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Political Authority, Moral Powers, and the Intrinsic Value of Obedience

William A. Edmundson

Three concepts, authority, obedience, and obligation, are central to understanding law and political institutions. The three are also involved in the legitimation of the state: an apology for the state has to make a normative case for the state's authority, for its right to command obedience, and for the citizen's obligation to obey the state's commands.

Recent discussions manifest a cumulative skepticism about the apologist's task. Getting clear about the three concepts is an essential preliminary to any cogent normative defense of the state. Clarity can't guarantee the apology's success, but it should make it easier to understand where and how it fails, if it fails. In this paper, I will highlight the question, What is it to *obey*? We need to be clear about what it is to *obey* before we can sensibly tackle the idea of, and justification of, any *obligation* to obey. We also need to be clear about what it is to obey before we can understand or justify the state's *authority* to obligate us to obey.

I. Political Authority as a Moral Power

Political authority consists in the state's (purported) moral power to place us under obligations to obey its commands, particularly its laws. As Stephen Perry has pointed out, the ancient controversy about a duty to obey the law is really about the state's

moral power to create duties;¹ and, as David Estlund has pointed out, such a power is not to be confused with the power that each of us has to do things that happen to impose duties upon others (as, for example, when by stepping in front of your car I make it the case that you have a duty to stop).²

More about powers comes later: first, obedience. At first blush, it appears that there is a single type of conduct –obedience—that is the central component of both the state’s authority and the citizen’s coordinate obligation. There is something *X* the citizen is obligated to do in virtue of the state’s authority to obligate her to do it, and that something *X* is obedience. Obedience seems to be the pivot where authority and obligation connect, and around which they both move.

II. Obedience: A Loose Sense and a Strict Sense

¹ Perry, Stephen. 2005. Law and Obligation. *American Journal of Jurisprudence* 50:263-95. “It seems to me to be a mistake to characterize [the subject’s] overall normative relationship to the government by reference to a general obligation of any kind. The most appropriate description of this relationship is, rather, that they are under a general *liability* to have their normative status affected by the government.” (*id.* at 273.)

² Estlund, David M. 2008. *Democratic Authority: A Philosophical Framework*. Princeton: Princeton University Press. Estlund introduces the term “side-effect power” to emphasize that genuine exercises of political authority must have the creation of duties as their point, rather than their mere result (*id.* at 143). I stress another differentia Estlund emphasizes as well, which distinguishes a duty to obey from a “mere duty to follow” (*id.* at 125). The former, unlike the latter, survives “mere” errors on the part of the authority. I follow Don Regan in assigning this distinctive “small-error-tolerance” to the intrinsic value that legitimate authority is supposed to be able to impart to the performances it commands.

But things aren't so simple. As Don Regan has pointed out, there is a strict, "philosopher's" sense of obey, and a looser, colloquial sense.³ This ambiguity introduces a danger of slippage: the state's authority might turn out to be authority with respect to obedience in one sense and the citizen's obligation might turn out to be an obligation of obedience in another sense. This is a complication for the apologist and skeptic alike. The narrow sense of obedience could well turn out to be tougher to justify than the wider; and that is likely to lead to disagreement about which sense is relevant to anchoring the legitimacy of the state.

In a colloquial sense, a citizen satisfies her duty to obey the law (assuming she has one) so long as she is in compliance with the law's requirements. In this sense, it does not matter whether or not she complies for the reason that the law requires her to do as she does. It does not even matter whether she knows that the law requires her to do as she does. But, in a stricter sense, it takes more than mere conformity to be said to have *obeyed* an authoritative directive. In particular, one must know that one has been directed to do as one does. Moreover, it must be the case that the directive was the reason why one did as one did; and that reason has to operate in a certain way.

Let me illustrate the difference with some examples:

³ Regan, Donald H. 1990. "Reasons, Authority, and the Meaning of 'Obey': Further Thoughts on Raz and Obedience to Law." *Canadian Journal of Law and Jurisprudence* 3:3-28. There might be more than two distinct senses, but I will try to simplify by speaking only of two.

X orders Y to ϕ . Y does not hear X, but happens to ϕ for reasons having nothing to do with X. Y ϕ s, but does not obey X in doing so.

In this case, it is a *mere coincidence* that Y does as X commanded. Now following is an example of *mere compliance*:

X orders Y to ϕ . Y hears X and, merely to humor X, or to accommodate X (who has a reputation for being arrogant and difficult) to avoid creating a scene, ϕ s. Y complies, but in so doing does not obey X.

In this case, Y does what X demanded, but Y treats X's order as a churlish request. It does not enter Y's head that X has authority, or that X's command creates or engages any sort of duty. Here is another example of mere compliance:

X orders Y to ϕ . Y hears X, and is reminded that Y had intended to ϕ , or is reminded of an extraneous duty to ϕ . Y ϕ s, but Y has not obeyed X.⁴

Even where one person's order results in another's obligation, compliant behavior may not count as obedience. Consider:

⁴ The following modification of my last example is not as easy to dismiss as mere compliance.

X has loaned Y a small sum, without stipulating a time for repayment. Weeks pass, and X says to Y, "Pay me now." Y pays X.

Here, it is not obvious that Y has not, in a sense, obeyed X. Although Y had a duty to repay X sometime, Y had no duty to repay X then and there until, and because, X then and there demanded payment. It may be that the moral power X exercises on the occasion is too narrow to count as an exercise of authority, but nevertheless this seems to be a case of Y obeying X, rather than merely complying with a demand.

X, a poor swimmer, is struggling in the surf, and is about to drown. X yells to Y, a stranger, “I command you to rescue me!” Y, a strong swimmer, hears and saves X, ignoring X’s impertinence. Y has not obeyed X.

What can be extracted from these examples? I think they point to what is needed to sharpen these two conceptions.

Obedience in the vernacular sense (or “mere behavioral compliance”): In this loose, or conversational sense, for a rational agent to obey is merely for her not to *disobey*. Regan would paraphrase this sense by saying “I [comply], but for reasons which make no reference to the law’s commands.”⁵ This can’t be quite right, for then the Holmesian “bad man” –who complies with awareness of the law, but solely to avoid the consequences of being found not in compliance—would not “obey” even in the loose sense. Regan’s intended paraphrase was surely, “I comply for reasons which make no reference to the law’s commands, or which do not regard compliance as an *intrinsic* reason.” I will explain what intrinsic reasons are after I lay out the basic distinction between the *strict* and the *vernacular* senses of obedience:

Obedience in the strict sense (which “includes a motivational component”). Regan variously paraphrases this: I obey in the strict, or “philosopher’s” sense when “I do what I have been told to do because I have been told to do it.”⁶ Or when “I regard

⁵ Regan 1990, at 15.

⁶ *Id.* John Simmons puts the point this way: “A moral duty to obey the law would be a duty to do as the law requires because it is required by valid law...[i.e.,] a duty to obey the law as such, not to do as it requires just insofar as it happens to overlap with independent moral duties....” Wellman, Christopher and A. John Simmons.

the fact that a certain act will comply with the directive as an intrinsic reason for action.” Or, yet again: “[A]n agent ‘obeys’ authority, in the strict sense, only if she regards the authority’s directives (or facts about what will constitute compliance with them) as intrinsic reasons for action.”⁷ The notion of an intrinsic reason for action has to come in to help us get beyond colorful but imprecise “because I was told to”-style locutions.

III. Intrinsic v. Non-Intrinsic Reasons for Action

An intrinsic reason for action is one that reflects the action’s inherent value, or the value of a whole of which the action is an essential component. An intrinsic reason for action is to be contrasted with a merely instrumental reason for action, where the action has no value in itself but would lead to or promote something else that is valuable in itself, if perhaps only by a chain of further events and actions. An intrinsic reason is also to be contrasted to an epistemic reason for action. An epistemic reason for action (Regan uses the term “indicative reason”) is constituted by a fact or an apparent fact that notifies the actor that by acting she might accomplish or promote what he has intrinsic reason to accomplish or promote.⁸ For

2005. *The Duty to Obey the Law: For and Against* 95. Cambridge: Cambridge University Press.

⁷ Regan 1990 at 16. Regan’s “intrinsic reason for action” is the equivalent of Raz’s “reason for action in the strict sense” as in “[A]s Raz says, unless we regard authoritative utterances as reasons for action in the strict sense...our relation to authority is not...obedience.” Regan, Donald H. 1989. Authority and Value: Reflections on Raz’s MORALITY OF FREEDOM. *Southern California Law Review* 62:995-95, at 1029.

⁸ Regan supports the intrinsic/indicative distinction by pointing to the varying opacity of the “it is morally obligatory that...” context: the greater the referential

simplicity's sake, I will use the label "*non-intrinsic* reasons for action" to refer compendiously to merely instrumental and merely epistemic reasons for action.

With the intrinsic reason/non-intrinsic reason distinction in hand, we can sharpen the distinction between obedience in the loose sense and obedience in the strict sense. The differentia of strict-sense obedience is somehow related to the actor's motivations in acting. When, but only when, the actor complies (or would comply) with an authoritative directive for the reason that the actor regards compliance as intrinsically valuable, does the actor obey in the strict sense.⁹ This captures the idea that one who obeys an authoritative directive sees, or would acknowledge, directive *itself* as a reason for action. All other compliance, including coincidental compliance, is obedience in the loose sense.

Now let's turn to the subjects of authority and obligation, and the way the idea of obedience figures in with them. At first, it seems obvious that the obligation to obey the law involves only the looser sense. Legal authorities normally could not care less whether their addressees do as they are told because they are told to, or do it for some other reason. So long as what they are told to do is done, those exercising legal authority typically are satisfied. This indifference is not typical of

opacity, the stronger the evidence that intrinsic reasons are at work. See Regan 1990 at 12, 18. I have doubts about this, but I won't go into them here.

⁹ This surely oversimplifies. Obedience *strictissimo sensu* may require that the actor view the intrinsic reason on which she acts as being likewise viewed as an intrinsic reason by the authority she obeys. The authority may or may not share this view, and the question whether or not it must as a conceptual matter is currently in dispute, as noted *infra* in footnote . The actor may also have to view the *intrinsic* value of compliance (though not necessarily *all* value) as deriving solely from an authoritative directive to so act. And she may have to view compliance as likewise viewed by the authority she obeys. Etc.

every kind of practical authority. The motive for compliance may be of the highest importance to a moral educator, who might in fact wish that her charge not do what he is told because he is told to do it, but because he sees the independent merit of doing it. But there seems to be close to a consensus that legal authorities are not moral educators, certainly not to this degree. Similarly, an expert on some topic might prefer that those she directs take her word for it, and not act on their own (perhaps now improved) understanding of the subject matter.

Employing this loose sense of obedience, then, the relevant definition of *practical authority*, if it involved a moral power at all, would be the moral power to make mere compliance-or-coincidence with S's directives obligatory (i.e., a duty to S, or to S's principal). Legal and political authority, in turn, would be the special case in which S = the state.¹⁰

IV. Restating the Problem of Political Authority

At first, it may seem that defining the problem of political authority in terms of the loose sense of obedience should ease the apologist's task of solving it. After all, we approach the state's claim to authority with suspicion, and the more power it claims, the more suspicious we are apt to be. Therefore, it should be harder to legitimate

¹⁰ As Regan indicates, "the moral obligation to obey the law' is normally thought to be fully discharged by mere behavioral compliance." (*id.* 17) He thinks "The phrase 'the moral obligation to obey the law' really is a misnomer...and we should speak of 'the moral obligation to comply with the law' instead." (*id.*) (Here, "to comply" should be taken in the broad sense indicated earlier, encompassing both intended and unintended complying behavior.) Stephen Perry, in contrast, thinks we should speak of "a general *liability* to have [one's] normative status affected by the government" (*supra* note X). Simply stated, the point of this paper is to expose the irreconcilability of Regan's and Perry's respective reformulations.

the state's telling us both what to do *and* what motive to have in doing it, than to legitimate simply the "what to do" part (leaving us free to find for ourselves a motive for doing as the state tells us). But this impression is wrong.

Wrong, that is, if authority is understood to be a moral power in a performative sense, that is, as a power to alter the moral situation of others in a direct way.¹¹ Not to leave the notion of "directness" untethered, I inject this example. You and I go drinking, taking separate cars. You drink too much. If I had promised to be your designated driver, I exercised a moral power that directly made me subject to a duty to drive you home. If I had not made any such promise, your condition and our relationship would also make me subject to a duty to drive you home. But in the latter case the duty I am under is not the product of anyone's exercise of a moral power.¹² Now, back to authority as a moral power: So far the focus here has been on the content of the duty – viz., obedience – that is the product of this moral power. It is time to ask what that moral power can be like –if indeed authority can be conceived in such terms.

¹¹ Performative utterances were, if not discovered, then first studied by J.L. Austin. See Austin, J.L. 1962. *How to Do Things with Words*. Oxford: Clarendon Press. Performative utterances are the typical but not the exclusive organs by which moral and legal powers are exercised. A power – conceived in austerely Hohfeldian terms as a "jural advantage" – is nothing more than the logical correlate of a legal liability and the opposite of a legal disability. But even so much as to speak of the *exercise* of a legal power is to fall into a performative idiom, even though an effective performance need not involve any verbal utterance –e.g., raising one's right hand in certain contexts.

¹² Suppose the reason I went drinking with you –lush that you are-- was to bring myself under a duty to drive you home. (Maybe I've read that virtues are habits, and I figure I need practice.) Even so, the duty, when it arises, is not the product of a moral power, as it would have been had I promised.

To approach this question, consider once again the distinction between intrinsic and non-intrinsic reasons. A moral power to require others to respect *intrinsic* reasons is intelligible and plausible. For example, John Rawls held that “Persons are self-originating sources of valid claims.”¹³ That meant, not that persons are self-originating, but that we persons possess moral powers to require others to respect our intrinsic worth and the intrinsic worth of important aspects of our personhood. We are “self-originating sources” in that the intrinsic reasons others have to respect our personhood have their source in active aspects of our very personhood, and not elsewhere.¹⁴

But, in contrast, a moral power to require others to respect *non-intrinsic* reasons is –when you think about it --unintelligible. Non-intrinsic reasons for action are, recall, merely epistemic or merely instrumental reasons. As such, they are never more than provisional reasons, and thus never binding in themselves. Any merely epistemic reason for action can, in principle, be supplanted by an epistemically superior reason. To conscript an example of Regan’s, suppose that the fact that Bailey is Ali’s student is a reason to believe that sex between Ali and Bailey would not be genuinely consensual. The fact that Ali and Bailey are related as teacher to student is an epistemic (or “indicator”) reason to discourage sex between

¹³ Rawls, John. 1980. Kantian Constructivism in Moral Theory. *Journal of Philosophy* 77:515-572, 543.

¹⁴ Persons, as such, often possess moral powers to forbid what would otherwise be permissible. Suppose Klutz is standing behind Monk in the security queue at a busy airport. Klutz is conversing with Ms. Klutz, who is behind him. Klutz’s backpack lightly rubs against Monk’s. The contact is permissible, but it annoys Monk. Monk asks Klutz to take care not to allow his backpack to rub against Monk’s. Klutz is now morally obligated not to let his backpack touch Monk’s backpack. Even in an airport, Monk is a self-originating source of valid claims.

Ali and Bailey. It isn't that chaste relations between students and teachers are intrinsically valuable. What is intrinsically valuable is consensuality. Should some epistemically superior way of certifying consent come along, the fact that partners were related as student and teacher would no longer be a reason to discourage sexual relations –not an overridden reason, but no reason at all.

Compare promising, which is the exercise of a moral power if anything is. Within a wide range of morally permissible but non-obligatory acts, I may choose to promise to do something and therewith endow my doing it with an intrinsic value that it would otherwise lack. Although there may turn out to be countervailing reasons that make it my all-things-considered duty not to keep the promise, that will not mean that keeping it is devoid of value, or that the value it has is non-intrinsic. But try to think of a case of promising that *makes* the keeping of the promise *non*-intrinsically valuable. Suppose Abel promises to mow Baker's lawn as a way to help Baker impress his in-laws, who are coming to visit. Abel's promise imparts intrinsic value to Abel's mowing Baker's lawn, and Abel's mowing Baker's lawn *has* non-intrinsic value as a means of promoting good feelings within the Baker family. But, in promising, Abel did not exercise a moral power to *make* mowing the lawn non-intrinsically valuable.¹⁵ Its non-intrinsic value is independent of the promise, and this remains true even if we stipulate that the in-laws' invitation was

¹⁵ Some may suspect that, in the ultimate analysis, promise-keeping's *only* value will turn out to be instrumental, nonintrinsic value. But I suspect that from such a perspective the very idea of a "moral power" will have boiled away. In any case, I contend that authority in the relevant sense can be understood, and can only be understood, as involving a moral power. Cf. Shelly Kagan. 2002. Kantianism for Consequentialists. In Allen W. Wood, ed. *Kant's Groundwork for the Metaphysics of Morals*. New Haven: Yale University Press.

predicated on an expectation created by Abel's promising. If Abel were able more effectively to promote good feelings within the Baker family by pruning the shrubs rather than mowing the lawn, that would not impart intrinsic value to pruning the shrubs, nor would it diminish the intrinsic value of mowing the lawn as promised.¹⁶

This is not to say that it is never obligatory to act upon non-intrinsic reasons, for quite often it is. We may, e.g., be duty-bound to give to charitable agencies even though giving to them is not intrinsically valuable –it is non-intrinsically valuable as a means to helping the needy. All there is *intrinsic* reason to do is to help the needy, and that reason is binding in itself.¹⁷ True enough, it might come about that giving to a certain charity is the *only* way for a certain person to help the needy. But the charity itself has not, by occupying that position and making appeals, exercised a moral power to impose obligations of giving. The charity will have had a part in creating facts, and those facts, in turn, impose new obligations, but those obligations are not the product of the charity's exercise of a moral power to create obligations or to make donating to the charity intrinsically valuable.

¹⁶ The intrinsic value of keeping a promise is not absolute even if we assume that patently wicked, illegal, and self-destructive actions cannot be bindingly promised. There may be nothing patently wicked, illegal, or self-destructive about my meeting you at the mall for lunch, but if keeping that appointment requires doing what would be very wicked –e.g., ignoring the plight of a child drowning in a roadside puddle – then it could seem silly to insist that keeping the promise retains intrinsic value. But it would be a mistake to conclude that it does not. That promise keeping has intrinsic value even where that value is outweighed is part of the explanation why a duty of apology and repair survives the emergency that made it one's all-things-considered duty not to keep the date at the mall.

¹⁷ For Regan, a merely indicative reason is never more than provisional, and a provisional reason is never intrinsic. Nonetheless, "The agent is bound to adopt and act upon...indicator-rules even though the indicator rules are not binding in themselves." Regan 1989, 1013.

If this is right, I can assert by way of summary that authority as a moral power to require obedience in the loose sense is unintelligible; and that authority as a moral power to require citizens to respect its directives as intrinsic reasons –that is, to obey in the strict sense -- *is* intelligible (even if implausible). Its intelligibility helps explain the persistence of consent theories of political obligation. Promising and consenting are relatively uncontroversial cases of exercising moral powers; and to the extent that political authority can be rationalized in terms of them, it too can be understood as involving the possession and exercise of moral powers.¹⁸ The fact that consent theories fail does not show that they are of a type that might, given the right circumstances, succeed.

V. Coordination and Fair-Play Duties

Let me explain my point in the context of a crucial issue in dispute between Regan and Joseph Raz. Regan charged Raz with holding views about authority that are, if not flatly inter-contradictory, then in some similar kind of tension with one another. Raz's celebrated "service conception" of authority is consistent with construing authoritative directives as non-intrinsic reasons for action. But in certain passages

¹⁸ The idea that the state's authority consists in its exercise of powers delegated to it by the People has perennial appeal. Can it be defended by analogy to promising? If I promise to help you move to a new apartment this weekend, and you ask me to lift the other end of your sofa, my lifting the other end of the sofa has intrinsic value. Moreover, it possesses that value even if it would make much better sense to move the coffee table first. Similarly –so the argument would go-- if I have consented to state authority (and the state is not grossly unjust), my doing as the state directs has intrinsic value even if what it directs ill serves or even frustrates its chosen ends. One worry here (among others) is that suffering what one has consented to suffer seems less obviously to possess the kind of intrinsic value that belongs to doing what one has consented to do.

Raz seems to suggest that authoritative directives –issued by legitimate authority -- are *themselves* reasons for action, which in turn suggests that Raz understands them as intrinsic reasons for action.¹⁹ Other aspects of his view, such as his rejection of the “no difference” thesis, also suggest that Raz wants to believe that authoritative directives are intrinsic reasons.²⁰ My interest here is not so much what Raz thinks but what we ought to think.

The issue can best be understood in reference to law’s role as solver of collective action problems. Traffic safety is a favorite source of examples. Suppose there is no rule of the road, but there is a “background” moral duty to drive safely.²¹ Enter legal authority, which decrees that all shall stay to the right (it might just as well have been the left). Drivers better comply with the reasons that apply to them anyway if they follow the authoritative directive to stay to the right than they would by making case-by-case decisions based on each moment’s evidence, or by sticking to a self-imposed rule in the hope of “norm seeding.” The solution represented by the law’s authoritative directive is “salient,” and drivers comply.

The issue is how to construe the state’s exercise of authority. In particular, shall we say that the authoritative directive to drive on the right was an intrinsic reason for action, the product of a moral power possessed by the state? Or shall we

¹⁹ As Regan observes, Raz’s celebrated distinction between exclusionary and first-order reasons for action is orthogonal to that between intrinsic and non-intrinsic reasons: thus the present issue does not turn on it.

²⁰ Raz, Joseph. 1986. *The Morality of Freedom*. pp. 30-31, 48, 56-67. Oxford: Clarendon Press.

²¹ The impotence of the state to legislate background morality is argued by Hart. See Hart, H.L.A. 1994. *The Concept of Law* (2d ed.). Oxford: Clarendon Press. Pp. 176-78.

say, instead, that the state's authoritative directive was a non-intrinsic reason for action, which, happily, seeded a general pattern of conforming behavior that furnishes further –now decisive but still non-intrinsic—reason to drive on the right?

Raz is correct, I think, that the state claims to possess a moral power to require conforming behavior.²² And –whatever Raz might say—I think the state's claim to possess such moral power has to be understood as a claim to possess a moral power to create intrinsic reasons for action. That said, I suspect that Regan may be right that, even in circumstances where the state's authoritative directive is crucially involved in solving a coordination problem, though the directive can indeed *cause* it does not *constitute* an intrinsic reason for action.²³ Let me use the term “*coordination reasons*” to designate reasons arising from the salience of a solution to a collective action problem. Where a directive gives a coordination reason, and there is sufficient compliance, there is – let's assume for argument's sake -- a moral (“fair-play”) duty to cooperators.²⁴

²² This is a truism with regard to most credible legal systems; but Matt Kramer and Ken Himma have argued that it is not true of all conceivable legal systems. See, e.g., Himma, Kenneth Einar. 2001. *Law's Claim of Legitimate Authority*. In Jules Coleman, ed. *Hart's Postscript: Essays on the Postscript to THE CONCEPT OF LAW*. Oxford: Oxford University Press; Kramer, Matthew. 1999. *In Defense of Legal Positivism: Law without Trimmings* 78-112. Oxford: Oxford University Press. Nothing here depends on it.

²³ “Where co-ordination is involved, directives may do more than indicate – they may create intrinsic reasons – but still without being intrinsic reasons themselves.” Regan 1990 at 14, *citing* Regan 1989 at 1019-31.

²⁴ See Hart, H.L.A. 1955. *Are There Any Natural Rights?* *Philosophical Review* 64:175-91; Klosko, George. 1992. *The Principle of Fairness and Political Obligation*. Lanham, Md.: Rowman and Littlefield; Edmundson, William A. 2004. *State of the Art: the Duty to Obey the Law*. *Legal Theory* 10:215-59.

Coordination reasons are not intrinsic reasons. If the state decrees “Drive 55!” and the practiced solution is 65 mph, then the coordination-duty and the fair-play duty are to drive 65 not 55 mph. This would be so even in case there would have been no drive-65 convention had the state not decreed a lower, 55-mph limit. Now suppose that the practiced solution is indeed 55 mph, which matches the content of the state’s directive. The directive is still at best a provisional reason to drive 55 mph; and any duty to comply stands free of the state’s directive, in the sense that there is no intrinsic reason to drive 55, with or without an authoritative directive to do so.²⁵ Given general compliance, there may indeed be a fair-play duty now, which does involve an intrinsic reason of *some* description. But the relevant description will not make essential reference to the state or its directives as the causal seed of the norm of conformity.

VI. Conclusion

An easy conclusion to draw is that state authority, understood as a moral power to give intrinsic reasons, normally falls significantly short of its claimed authority. I won’t offer any further argument here, but I think this is true even in case the state enjoys such widespread de facto authority that its authoritative directives are practically certain to be uniquely salient as solutions to all coordination problems of importance. A further conclusion that one might draw, as Regan seemingly must, is that the state’s authority ought not be construed as a moral power *stricto sensu* at all. Be that as it may, what the state’s authority comes to in coordination cases is an

²⁵ *Accord* Regan 1989, 1024-27.

ordinary power to create facts which, at best provisionally, give non-intrinsic reasons for action, and which may contingently and non-essentially combine with other facts to generate fair-play duties.²⁶ The state, I believe, claims more; and the fact it seldom possesses what it claims need not alter our understanding of what that at least implicit claim is, or of what it would take to justify the state in making it.

²⁶ I have argued this in detail in Edmundson, William A. 2002. Social Meaning, Compliance Conditions, and Law's Claim to Authority. *Canadian Journal of Law and Jurisprudence*, 15:51-67. John Finnis --who is friendlier to the idea of a general duty to obey --has emphasized law's role in identifying which of myriad coordination problems is worth solving, as well as its role in their solution. See Finnis, John. 1989. Law as Co-ordination. *Ratio Juris* 2:97-104. I would note that at this higher level, where law is involved in identifying (and not solely with solving) coordination problems, the same problem is replicated. If legal authority consists (in some part) of a moral power, then it must impart intrinsic value to the task of solving certain coordination problems rather than others (ruling out any "utilitarianism of coordination," just as deontology rules out any utilitarianism of rights). The same is so if there is a single *über*-coordination problem, viz. that of coordinating the enforcement of morality, as I have argued there is. See Edmundson, William A. 1998. *Three Anarchical Fallacies: An Essay on Political Authority*. Cambridge: Cambridge University Press.

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William A. Edmundson © 2009