite of “lawlessness”—that is, “lawfulness”—is being held up as a good. This tendency is worrying because the mere fact that a norm is legally valid simply “does not provide any guidance at all on what anyone should do

“lawlessness,” for the months of January 2015 and January 2019, respectively – as compared to 161 hits for the period of January 2021.

102. Buck Sexton, *American carnage: These Aren't Protests - They're Riots. Someone Must End the Lawlessness*, USA TODAY, (updated June 8, 2020, 2:33 PM), <https://www.usatoday.com/story/opinion/2020/06/02/george-floyd-riots-looting-anarchy-antifa-trump-military-column/3123008001/> (emphasis added).

103. Jim Waters, *Liberty and Lawlessness Can't Co-Exist*, THE RECORD, January 21, 2021 (emphasis added).

104. Joseph R. Biden, *Presidential Inaugural Address* (January 20, 2021).

105. My thanks to Evan Butts for the framing of these points.

about anything on any occasion.”¹⁰⁶ Rather, as Gardner has correctly observed, it is perfectly consistent to hold that a law is valid but nonetheless “entirely worthless and should be universally attacked, shunned, ignored, or derided.”¹⁰⁷ Particularly in light of law’s long track record of moral fallibility, and the need for any claim of authority to itself be justified, we should eschew currently fashionable arguments grounded in simple critiques of “lawlessness.”

B. (Re)Establishing Trust

Despite law’s moral fallibility, law is also, at least sometimes, morally valuable. As we have seen in the hypotheticals of *driver vs. girl-on-bike*, *staircase mayhem*, and *weak-willed-runner*, claims of authority, whether legal or not, can provide a valuable service.¹⁰⁸ They can help us do the right thing—to conform to what our normative reasons would have us do—even when we are ignorant of the normative reasons that apply to us, when we require implementation and enforcement of coordination solutions, and when we lack the strength of will to do what those normative reasons would have us do.

In the same way, the law can provide a valuable service to its subjects. When it comes to drivers and a wide range of other activities, such as the safest way to store dangerous chemicals, the law can provide a service to those who would otherwise fail to be aware of, and thus fail to conform to, what their normative reasons would have them do. When it comes to coordination solutions, whether simple ones, such as establishing and enforcing what side of the road to drive on, or complex ones, such as managing scarce resources, reducing pollution, or distributing life-saving vaccines, the law can provide a valuable service insofar as we would otherwise fail to achieve the level, degree, and consistency of coordination required to conform to our normative reasons. Finally, when it comes to weakness of will, such as a reluctance to pay our fair share of taxes or acquiescence to the temptation to shoplift, the law can strengthen our resolve and thereby enable us to conform to what our normative reasons would have us do.

Another valuable service the law can provide is to establish the conditions under which people can come to trust one another enough to establish and maintain a political community. As Scott Shapiro correctly observes:

[T]he problems of the circumstances of legality are largely (although not

106. John Gardner, *Legal Positivism: 5½ Myths*, 46 AM J. JURIS. 199, 202 (2001).

107. *Id.* at 210.

108. *Supra* text accompanying notes 57-58.

exclusively) problems of trust: either members of the community cannot be trusted to do what they ought to do, can be trusted but need help realizing their potential, or do not trust each other enough to engage in the social cooperation necessary to solve the serious and numerous problems that can arise.¹⁰⁹

Given the centrality of trust to maintaining a political community, it is important to recognize the valuable role law can play in establishing and maintaining trust amongst law's subjects. Indeed, "one of the main roles the law plays is to manage trust and distrust," and while we cannot and should not assume that law is always going to get things right, we should be willing, where necessary, to make use of the rational service the law can provide to us when it offers a directive that conforms to the NJT. In this way, we can effectively use the service of law's claim of authority not only to "compensate for...lack of trust in others" but also enable members of our political community "to capitalize on ... trust where it exists."¹¹⁰ Particularly in light of the political polarization and resulting crisis of trust we are experiencing at present, the value of law and its claim to authority in (re)establishing trust is crucial for maintaining our political community.

C. Obligations Beyond Obedience

Much ink has been spilled over the centuries regarding the supposed obligation to obey the law. One point of this Article has been to contribute something new to these debates, by drawing together Joseph Raz's service conception of authority with John Gardner's account of justification to illuminate new answers to old questions. Yet, it is important to note that the obligation to obey the law, where it exists, is hardly the *only* obligation we have regarding the law. Two other obligations often go overlooked: the obligation to *know* the law and the obligation to *improve* the law.¹¹¹

The obligation to know the law does not entail subjects having an obligation to develop an encyclopedic knowledge of every legal norm in their legal system. That would be impossible, both in terms of human capacity and the nature of the law itself.¹¹² Rather, the obligation to know

109. SHAPIRO, *supra* note 100, at 337. *See also id.* at 170, defining "circumstances of legality" in terms of a community having "numerous and serious moral problems whose solutions are complex, contentious, or arbitrary.").

110. SHAPIRO, *supra* note 100, at 334.

111. This discussion is inspired by Green, *supra* note 92 at 545-547. Green also examines and endorses what he calls an "obligation to facilitate the rule of law." For reasons of space, I decline to follow that part of Green's discussion.

112. The point regarding the nature of law is grounded in the fact that the fundamental norm of any legal system – what Hart called its rule of recognition – is in a constant state of being constituted and reconstituted, through more or less accidental means.

the law is two-fold. First, it entails an obligation to know of the existence of starkly unjust laws that cause suffering and/or endanger the well-being of others in one's community and elsewhere in the world.¹¹³ Second, it entails an obligation to have a "basic acquaintance with the most significant legal institutions and traditions" of one's own legal system(s).¹¹⁴

This formulation of the obligation to know the law implicitly rejects Leslie Green's claim that "it is permissible to take little interest in the law, and to tend to one's own garden."¹¹⁵ Sure, it *might* be permissible to take little interest in the law as a general matter, all-things-considered, but, *pro tanto*, it is *not* permissible to take little interest when it comes to specific, unjust laws that cause suffering or endanger others' well-being. If it is *ever* permissible to take little interest in such immoral laws, it would only be because one is justified all-things-considered in failing to conform to one's obligation to know the law.¹¹⁶

The obligation to improve the law is also two-fold. In one sense, it entails the rather straightforward obligation that applies primarily to law-making and interpreting legal officials: to improve the law by reforming laws that are morally pernicious.¹¹⁷ While there are surely competing

The ultimate rule of recognition is, to a very large extent, accidentally made. Each official takes himself or herself to be merely following the practice of his or her peers, when in fact he or she is helping to constitute that practice and thereby to shape the rule. The rule changes precisely as it was born, mainly by mistake -- that is to say, by successive attempts merely to follow it that in fact contribute to its development.

John Gardner & Timothy Macklem, *Review of Scott Shapiro's LEGALITY*, NOTRE DAME PHIL. REV. (December 8, 2011) (comparing Hart, *supra* note 44, to Shapiro, *supra* note 100).

113. The phrase, "cause suffering and/or endanger the well-being of others," is intended to include suffering and endangerment to both individual human beings, animals, the environment. It may also extend to a duty to know of laws that harm or threaten aesthetic and cultural harms.

114. Green, *supra* note 92 at 545.

115. *Id.* at 546.

116. The pieces of the puzzle set out *supra*, in Section II, provide the conceptual tools to run the argument regarding whether any particular failure to fulfil one's duty to know the law is justified. First, we must ask whether one has undefeated normative reason(s) not to do what this obligation would have one do. Second, we must ask whether, in failing to conform to this duty, one acted for one or more undefeated normative reason (that is, whether one's explanatory reason(s) tracked one of more undefeated normative reason). In such cases, say, where one is completely consumed with caring for an ailing parent, injured child, or dealing with one's own physical or mental burdens, one could be justified in "tending to one's own garden," and thus, one's failure to know the law would be morally permissible, all-things-considered.

117. Green is right to note that this obligation (which he calls the "obligation to develop law") applies "most urgently to legislative and adjudicative officials." *Id.* at 546. It is sometimes (wrongly) supposed that courts do not have ability to improve law, but only to apply it. Yet, as Green correctly observes, this is an oversimplification:

Courts have the power not only to apply the law but to change it. They may do so intentionally, through the exercise of their equitable jurisdiction, their powers to overrule or distinguish cases, and by applying the doctrine of desuetude. They may also do so unintentionally through the gradual crystallization of new legal rules. *Id.*

reasons that weigh in favor of maintaining stability in legal institutions and protecting expectations grounded in such stability, the obligation to improve the law makes it the case that, *pro tanto*, a failure to reform morally pernicious laws calls for justification.¹¹⁸

In another sense, the obligation to improve the law applies primarily to law's subjects and manifests itself in a duty to engage in the political process to improve the law. It entails a duty to write to one's representatives to complain about morally pernicious laws, vote for legal officials who will improve the law or refuse to enforce such laws, and generally do one's part in making the law morally better.¹¹⁹ Where these efforts are insufficient, the duty to improve the law entails further obligations of political protest, conscientious objection, and civil disobedience.¹²⁰

Any supposed duty one may sometimes have to obey the law is dependent upon both the duty to know the law and to improve the law. Thus, even if we lack a general obligation to *obey* the law, as argued above, we nonetheless have weighty and important obligations *with respect to* the law.

CONCLUSION

This Article has defended a modest version of philosophical anarchism, according to which the following is true. First, there is a general obligation *not* to obey claims of authority over us, including law's claims. Second, and parasitic upon the first point, there is a general obligation not to claim authority over others. Third, and happily for those who claim authority and those who obey such claims, breaches of these obligations are justifiable. Moreover, where one justifiably claims authority based on reasons that apply to the subjects of those claims, the claim of authority is justified. So, too, where one justifiably obeys a claim of authority out of a "service conception mentality," one's obedience is justified. Where claims of authority and obedience to such claims are fully justified, they are morally permissible. Finally, it is possible for moral duties to conflict, such that one may be obligated both *not* to obey *and* to obey law's claim

118. STEPHEN SHEPPARD, *I DO SOLEMNLY SWEAR: THE MORAL OBLIGATIONS OF LEGAL OFFICIALS* (2009).

119. Recent examples of legal officials refusing to enforce morally pernicious laws include so-called "progressive prosecutors" refusing to enforce low level drug offenses. On progressive prosecution generally, see *Symposium on Progressive Prosecution: Legal, Empirical, and Theoretical Perspectives*, J. CRIM. L. & CRIM. JUSTICE (Fall 2020).

120. Candice Delmas, *Political Resistance: A Matter of Fairness*, 33 L. & PHIL. 465 (2014); See also, KIMBERLEY BROWNLEE, *CONSCIENCE AND CONVICTION: THE CAUSE FOR CIVIL DISOBEDIENCE* (2012). As with the duty to know the law, the duty to improve law is *pro tanto*, such that a breach of this duty can be justified, all-things-considered. See Green, *supra* note 92, at 546.

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of authority. By drawing on the work of Joseph Raz and John Gardner to construct a framework to defend this version of modest philosophical anarchism, this Article has illuminated new answers to intriguing puzzles regarding the nature of authority, obedience, and the justification of each.