

# Legality, Legal Obligation, and Commitment

FELIPE JIMÉNEZ\*

ABSTRACT. Several political and legal philosophers doubt there is a general, content-independent duty to obey the law. At the same time, many citizens and officials believe they have at least a *prima facie* duty to obey the law. In this paper, I develop an argument that attempts to preserve both seemingly incompatible intuitions. I argue that whether law makes a significant practical difference, independently of its content and of the sanctions threatened for its violation, depends on whether individuals have adopted a commitment to law. Such a commitment might be based, as a matter of fact, on a variety of reasons. But the fact that a legal system complies with the demands of rule of law is one important reason why individuals ought to adopt a commitment to law. In this way, the argument shows how compliance with the rule of law is not normatively irrelevant, even if the philosophical anarchist is—nevertheless—ultimately right about the moral sovereignty of the individual agent and law’s normative inertness.

---

\* Assistant Professor, University of Southern California. Many thanks to Scott Altman, Chris Essert, Paul Gowder, Greg Keating, Erin Miller, Crescente Molina, Jeesoo Nam, Marcela Prieto, and Andreas Vassiliou, as well as to participants in workshops at Universitat Pompeu Fabra and the University of Toronto for comments on previous versions.

## INTRODUCTION

Does law impose genuine (moral) obligations?<sup>1</sup> Many thinkers—including both political<sup>2</sup> and legal philosophers<sup>3</sup>—doubt legal norms generate an obligation of obedience. Other theorists have responded to this skepticism by attempting to ground duties of obedience in (express or tacit) consent,<sup>4</sup> fairness,<sup>5</sup> natural duties of justice,<sup>6</sup> and associative obligation.<sup>7</sup>

In this paper, I will suggest that we should think about this issue in a somewhat different way—a way that might allow us to

---

<sup>1</sup> In this paper, I use the terms “obligation” and “duty” interchangeably.

<sup>2</sup> See ROBERT PAUL WOLFF, *IN DEFENSE OF ANARCHISM* (1970). Note that one could accept the claim that the state has authority, but still deny that citizens have a correlative moral obligation to obey its mandates. See Rolf Sartorius, *Political Authority and Political Obligation*, 67 *VIRGINIA LAW REVIEW* 3 (1981).

<sup>3</sup> See, e.g., Leslie Green, *Law and Obligations*, in *THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW* 514–547 (Jules L. Coleman, Kenneth Einar Himma, & Scott J. Shapiro eds., 2004); LIAM MURPHY, *WHAT MAKES LAW: AN INTRODUCTION TO THE PHILOSOPHY OF LAW* 109–143 (2014); JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* (1983).

<sup>4</sup> JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (C. B. Macpherson ed., 1980).

<sup>5</sup> H.L.A. Hart, *Are There Any Natural Rights?*, 64 *THE PHILOSOPHICAL REVIEW* 175 (1955).

<sup>6</sup> John Rawls, *Legal Obligation and the Duty of Fair Play*, in *COLLECTED PAPERS* 117–129 (Samuel Freeman ed., 1999).

<sup>7</sup> See RONALD DWORKIN, *LAW’S EMPIRE* 195–216 (1986); Samuel Scheffler, *Membership and Political Obligation*, 26 *JOURNAL OF POLITICAL PHILOSOPHY* 3–23 (2018).

respond to skeptics about the duty to obey the law without giving up entirely on their intuitions. To my mind, those intuitions are not mistaken. The arguments of consent, fairness, natural obligation, and associative duty do not show that there is a general, relatively content- and context-independent, non-instrumental duty to obey the law.<sup>8</sup> Others might disagree. But I want to question whether—if, as I am inclined to believe, the skeptics are onto something—then we must accept an “error theory” about a view that seems to be held by most agents in contemporary legal systems. According to that view, law’s mandates make a significant difference regarding what agents should do—a difference that is not contingent on context, content, or prudential considerations (throughout this paper I will refer to this idea as law “making a practical difference”). According to this view, which I will call the *Real Practical Difference Thesis* (“RPDT”),<sup>9</sup>

RPDT: the fact that law mandates (or prohibits) a behavior makes, in and of itself, a significant practical difference regarding how the agent should behave.

For those who believe that RPDT is true, the behavioral

---

<sup>8</sup> Green, *supra* note 3 at 539; MURPHY, *supra* note 3 at 133.

<sup>9</sup> I base the RPDT on the practical difference thesis, defined as “the claim that, in order to be law, authoritative pronouncements must in principle be capable of making a practical difference: a difference, that is, in the structure or content of deliberation and action.” Jules Coleman, *Incorporationism, Conventionality, and the Practical Difference Thesis*, 4 LEGAL THEORY 381–425, 383 (1998).

prescriptions of the legal system make an important difference in their practical deliberation, *simply because* they are the prescriptions of the legal system. That the prescriptions of the law coincide with or determine the demands of morality or virtue, that they help us coordinate behavior, that they were generated through a legitimate democratic process, that they help us achieve valuable collective goals, etc., will of course count as reasons to act in conformity to them. But RPDT postulates that the mere mark of legality (or illegality) makes a practical difference in favor (or against) the conduct, independently of whatever other reasons might count in favor (or against) that conduct.<sup>10</sup>

Thus, instead of following the traditional framing of questions about the practical difference made by legal norms in terms of a *prima facie* duty to obey, I want to ask a simpler, less committal question: can the law have a significant practical difference, independently of its content and of the sanctions threatened for its violation? This question is compatible with seeing that impact in terms of ordinary reasons for action;<sup>11</sup> of *particularly* weighty reasons for action that might not be conclusive;<sup>12</sup> or of obligations, understood as exclusionary or

---

<sup>10</sup> See Christopher Essert, *Legal Obligation and Reasons*, 19 LEGAL THEORY 63–88, 81 (2013); Green, *supra* note 3 at 514–515.

<sup>11</sup> See Christopher W. Morris, *Natural Rights and Political Legitimacy*, 22 SOCIAL PHILOSOPHY AND POLICY 314–329, 328 (2005). For a critical analysis about the relationship between law and agents' reasons for action, see David Enoch, *Reason-Giving and the Law*, in OXFORD STUDIES IN PHILOSOPHY OF LAW 1–38 (Leslie Green & Brian Leiter eds., 2011).

<sup>12</sup> See John Broome, *Reasons*, in REASON AND VALUE 28–55, 36 (R. Jay Wallace

protected reasons that do not only have weight but also exclude other first-order reasons from consideration.<sup>13</sup> In this paper, I am not interested in the question about the specific shape of the practical difference that law makes. There is a whole set of problems raised by these notions which would distract us from what is, to my mind, the central question: does law make a genuine and important practical difference? Might the individuals who believe in RPDT be right?<sup>14</sup>

Again, one possible answer is that law does not make this type of practical difference by itself, and that—at most—it can manipulate the facts in a way that can trigger already existing reasons.<sup>15</sup> If that were the case, those who believe in RPDT would be simply deluded, or at least confused. But we do not need to accept this as the only plausible answer. In this paper, I offer an alternative response based on the idea of commitment. As I will argue, individual citizens can be genuinely required to conform to legal prohibitions or prescriptions because of their commitment to law. On this account, agents make a commitment to law as an

---

et al. eds., 2004).

<sup>13</sup> See John Gardner, *What is Tort Law For? Part 1. The Place of Corrective Justice*, 30 *LAW AND PHILOSOPHY* 1–50, 31 (2011); JOSEPH RAZ, *PRACTICAL REASON AND NORMS* (1999). For criticism, see David Owens, *Rationalism about Obligation*, 16 *EUROPEAN JOURNAL OF PHILOSOPHY* 403–431 (2008); Thomas Pink, *Moral Obligation*, in *MODERN MORAL PHILOSOPHY* 159–186 (Anthony O’Hear ed., 2004).

<sup>14</sup> The question, to clarify, is not whether these agents take themselves to have certain reasons, duties, etc., as a consequence of law’s mandates, but whether they *in fact* have such reasons, duties, etc.

<sup>15</sup> Enoch, *supra* note 11.

institution of social governance, and this commitment generates a practical impact in favor of their doing what the law requires, independently of law's content and the sanctions threatened in cases of non-compliance. Agents' commitments can thus transform the purely formal normativity of law into genuine normativity.<sup>16</sup> This does not mean that the law's compliance with some moral demands is normatively irrelevant. As I will argue, because and to the extent that law complies with the demands of the rule of law (which I sometimes refer to as the virtue of legality), agents have an important reason to be committed to the law.

Thus, in this paper I make two claims. First, whether law makes a non-prudential, content-independent genuine normative difference depends on whether individuals have adopted a commitment to law (a commitment which, as I will stress, might be based on a variety of considerations). Second, compliance with the rule of law is one important consideration why individuals ought to adopt a commitment to the legal system.

Two preliminary notes about my argument. First, unlike other arguments on political obligation and related topics, I engage the question from a distinctly jurisprudential perspective. My argument is motivated by, and based on, the value of law as a system of governance rather than the value of political authority as such. I thus focus on, to use David Dyzenhaus's words, "what is

---

<sup>16</sup> I take the distinction from David Enoch, *Is General Jurisprudence Interesting?*, in *DIMENSIONS OF NORMATIVITY: NEW ESSAYS ON METAETHICS AND JURISPRUDENCE* (David Plunkett, Scott J. Shapiro, & Kevin Toh eds., 2019).

normatively distinctive about legal order.”<sup>17</sup> For now, this might be somewhat obscure—but hopefully it will become clearer below. Second, the argument offered here falls runs along similar lines to other liberal arguments for political obligation—particularly those associated to consent. Like those arguments, the argument from commitment sees the individual agent—as opposed to the common good or the organic whole—as the starting point of moral inquiry.<sup>18</sup> But the argument also starts, as I have noted, from a certain skepticism about the normative difference that law can make—a skepticism that, ultimately, is grounded in respect for the moral sovereignty of individual agents.

Here is a roadmap. Part I introduces the value of legality as the specific virtue of law. Part II discusses the idea of legal normativity and distinguishes it from robust normativity. Part III builds upon parts I and II to show how the value of legality is insufficient to transform, as it were, legal normativity into genuine normativity, how—in other words—law is normatively inert. Part IV explains why, nevertheless, agents who operate under the legal system and believe in the truth of RPDT are not necessarily self-deluded. Instead, I explain how their belief in RPDT might be vindicated through the notion of commitment. Part V addresses four potential objections.

---

<sup>17</sup> DAVID DYZENHAUS, *THE LONG ARC OF LEGALITY: HOBBS, KELSEN, HART* 182 (2021).

<sup>18</sup> See Jonathan Wolff, *What Is the Problem of Political Obligation?*, 91 *PROCEEDINGS OF THE ARISTOTELIAN SOCIETY* 153–169, 153 (1990).

## I. LEGALITY

Law is subject to a distinctive criterion of evaluation, separate from the evaluative criteria derived from political morality at large to which its content is subject. Legality could be defined as the virtue of (or specific to) governance through law, as the virtue that characterizes legal systems that are virtuous *as legal systems*. The virtue of legality is the virtue of legal systems that comply with the formal idea of the rule of law and the main *desiderata* comprised by that idea, such as publicity, non-retroactivity, consistency, congruence, and stability.<sup>19</sup> As the rule of law tradition argues, governance by law is at its best—both in its instrumental efficacy and its respect for human autonomy—when it complies with the rule of law.

The value of legality thus understood is a distinct ideal. It is distinct from other moral norms to which legal systems should ordinarily conform to, such as justice. Legality is a set of norms

---

<sup>19</sup> See LON FULLER, *THE MORALITY OF LAW* (1964); Joseph Raz, *The Rule of Law and its Virtue*, in *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* (1979); Jeremy Waldron, *Does Law Promise Justice*, 17 GA. ST. U. L. REV. 759 (2001); Jeremy Waldron, *The Concept and the Rule of Law*, 43 GA. L. REV. 1–62, 6 (2008). The *formal* idea of the rule of law understands it as a procedural virtue, characterized by the formal constraints mentioned above, and therefore compatible with different substantive contents. A *substantive* conception of the rule of law includes substantive elements (such as private property rights or human rights protections) as part of the idea of the rule of law. I think we are better off separating the rule of law from other political ideals, and hence take the rule of law to be a purely formal virtue. See JEREMY WALDRON, *THE RULE OF LAW AND THE MEASURE OF PROPERTY* 1–75 (2012).

that all laws and legal systems realize to some degree, and ought to realize as much as feasible, *because* they are laws and legal systems.<sup>20</sup> Importantly, given that legality is just one value that can be brought to bear on the moral evaluation of law, it is consistent with law being defective along some other morally significant dimension.<sup>21</sup>

Because legality understood as a formal virtue is compatible with law being morally deficient, it is worth asking why we should think, as E.P. Thompson did, that the rule of law is an unqualified achievement.<sup>22</sup> The rule of law does not guarantee justice or a flourishing society. It does not guarantee equality. It can be used for oppressive ends. The value of the rule of law, however, lies precisely in its distinctive contribution to the achievement of justice and equality, the flourishing of society, and the avoidance of oppression. The rule of law allows the relatively complex political communities we inhabit, where people disagree vehemently about these issues, to act in a coordinated way, speaking—as much as the circumstances of politics allow us to—with one voice,<sup>23</sup> and allowing individuals the space to plan their affairs and to know what is coming their way.<sup>24</sup>

---

<sup>20</sup> John Gardner, *The Legality of Law*, in *LAW AS A LEAP OF FAITH: ESSAYS ON LAW IN GENERAL*, 192 (2012).

<sup>21</sup> Raz, *supra* note 19.

<sup>22</sup> E. P. THOMPSON, *WHIGS AND HUNTERS: THE ORIGIN OF THE BLACK ACT* 266 (1975).

<sup>23</sup> See generally JEREMY WALDRON, *LAW AND DISAGREEMENT* (1999).

<sup>24</sup> See Raz, *supra* note 19.

This is all familiar, given the long tradition of thought about the rule of law as a political ideal.<sup>25</sup> As that tradition emphasizes, a legal system that complies with the rule of law has something (morally) going for it—both because of what it enables us to do and what it prevents us from doing. It satisfies at least one moral standard that can be used to evaluate law—in fact, the basic moral standard to which law is subject *qua* law, and one on which people with good faith disagreements about substantive moral and political values can agree—and is at least to that extent morally valuable. This moral value, as I will argue, is not sufficient to directly generate reasons for complying with law because it is the law—but it can give agents a reason to adopt attitudes and dispositions that can themselves ground law’s practical difference.

## II. LEGAL NORMATIVITY

Compliance with the rule of law does not entail that the law’s prescriptions ought to be obeyed, full stop. Most jurisprudential views tend to agree on this.<sup>26</sup> Legal positivism’s claim that the identification of law is just a matter of social fact should naturally lead to the view that there is no unconditional moral obligation to obey the law<sup>27</sup>—even if it complies with the rule of law.<sup>28</sup> And the

---

<sup>25</sup> See Paul Burgess, *Neglecting the History of the Rule of Law: (Unintended) Conceptual Eugenics*, 9 HAGUE J RULE LAW 195–209 (2017).

<sup>26</sup> See Waldron, *supra* note 19 at 42.

<sup>27</sup> Frederick Schauer, *Positivism as Pariah*, in *THE AUTONOMY OF LAW: ESSAYS ON LEGAL POSITIVISM* 31–55, 37 (Robert P. George ed., 1996).

<sup>28</sup> H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARVARD LAW REVIEW 593–629, 623–624 (1958); H.L.A. HART, *THE CONCEPT OF LAW* 207 (1994).

natural law motto of *lex iniusta non est lex* is best interpreted as a statement about unjust law's inability to produce the binding effects generated by the *focal*—i.e., not substantively evil or unjust—case of law.<sup>29</sup>

Now of course if law is perceived as binding by legal officials and subjects this is a fact that legal theory must incorporate (as in Hart's notion of the internal point of view).<sup>30</sup> But one can account for these attitudes, according to those who follow Hart, while remaining completely agnostic about the question of whether law is genuinely binding. While law and legal statements traffic in the language of 'duty,' 'obligation,' 'wrong,' 'right,' and 'ought,' these normative statements are not necessarily genuine *oughts*.<sup>31</sup> Law is only *formally* normative. Whether it generates genuine obligations is always an open moral question.

Thus, we have two general ideas that on their face seem entirely plausible. First, law can be valuable, particularly when it complies with the rule of law. Second, law cannot *by itself* make a genuine practical difference, even if it complies with the rule of law. There is a problem, however—a problem that Hart's internal point of view does not resolve but in fact highlights. Many people (and not just lawyers), even in relatively unjust societies, believe that law does make a practical difference. The issue is not just that individuals routinely state the content of the law by making

---

<sup>29</sup> JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 364–366 (1980).

<sup>30</sup> HART, *supra* note 28 at 89–92.

<sup>31</sup> MURPHY, *supra* note 3 at 111–112.

formally normative statements,<sup>32</sup> but that many of them, in fact, see the *oughts* of the legal system as genuine *oughts*, particularly when the relevant system complies with the rule of law. Which means that for many officials and citizens in those societies statements about legal obligation are just statements about what they genuinely ought to do.

This is a fact that stands in need of explanation. One explanation that might seem tempting is one that directly vindicates these seemingly prevalent views: a philosophical argument for why, in fact, legal obligations are just genuine obligations,<sup>33</sup> or for why legal obligations are the moral obligations generated by the actions of legal institutions.<sup>34</sup> These routes, however, presuppose that the relevant legal norms either derive their force from, appropriately change, or mirror genuine moral norms. It seems to me that these routes do not capture the first-person perspective towards law: that it is seen as changing what agents ought to do, without the mediation of moral norms. Furthermore, these routes make it hard to explain why citizens and officials see the behavioral prescriptions of law as making a

---

<sup>32</sup> As argued by H. L. A. HART, *ESSAYS ON BENTHAM: JURISPRUDENCE AND POLITICAL PHILOSOPHY* 144–145 (1982). As Raz notes, it is possible to make statements about legal obligation and prohibition in a detached way, without endorsing the law’s claims. RAZ, *supra* note 3 at 303–312. See also John Gardner, *Nearly Natural Law*, in *LAW AS A LEAP OF FAITH: ESSAYS ON LAW IN GENERAL*, 160 (2012).

<sup>33</sup> Scott Hershovitz, *The End of Jurisprudence*, 124 *THE YALE LAW JOURNAL* 1160–1204 (2015).

<sup>34</sup> Mark Greenberg, *The Moral Impact Theory of Law*, 123 *THE YALE LAW JOURNAL* 1288 (2014).

practical difference even when they are aware of the injustice of the relevant society, the deficits of the state, and of the fact that the content of the relevant legal norms is morally problematic. We must ask why even when a legal norm is unjust and even when the state might be ineffective, illegitimate, or both, many agents still believe that they ought to follow the prescriptions of a legal system that complies with the relatively thin demands of the rule of law. One option, as I anticipated, is to adopt an error theory that claims that these officials and citizens are simply mistaken. In the next two sections, however, I will offer an explanation that takes the outlook of these laypersons and officials more seriously.<sup>35</sup>

### III. THE RULE OF LAW AND LEGAL OBLIGATION

One possible answer—more charitable than the simple view that these officials and citizens are mistaken—is akin to the view David Dyzenhaus describes in his reconstruction of Hobbes and Bentham:

“[I]n Hobbes and Bentham it is the legitimating theory of legal order that transmits, through properly designed institutions, normative force to the determinate content of positive law... [L]egal order, properly constructed, is fully normative when viewed from the perspective of a subject who understands why he is under an obligation to obey

---

<sup>35</sup> A similar motivation underlies Noam Gur, *Actions, Attitudes, and the Obligation to Obey the Law*, 21 *JOURNAL OF POLITICAL PHILOSOPHY* 326–346 (2013).

the law of his sovereign.”<sup>36</sup>

A similar argument might be made here. Under this argument, a legal system that complies with the demands of the rule of law, and therefore has value, communicates this value to its specific prescriptions, making them genuinely normative. Our imagined citizens and officials are, thus, not mistaken.

There is something attractive about this view, but it seems to me to move too quickly from the value of legality to moral obligation. This kind of argument can easily drift into a form of authoritarianism, along the lines of Kant’s claim that defiance of the legislature “is the greatest and most punishable crime in a commonwealth, for it destroys its very foundations.”<sup>37</sup>

This is not a fatal problem. Those who agree with Kant, Hobbes, and Bentham might be able to respond to it, and there might be something important this type of view captures.<sup>38</sup> But I

---

<sup>36</sup> David Dyzenhaus, *The Genealogy of Legal Positivism*, 24 OXFORD JOURNAL OF LEGAL STUDIES 39–67, 57–58 (2004). For a similar reconstruction of Hobbes with some connections to the account offered here, see Horacio Spector, *Legal Reasons and Upgrading Reasons*, in UNPACKING NORMATIVITY: CONCEPTUAL, NORMATIVE, AND DESCRIPTIVE ISSUES 135–154 (Kenneth Einar Himma, Miodrag Jovanovic, & Bojan Spaic eds., 2018).

<sup>37</sup> Immanuel Kant, *On the Common Saying: “This May Be True in Theory, But It Does Not Apply in Practice”*, in POLITICAL WRITINGS, 81 (Donna M. Brinton & Janet M. Goodwin eds., 1991). There is an obvious tension between this statement and other aspects of Kant’s thought. Those tensions need not detain us here.

<sup>38</sup> See Jeremy Waldron, *Kant’s Legal Positivism*, 109 HARVARD LAW REVIEW 1535, 1545 (1996).

want to stick to the intuition that there is something troublingly authoritarian about this line of reasoning, and that we should resist the direct inference from the value of legality to the conclusion that law makes a genuine practical difference. Still, I want to resist this inference in a way that does not completely eliminate the underlying animating intuition. Because of this, I will offer a view that preserves what is attractive about the Hobbes-Bentham line of reasoning—particularly, its connection between the value of legality and the robust normativity of law—without its authoritarian connotations. According to the view I will articulate, there is indeed a connection between the value of legality and law’s genuine normativity, but that connection is mediated by agents’ commitments.<sup>39</sup> Compliance with the rule of law might be normatively relevant even if the philosophical anarchist is right about the moral sovereignty of the individual agent.<sup>40</sup>

#### IV. RESPECT AND COMMITMENT

As a starting point, we might profit from differentiating between different degrees to which a legal system might fail to comply with the moral demands that bear upon it. While respecting a radically unjust or evil legal regime might be unambiguously wrong,

---

<sup>39</sup> There are certain connections between this account and the one offered in NOAM GUR, *LEGAL DIRECTIVES AND PRACTICAL REASONS* (2018). However, while Gur focuses on law’s ability to generate reasons for developing certain attitudes, he only focuses on law as a source for reasons for individual attitudes, whereas I focus on commitment to law beyond the cases in which that commitment is generated by law or its contingent features (such as its compliance with the rule of law).

<sup>40</sup> Similarly, Gur, *supra* note 35 at 327.

perhaps individuals could permissibly respect the legal regime when it is somewhat, but not radically, unjust.<sup>41</sup> In a somewhat cryptic paragraph, Joseph Raz explains a version of this idea:

“[R]espect is itself a reason for action. Those who respect the law have reasons which others have not. These are expressive reasons. They express their respect for the law in obeying it, in respecting institutions and symbols connected with it, and in avoiding questioning it on every occasion.”<sup>42</sup>

According to Raz, then, adopting an attitude of respect towards law might generate reasons for action. This idea of respect is attractive on several levels. First, it can explain how individuals can be the source of law’s practical difference without artificially stretching the idea of consent.<sup>43</sup> Second, because it does not force us to fit this practical difference within the notion of consent, the idea of respect can also explain how the relevant attitudes do not require specific acts at specific times one can identify. Third, at the same time respect preserves the ideas that underlie and perhaps explain the attraction of consent—particularly, the notion that we as individuals can be the authors of our moral world.<sup>44</sup>

Still, I am not sure the notion of respect is the most apt to capture these intuitions. Respect might change agents’

---

<sup>41</sup> RAZ, *supra* note 3 at 258–259.

<sup>42</sup> *Id.* at 259.

<sup>43</sup> JOSEPH RAZ, *THE MORALITY OF FREEDOM* 97 (1988).

<sup>44</sup> *Id.* at 98.

deliberation and their genuine reasons, but an attitude of respect is compatible with a relatively detached, indifferent stance. This stance might be able to generate an impact, but that impact seems to be easily outweighed by other considerations. There is also something noncommittal about the idea of respect. I can respect your religion even though I believe it is false, and I can respect any religious authority (say, by addressing a Catholic priest as “Father”) even though I think the belief system that supports that alleged authority, and its claims, is false. Similarly, it seems plausible to think that I can respect legal officials even though I think the law is unjust and lacks any moral authority. But if that is the case, the practical difference generated by respect seems quite limited.

A different way of capturing the intuition underlying Raz’s argument while avoiding its limitations is the notion of a *commitment*.<sup>45</sup> A commitment is an individual determination that is meant to direct the agent’s behavior.<sup>46</sup> It is, in this way, a voluntary engagement.<sup>47</sup> Note that this does not entail that all commitments are voluntary in the same way or *equally* voluntary (in the sense that all commitments are equally choice-

---

<sup>45</sup> There are multiple possible conceptions about the structure and normative force of commitments. Here, I try to provide a relatively ecumenical account.

<sup>46</sup> JED RUBENFELD, FREEDOM AND TIME: A THEORY OF CONSTITUTIONAL SELF-GOVERNMENT 92 (2008). See also Sam Shpall, *Moral and Rational Commitment*, 88 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 146–172, 154 (2014).

<sup>47</sup> Judith Shklar, *Obligation, Loyalty, Exile*, 21 POLITICAL THEORY 181–197, 183–184 (1993).

dependent<sup>48</sup>), nor that we are supposed to be able to single out any specific moment at which a commitment was chosen. We might, in other words, come to be committed in a slowly and incremental manner, as a consequence of social influence, acculturation, and so on. Thus, commitments are voluntary in the more limited sense that voluntariness plays a significant role in the explanation of how they come about and subsist—not in the sense that they occur as the consequence of a specific voluntary choice. Additionally, through a commitment, the agent imposes on him or herself reasons to act in certain ways in the future.<sup>49</sup> In more simple terms, commitments change what we should do. Given that a commitment is brought about by the agent unilaterally, it is always subject to the possibility of unilateral revocation.<sup>50</sup> However, commitments are robust, in the sense that, although they can be rescinded, they exert a normative pull that goes beyond mere habit, and are resilient even when the courses of action they would lead to are not optimal from the perspective of the agent's other current reasons and preferences.<sup>51</sup> As a consequence, revoking a commitment is a significant and potentially difficult decision. These five traits—*individual determination*, *voluntariness*, *practical effect*, *unilateral revocability*, and *robustness*—are the

---

<sup>48</sup> On different degrees of choice-dependence, see DAVID OWENS, *SHAPING THE NORMATIVE LANDSCAPE* 3–6 (2012).

<sup>49</sup> MARCEL S. LIEBERMAN, *COMMITMENT, VALUE, AND MORAL REALISM* 5 (1998); RUBENFELD, *supra* note 46 at 125.

<sup>50</sup> MARGARET GILBERT, *JOINT COMMITMENT: HOW WE MAKE THE SOCIAL WORLD* 31 (2013).

<sup>51</sup> Michael E. Bratman, *Time, Rationality, and Self-Governance*, 22 *PHILOSOPHICAL ISSUES* 73–88 (2012).

central features of the idea of commitment, as I will understand it.<sup>52</sup>

Thus understood, a commitment is a first-personal phenomenon. I am committed to certain things, like relationships and projects,<sup>53</sup> but also institutions.<sup>54</sup> Second, unlike promises, commitments are personal also in the sense that they are unilateral.<sup>55</sup> Because of this, a commitment can be made exclusively *in foro interno*.

In terms of scope, a commitment to law is not a retail, specific commitment to any specific rule or norm that is part of the law. It is a commitment to the specific legal regime as a system of governance, and therefore a commitment that extends, in principle, to all of the norms of the legal system. Thus, a commitment is not a decision to obey a specific law—it is a general attitude towards law as such, which gives practical significance to its specific laws.<sup>56</sup>

---

<sup>52</sup> Incidentally, because I treat commitments as unilateral and individual determinations, I don't see them as a *genus* which includes species like promises. For that type of view, see Cheshire Calhoun, *What Good Is Commitment?*, 119 *ETHICS* 613–641 (2009); Margaret Gilbert, *Commitment*, in *INTERNATIONAL ENCYCLOPEDIA OF ETHICS* (2013); Shpall, *supra* note 46.

<sup>53</sup> Ruth Chang, *Commitments, Reasons, and the Will*, in *OXFORD STUDIES IN METAETHICS*, VOLUME 8 74–113, 77 (Russ Shafer-Landau ed., 2013).

<sup>54</sup> Bernard Williams, *A Critique of Utilitarianism*, in *UTILITARIANISM: FOR AND AGAINST* 108–117, 112 (1973).

<sup>55</sup> Crescente Molina, *Promises and Commitments* (2021).

<sup>56</sup> For an interpretation of Plato's *Crito* (particularly of the argument of the Laws) along similar lines, see Paul Gowder, *What the Laws Demand of*

Importantly, whether any individual agent has adopted a commitment to law is a complex question—and reasonable people would likely disagree about the factual conditions under which a commitment has been adopted, when it no longer obtains, and so on. While these are all relevant questions, here I limit myself to the more basic point: commitments can generate a practical impact, which can be understood as giving us reasons to comply with the law.

This point derives from the more general claim that sees commitments as able to change our practical deliberation. According to Ruth Chang, a commitment generates agent-relative reasons “to have distinctive attitudes and to engage in distinctive activities that would be supererogatory at best and bizarre at worst if directed at those to whom we are not committed.”<sup>57</sup> In the case of law, I want to suggest that a commitment to law gives law a genuine normative effect or practical impact that it would otherwise not have. Commitments make RPDT true for those who are committed. For theorists who argue that law claims authority,<sup>58</sup> commitments would explain how that claim can become true. And if law does not claim authority but simply a right to issue and enforce directives about behavior,<sup>59</sup> then a commitment is an individual undertaking to treat those directives

---

*Socrates—and of Us*, 98 *THE MONIST* 360–374 (2015).

<sup>57</sup> Chang, *supra* note 53 at 74. To clarify, while Chang accepts that some reasons can be created by agents’ commitments, she limits this to cases where reasons run out. *See Id.* at 104.

<sup>58</sup> RAZ, *supra* note 3.

<sup>59</sup> *See* MURPHY, *supra* note 3 at 115–116.

as normatively significant.

Four caveats should be noted here. First, there might be other reasons why law has a genuine normative effect. A commitment generates a content-independent, context-independent, non-instrumental impact, which can be understood as a reason to act consistently with law simply because it is the law. This effect is compatible with, and can reinforce, reasons, considerations, and undertakings that are also effective at giving law a practical effect (consider, for instance, oaths by judicial and other public officials).

Second, our commitment might be motivated or explained by defective reasons, motivations, and processes.<sup>60</sup> In this aspect, commitments are just like other normative phenomena, such as promises. A promise can generate their normal practical effect even if there was no good reason for making the promise in the first place. The same is true for commitments.<sup>61</sup> Ideology, for instance, might be a particularly important morally troublesome source of commitments to law. Importantly, if we are committed to law for the wrong reasons then this is something morally problematic—just as it is problematic to be bound by promises we made for the wrong reasons. But this is compatible with the ability of both commitments and promises to generate a genuine practical effect. That effect might be subject to some constraints in extreme cases: some promises (promises to act immorally or

---

<sup>60</sup> Shklar, *supra* note 47 at 184. See also John Gardner, *Law as a Leap of Faith*, in *LAW AS A LEAP OF FAITH: ESSAYS ON LAW IN GENERAL*, 12 (2012).

<sup>61</sup> See Gardner, *supra* note 60 at 12–13; RAZ, *supra* note 43 at 388.

“wicked promises”) might fail to generate any practical impact, given the immorality of the promised performance. By the same token, commitments to radically evil legal regimes might fail to make any practical difference. I assume that such constraints on the normative efficacy of commitments exist. However, before even exploring those constraints we first need to understand the central normative phenomenon, when it refers to the more prosaic and common situation of a morally defective legal system it is nevertheless permissible to be committed to. Third, the value of legality and compliance with the rule of law might provide an important explanation for why agents—even agents who disagree about questions of political morality and justice—make these commitments.<sup>62</sup> More importantly, compliance with the rule of law is a reason why agents *ought* to make these commitments. Fourth, and relatedly, even though there is an important role that voluntariness plays in explaining how commitments come about or subsist, our commitments might be based on reasons that agents can appreciate and come to endorse without being fully able to articulate them.<sup>63</sup> Again, a commitment might not be generated by any specific decision. Coming to be committed to something can be an incremental process that changes our priorities and values, rather than a specific decision.

If this is correct, two upshots follow. First, whether law makes a genuine practical difference is a contingent question, one

---

<sup>62</sup> PAUL GOWDER, *THE RULE OF LAW IN THE REAL WORLD* 6 (2016).

<sup>63</sup> Kyla Ebels-Duggan, *Beyond Words: Inarticulable Reasons and Reasonable Commitments*, 98 *PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH* 623–641, 624 (2019).

that depends on the commitments of the relevant population. This, incidentally, opens the space for a central connection between empirical questions about descriptive, positive or sociological legitimacy, and normative questions about agents' obligations or reasons for action.<sup>64</sup> Second, the stability of governance through law requires enough people to adopt these commitments.<sup>65</sup> Unless legal authorities are willing to engage in a form of opaque manipulation, this means that—in conditions of political pluralism and moral disagreement—a stable legal regime ought to comply with the rule of law,<sup>66</sup> because this is a reason for agents who otherwise disagree about justice, fairness, and political morality, to adopt the relevant commitments. In this way, compliance with the rule of law can make a normative difference: it gives agents a reason to be committed to the law. But this normative difference translates into a change in agents' reasons for action and their practical deliberation only as a consequence of their commitments.

#### V. FOUR OBJECTIONS

The picture so far is skeletal and incomplete. In order to flesh it out in more detail, I want to address four potential objections to the idea of commitment. This will allow me to make the idea both

---

<sup>64</sup> Similarly, SCOTT SHAPIRO, *LEGALITY* 81 (2011).

<sup>65</sup> See Gowder, *supra* note 56 at 361; GOWDER, *supra* note 62 at 5, 52, 144.

<sup>66</sup> On the notion that commitments are based on a positive evaluation of the system, institution, or belief one commits to, see ROGER TRIGG, *REASON AND COMMITMENT* 44 (1973).

more plausible and more determinate.

#### A. No General Duty?

The first potential objection is that commitment cannot ground a general duty to obey the law, even within a specific jurisdiction. Given that commitments are personal and voluntary, many individuals might simply not make them. Within any legal system, law—even law that complies with the rule of law—will not be able to generate obligations, reasons for action, or some such, for every member of society.

The objection is, in fact, entirely correct. But I want to suggest that this is a strength of the account. In order to explain why, let me—very roughly—divide the population into well-off citizens, worse-off citizens, and government officials. Assume, moreover, that the legal regime generally complies with the rule of law but is also somewhat unjust.

Well-off citizens are obviously benefitted by the existence of law and its compliance with the rule of law. This means that law is good for them from a purely self-interested standpoint, but also that they will tend to perceive the law as just (to a greater extent than less well-off groups). In most contemporary legal systems, the well-off enjoy multiple legal protections. Their property is protected by private law, as well as by constitutional limitations on state authority, and international (multilateral or bilateral) protections. The well-off can also rely on judicial contract enforcement and broad deference to the content of their contracts, including choice of law, forum selection, and arbitration clauses.

The well-off can also afford lawyers who can help them navigate the legal system and represent them in and out of court. For those who are relatively well-off, then, the legal system provides multiple goods.<sup>67</sup> Beyond self-interest, two other reasons might also explain the commitments of well-off individuals. First, it seems plausible that well-off individuals will tend to identify with the dominant social values that law will typically reflect. Second, and perhaps somewhat obviously, they might perceive the legal rules and institutions as just or legitimate, even independently of the benefit they might derive from them.

Government officials, particularly but not exclusively at the highest levels, are also benefitted by legal institutions. The legally constructed government structure is also a source of their income and a channel for their professional and political ambitions. More importantly, for many of them—consider, for instance, career politicians and judges—their association to the specific government functions they undertake is a source of meaning and personal identity.<sup>68</sup> In the specific case of judges, their education, socialization, and selection mechanisms reinforce their identification with the norms and values of the legal system.

Finally, and in contrast, citizens who are not well-off

---

<sup>67</sup> For an account of this phenomenon and the processes through which law generates monetary value, see KATHARINA PISTOR, *THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY* (2020).

<sup>68</sup> Keith C. Culver, *Legal Obligation and Aesthetic Ideals: A Renewed Legal Positivist Theory of Law's Normativity*, 14 *RATIO JURIS* 176–211, 205–206 (2001).

sometimes experience the legal system as alien, threatening, and distant.<sup>69</sup> They don't get to experience directly the benefits generated by the legal protection of capital. At least in some societies, they might be the victims of distributive injustice, discrimination, and relational inequalities that are reflected in, and facilitated by, law.

This is somewhat vague, but it is sufficient to make the following point. The view of commitment as the ground of law's practical difference explains why that difference might be greater for legal officials than for citizens in general.<sup>70</sup> After all, the latter—but not the former—are situated in an institutional position that makes the existence of a commitment to law quite likely. The view can also explain why the moral situation of those who benefit the most from legal ordering might be much more impacted than the situation of those who suffer injustice and abuse through law.

The fact that different segments of the population have different degrees of commitment to law and the legal system, and therefore that there are different degrees to which law genuinely makes a practical difference, should not be surprising. The observation should lead us to insist on at least one more reason to be concerned about the rule of law and about law's justice: effective governance through law requires the commitments of the majority of the population to the legal system.<sup>71</sup> The observation

---

<sup>69</sup> See MARC HERTOGH, *NOBODY'S LAW: LEGAL CONSCIOUSNESS AND LEGAL ALIENATION IN EVERYDAY LIFE* (2018).

<sup>70</sup> As argued by MURPHY, *supra* note 3.

<sup>71</sup> GOWDER, *supra* note 62 at 155.

can also lead us to go a step beyond the idea of individual commitment: ideally, the law ought to be such that it could ground the commitment of a majority (and ideally, the unanimity) of citizens. Compliance with the value of legality gives agents a reason to be committed to law—and if the value of legality can be perceived as such by large segments of the population, then this can lead to commitments that collectively make a stable legal regime possible. Perhaps, the morally optimal situation is one where the law is such that most if not all citizens and officials see the project of legal governance as one they are a part of and committed to, where law is able to truly count as “our law” and actually make a difference to what we ought to do, for the right reasons. Yet the notion of commitment as a unilateral and individual phenomenon is, to my mind, the basic building block of that larger and more normatively ambitious ideal.<sup>72</sup>

Finally, the notion of commitment also vindicates the quite natural intuition that, in non-ideal conditions, not everyone in society is similarly situated, morally, vis-à-vis the legal system.

#### B. The Peremptoriness Objection

A second potential problem with my argument is not focused on commitment but rather on my concern with law’s practical difference—as expressed in RPDT—instead of the more traditional concern with the duty to obey. According to this objection, law does not just aim to have an unspecified impact on

---

<sup>72</sup> For one recent version of that ideal, see SEANA VALENTINE SHIFFRIN, *DEMOCRATIC LAW* (2021).

agents' deliberation or on the moral status of their behavior. The law aims to exclude or preempt deliberation on the merits of the behavior, and legal obligations contain a practical verdict: the mandated behavior ought to be performed (or the prohibited behavior avoided).<sup>73</sup> The law aims to “settle the matter.”<sup>74</sup> A legal directive is a reason for not acting on the basis of (at least some) reasons that conflict with the directive.<sup>75</sup> Legal obligations have a built-in exclusionary force that protects them against conflicting reasons.<sup>76</sup>

If that is the case, the objection goes, a commitment as a ground for law's practical difference—but not necessarily as a ground for peremptory obligations—is inconsistent with the structure of legal obligation and the claims that law makes. What we need to explain is not whether law's prescriptions can have a practical impact independently of their content and the sanctions associated to their breach, but rather whether they generate genuine obligations.

My response to this objection is twofold. First, the view that law necessarily claims to preempt deliberation is not obviously true. Second, even if it were, my argument can accommodate this

---

<sup>73</sup> Essert, *supra* note 10 at 69–70.

<sup>74</sup> *Id.* at 72.

<sup>75</sup> Joseph Raz, *The Problem of Authority: Revisiting the Service Conception*, 90 MINN. L. REV. 1003–1044, 1022 (2005).

<sup>76</sup> John Gardner & Timothy Macklem, *Reasons*, in THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW, 466 (Scott Shapiro & Jules Coleman eds., 2002).

fact and explain why law might make a practical difference even when its supposed claim to preempt deliberation does not succeed.

The first aspect of my response rests on the answer to a fairly basic question: What do legal authorities aim to do when they enact a legal norm? The most plausible and natural interpretation is that they attempt to tell the agents subject to the norm what to do.<sup>77</sup> From the legal point of view, it is strictly irrelevant whether the explanation of the agent's lawful behavior resides in self-interest, complacency, altruism, fear, compliance with moral norms that the law tracks, or a cooperative or public-minded spirit.<sup>78</sup> As long as the behavior externally coincides with what's legally mandated, that is sufficient. Under this view, law's claim is a claim to direct and control behavior, not (or at least not necessarily) practical deliberation.<sup>79</sup> Law is interested in external conformity to its prescriptions—whether the prescriptions are the explanatory reason for conforming behavior is legally irrelevant.<sup>80</sup>

This does not mean that law does not sometimes (and

---

<sup>77</sup> Kenneth M. Ehrenberg, *Law's Authority is not a Claim to Preemption*, in *PHILOSOPHICAL FOUNDATIONS OF THE NATURE OF LAW*, 51–52 (Wilfrid J. Waluchow & Stefan Sciaraffa eds., 2013).

<sup>78</sup> FREDERICK SCHAUER, *THE FORCE OF LAW* 51 (2015).

<sup>79</sup> Ehrenberg, *supra* note 77 at 54.

<sup>80</sup> In other words, the law is interested in conformity rather than compliance. On this distinction, see RAZ, *supra* note 13 at 178–179; Michael Sevel, *Obeying the Law*, 24 *LEGAL THEORY* 191–215, 197 (2018). See also Scott Hershovitz, *The Authority of Law*, in *THE ROUTLEDGE COMPANION TO PHILOSOPHY OF LAW*, 67 (Andrei Marmor ed., 2012).

perhaps, usually) in fact preempt our deliberation. What the law most obviously seems to seek is conforming behavior.<sup>81</sup> That conforming behavior can be the consequence of agents' commitments to law. Those commitments might be such that the law might end up preempting deliberation. But this is not because of law's claims or the structure of legal obligation, but rather because of what the commitments of the relevant agents happen to be.

Let me explain. Agents' commitments might be weaker or stronger. They might only give law's mandates a *prima facie*, defeasible weight. They might be stronger and treat those mandates as particularly weighty reasons for action. They might be even stronger and have a second-order dimension that treats those mandates as exclusionary reasons. Certain agents—to my mind, the most obvious example being public officials—might assume this type of second-order commitment, one that effectively preempts their deliberation about the legally prescribed courses of action.<sup>82</sup> Nothing in my argument precludes this possibility. But a commitment can also generate weaker effects. In case of second-order commitments, we let the law *control* our deliberations. In

---

<sup>81</sup> Ehrenberg, *supra* note 77 at 55. See also Donald H. Regan, *Reasons, Authority, and the Meaning of Obey: Further Thoughts on Raz and Obedience to Law*, 3 CAN. J. L. & JURISPRUDENCE 3–28, 15–16 (1990).

<sup>82</sup> As Raz notes, “one may regard oneself bound to disregard conflicting reasons because one has committed oneself to do so.” Joseph Raz, *Reasons for Action, Decisions and Norms*, in PRACTICAL REASONING 128–143, 141 (Joseph Raz ed., 1978).

other cases, we let it *influence* them.<sup>83</sup> This is sufficient for RPDT.

This means that law can be exclusionary. It can guide practical deliberation by manipulating and excluding reasons and by preempting further deliberation. But this is not the only way in which law makes a practical difference. The distinction between first-order and second-order commitments shows that law can, in fact, make a practical difference without acting as an exclusionary reason.

### C. Normative Power Skepticism

A third objection is the following. The idea that we can commit ourselves to an institution and that these commitments can generate a genuine practical impact, such as give agents reasons—and potentially, exclusionary and preemptive reasons—for action, seems to rest on the idea that we have normative powers—i.e., powers to alter our normative situation at will. The problem is that one might deny the existence of such normative powers or claim that they can only exist to the extent we have an effective social convention establishing them.

It is certainly true that one can naturally see commitments as part of the more general category (along with, for instance, promises) of normative powers.<sup>84</sup> Ruth Chang, for instance, offers an analysis of commitments as deriving from the exercise of what

---

<sup>83</sup> I take the distinction between control and influence from MICHAEL E. BRATMAN, *INTENTION, PLANS, AND PRACTICAL REASON* 16 (1999).

<sup>84</sup> Molina, *supra* note 55 at 5.

she calls *robust normative powers*: “capacities to reflexively will that some consideration be a reason, where that willing is that in virtue of which the consideration is a reason.”<sup>85</sup> Under this view, we commit to some consideration being a reason, and our commitment is what explains why that consideration is in fact a reason.<sup>86</sup>

The objection claims that there is something mysterious about the idea that, by making a voluntary determination, one can assume a reason to act in certain ways.<sup>87</sup> In the case of promises or what Gilbert calls “joint commitments,”<sup>88</sup> the interpersonal character of the situation might make the explanation less mysterious. One can appeal to the promisee’s interest in the stability of her expectations or in not suffering detrimental reliance as part of the explanation for the promisor’s reasons or duty to perform. But how can a purely unilateral undertaking generate this type of normative effect?

One possibility would indeed be to argue for the existence of robust normative powers, for instance by arguing that our own attitudes of willing or reflective endorsement are a source of normativity,<sup>89</sup> whether in general or, as Ruth Chang argues, when

---

<sup>85</sup> Ruth Chang, *Do We Have Normative Powers?*, 94 ARISTOTELIAN SOCIETY SUPPLEMENTARY VOLUME 275–300, 292 (2020).

<sup>86</sup> *Id.* at 293.

<sup>87</sup> Making this observation about promises, DAVID HUME, A TREATISE OF HUMAN NATURE 3.2.5.14 (David Fate Norton & Mary J. Norton eds., 2000).

<sup>88</sup> GILBERT, *supra* note 50.

<sup>89</sup> Ruth Chang, *Voluntarist reasons and the sources of normativity*, in REASONS FOR ACTION 243–271, 244–245 (David Sobel & Steven Wall eds., 2009). See

our non-voluntarist reasons have run out (which would limit the explanatory scope of commitments as the grounds for RPDT).<sup>90</sup>

I want to resist this path. First, on my account commitments to law can exist and give law a normative impact even when there are other non-voluntarist reasons for law's genuine normativity. Second, and more importantly, I want to resist the idea that there is something mysterious or that stands in need of justification—whether by reference to innate moral powers or to social conventions—when we claim that our own attitudes can have a genuine practical effect and ground, for instance, genuine reasons for action. The notion of a “commitment” is part of a larger, familiar, and relatively straightforward phenomenon: our life comprises the embrace of goals, projects, commitments, and values, and those attitudes give shape to our life and allow us to lead a life of our own that is rationally dependent on our inclinations and attitudes.<sup>91</sup> Being able to adopt commitments and to therefore generate genuine reasons for acting in certain ways is not a mysterious power that needs explanation but a constitutive aspect of living a life as a moral agent.

Now the critic might still want to reject or revise what I take to be a central feature of our lives as moral agents. In that case, I want to suggest a slight variation of the argument. Under this

---

also R. Jay Wallace, *Normativity, Commitment, and Instrumental Reason*, 1 *PHILOSOPHERS' IMPRINT* 26, 2 (2001).

<sup>90</sup> Chang, *supra* note 89 at 246.

<sup>91</sup> RAZ, *supra* note 43 at 387.

modified argument, agents' commitments are not the efficient cause of law's normative effect, but just efficacy conditions for other reasons that play that role (such as the legal system's conformity to the rule of law). One could spell this out by seeing commitments as giving these other reasons their full normative force for any specific agent. In terms of the value of legality, the claim would look something like this: compliance with the rule of law gives agents *prima facie* reasons to obey the law, but their commitments explain the full normative efficacy of those reasons. At this point, I don't think we have gained much, but we have certainly lost a lot in terms of parsimony. The more direct route seems to me to directly claim that agents' commitments, which they ought to make given the value of legality, give law's mandates a significant normative effect.

#### D. A Different Name for Consent?

According to consent theories, states act permissibly when their exercises of coercion can be connected to the consent of the individuals subject to them.<sup>92</sup> Publicly available laws are, on this picture, the subject matter of consent: when the individual has consented to state power, they have consented to the state acting in certain ways specified by law.

---

<sup>92</sup> See Richard Dagger & David Lefkowitz, *Political Obligation*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Summer 2021 ed. 2021), <https://plato.stanford.edu/archives/sum2021/entries/political-obligation/> (last visited Dec 27, 2021).

If that is the case, then a potential critic might think that the account I have offered is a specific account of what it is to consent to state power: to consent to state power is to adopt a commitment to its law (which sets out how the state is to exercise its power and in what circumstances). At worst, my argument is only terminologically different from traditional consent theories. At best, it is only a subtle precisification of what counts as consent.

In my view, this potential objection captures something important: as I noted above, commitment and consent have certain common characteristics. More importantly, both commitment and consent as grounds of law's normative impact are consistent with broadly liberal commitments to individual agency. However, in principle, consent seems to require communication<sup>93</sup> or at least common knowledge.<sup>94</sup> Moreover, this communicative act—or this act by which common knowledge is generated—needs to be a single act which we can identify and from which the ensuing normative consequences follow. This, precisely, has been the traditional problem for consent theories of political obligation: it is extremely difficult to identify a single act that might communicate or establish a citizen's consent to the law of the state, even implicitly.<sup>95</sup>

---

<sup>93</sup> See Tom Dougherty, *Yes Means Yes: Consent as Communication*, 43 *PHILOSOPHY & PUBLIC AFFAIRS* 224–253 (2015).

<sup>94</sup> Mollie Gerver, *Inferring Consent without Communication*, 46 *SOCIAL THEORY AND PRACTICE* 27–53, 30–32 (2020).

<sup>95</sup> See M.B.E. Smith, *Is there a prima facie obligation to obey the law?*, 82 *THE YALE LAW JOURNAL* 950–976, 960–961 (1973).

Commitment is, in this regard, very different (so much so that we can be committed to a state's law without having ever consented to its authority). A commitment does not necessarily derive from a single identifiable act. And a commitment need not be communicated in order to be normatively effective. A commitment can be the growing, evolving, and ongoing adoption of a personal attitude towards the state's law. This idea can only metaphorically be associated to the notions of consent, promise, and contract.<sup>96</sup> This should be unsurprising because there are, as I have admitted, some resemblances and connections between these communicative acts and a commitment. These resemblances and connections should not, however, lead us to treat commitments as a species of consent—particularly given the multiple problems consent theories are subject to. Instead, they should lead us to embrace commitment as the real notion that the ideas of consent and contract can only capture metaphorically.

#### CONCLUSION: THE SOVEREIGNTY OF THE INDIVIDUAL

The picture I have offered sees law, in and of itself, as normatively inert. Law contains behavioral prescriptions that will only genuinely impact what agents ought to do, independently of the law's content and the associated sanctions, if agents assume a commitment to law. When agents do in fact assume such a commitment, they make RPDT true for themselves. As I have also

---

<sup>96</sup> See DYZENHAUS, *supra* note 17 at 183–184; JOHN WIEDHOFFT GOUGH, *THE SOCIAL CONTRACT: A CRITICAL STUDY OF ITS DEVELOPMENT* 248 (1957); A. John Simmons, *Associative Political Obligations*, 106 *ETHICS* 247–273, 255 note 25 (1996).

argued, the legal regime's compliance with the rule of law gives agents a reason to adopt the relevant commitments. And in the circumstances of politics, the rule of law is perhaps *the* central way in which legal systems can give agents who otherwise disagree about justice, morality, and fairness, morally legitimate reasons to adopt commitments to law.

As I have argued, the practical difference made by law need not be in terms of protected reasons that exclude conflicting first-order reasons from consideration by the agent.<sup>97</sup> Whether that is the case depends on the intensity of the agent's commitment, on whether (assuming the law claims to generate exclusionary reasons) the agent takes the law's claims at face value and, thus, approaches them as exclusionary reasons. The exclusionary dimension of law turns, according to this argument, not on the nature of law or legal rules, but on agents' attitudes.

Discussing the assertion that law might succeed in giving reasons for action but not in imposing obligations, Essert writes that such an idea should be rejected because "setting aside the law's claim to impose obligations requires setting aside the law's claim to be a legitimate authority and reduces its directives to the orders of a mere de facto authority or a gunman."<sup>98</sup> But, again, here I believe we must resist the idea that law demands anything more than conformity with its prescriptions. Agents might see law's mandates as exclusionary reasons. Ultimately, whether that is the

---

<sup>97</sup> RAZ, *supra* note 13 at 35–48.

<sup>98</sup> Essert, *supra* note 10 at 87.

case depends on agents.

Perhaps this is somewhat frustrating. But it seems to me there is something troubling about the idea of law in a liberal society demanding obedience rather than conformity—of law aspiring to manipulate our practical deliberation. This intuition is precisely what the idea of commitment vindicates. In contrast to, for instance, promises, commitments do not transfer exclusive authority to a third party.<sup>99</sup> Agents remain sovereign over the subject matter of their commitments,<sup>100</sup> and always retain the authority to release themselves from the reasons and obligations that their commitments might ground.<sup>101</sup> Thus, while law might end up successfully governing our practical deliberation, whether that is the case is always up to individual agents and their commitments.

In this way, the argument of this paper has shown that (i) compliance with the rule of law is normatively significant, in that it gives agents a reason to assume a commitment to the relevant legal system; and (ii) whether law makes a genuine normative difference, independently of its content and the sanctions it threatens for non-compliance, depends on whether the relevant agents have, in fact, assumed a commitment to the legal system. There is, after all, no inevitable conflict between the autonomy of

---

<sup>99</sup> Molina, *supra* note 55 at 5.

<sup>100</sup> *Id.* at 10.

<sup>101</sup> *Id.* at 13–14.

the individual and the authority of the state.<sup>102</sup>

---

<sup>102</sup> Against WOLFF, *supra* note 2 at 18.