

Political Authority, Moral Powers and the Intrinsic Value of Obedience

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Abstract—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 scepticism about the apologist’s task. Getting clear about the three concepts is, of course, an essential preliminary to any cogent normative defence of the state. The analysis here yields three conclusions: (i) the state claims to possess a moral power to subject citizens to duties of obedience, but non-consent apologies (including appeals to a principle of fair-play) can at best deliver a ‘side-effect’ power; (ii) consent theories of political authority aspire to justify one moral power by appeal to another, but they encounter familiar objections (including the objection that the state claims authority over non-consenters); and (iii) if authority is a moral power—as the state claims—its justification will have to render obedience as intrinsically valuable. Perhaps a virtue-ethical account can deliver a justification of the needed kind, but that would have to be shown elsewhere.

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Recent discussions manifest a cumulative scepticism about the apologist’s task. Getting clear about the three concepts is, of course, an essential preliminary to any cogent normative defence of the state. Clarity cannot guarantee the apology’s success, but it should make it easier to understand where and how it fails, if it fails. In what follows, my analysis will lead to the following conclusions: (i) the state claims to possess a moral power to subject citizens to duties of obedience, but non-consent apologies (including appeals to

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a principle of fair-play) can at best deliver a ‘side-effect’ power; (ii) consent theories of political authority aspire to justify one moral power by appeal to another, but they encounter familiar objections (including the objection that the state claims authority over non-consenters); and (iii) if authority is a moral power—as the state at least implicitly claims—its justification will have to portray obedience as *intrinsically* valuable. (Perhaps, a virtue-ethical account can deliver a justification of the needed kind, but that would have to be shown elsewhere.)

1. *Political Authority as 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, and the citizen’s coordinate liability to be subjected to such 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 Estlund coined the term ‘side-effect power’ to mark the category of actions that have moral effects but which are not, properly speaking, exercises of a moral power. Getting clear about the distinction is an essential preliminary to any investigation of the nature of political authority.

In the next sections, I will try to accomplish two things: first, I will sharpen the distinction between moral powers and (mere) side-effect powers. Part of this task is to make it plausible that there is indeed such a distinction to be observed. Second, I will argue that what underlies and explains the distinction between the two types of power is a distinction between two types of reason for action, which I will call intrinsic and non-intrinsic. Part of this task is to deflect objections to the very idea of an intrinsic reason, and its companion notion of intrinsic value, by offloading some of the excess metaphysical baggage that these ideas might seem to carry.

¹ S Perry, ‘Law and Obligation’ (2005) 50 *Am J Jurisp* 263–95, 273: ‘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’. The Hohfeldian correlative of this general liability is a general power to affect the citizen’s normative situation. As Joseph Raz puts it: ‘A person has authority to the extent that he has power to affect norms’. J Raz, ‘Voluntary Obligations and Normative Powers’ (1972) reprinted in SL and BL Paulson, *Normativity and Norms: Critical Perspectives on Kelsenian Themes* (Clarendon Press, Oxford 2007) 451–70, 467.

² DM Estlund, *Democratic Authority: A Philosophical Framework* (Princeton UP, Princeton 2008).

2. *Moral Powers Distinguished from Side-effect Powers*

Many, if not all, of our actions have moral consequences. A small but significant subclass of such actions represents the exercise of moral powers. The remainder represents the exercise (if that is the right word) of side-effect powers. There are four indications that an action is to be considered an exercise of a moral power. *Possession* of a moral power is simply understood as the capacity to exercise that moral power in normal circumstances.

A. *Purposive, Never Inadvertent*

Estlund introduced the term ‘side-effect power’ to emphasize that genuine exercises of political authority must have the creation of duties as their aim, rather than their mere result.³ The same is true of moral powers generally. For example, if I carelessly step off the curb and into the path of an oncoming car, my action has the consequence that the driver of the car is under a duty to apply the brakes to avoid hitting me. But it was not my intention to place the driver under a duty to apply the brakes. The action that brought about the duty is easy to classify as different from the action of raising my hand to signal to the driver that I intend to cross in front of the car. The latter is intended to place the driver under a duty to apply the brakes. It is at least a candidate for classification as an instance of the exercise of a moral power.

B. *Content Independent, Not Dependent*

The exercise of a moral power gives reasons for action, but the exercise of a side-effect power does so as well. The difference lies in the kind of force the reasons have. The exercise of a moral power gives a content-independent reason for action. A content-dependent reason for an action is a reason whose weight derives entirely from the value of the action itself, while a content-independent reason for action is a reason that does not derive entirely from the value of the action itself. For example, a (valid) promise to do something gives a reason for performing an action that keeps the promise, irrespective of what that action is and of whatever other reasons there may be to perform it. Standing in line outside a discount store at 5 am on a frigid morning may have little to recommend it; but if I have promised to do that then there is a reason to it, whose existence and weight do not depend on the merit of the action itself. There is a reason to keep promises that is independent of the content of the promise.

³ Ibid 143.

C. *Small-error-tolerant, Not Intolerant*

Moral powers are normally exercised for reasons. One might concoct a *recherché* example in which a moral power is exercised just for the sake of exercise, but normally moral powers are exercised in order to further some end. We promise things, for example, to please or to accommodate others, or perhaps to motivate ourselves to do what we have other reasons to do. But the reasons for action that are the upshot of the exercise of a moral power persist even when it is discovered that the reasons for which the power was exercised are not as had been supposed.

Let us say I am a non-commissioned officer. The date of a dress review of my unit is approaching. My commanding officer thinks a 5-mile jog before breakfast on the day of the review would improve morale. As indeed it would, unless it rains that morning, in which case morale will suffer. If my commanding officer orders me to lead the unit on a jog, I have a reason to do so even if the weather deteriorates; whereas, had there been no order or an order conditioned on the state of the weather, there would be no such reason. Given the order, there is a reason to comply that is insensitive to tolerably small errors in the deliberation that led up to it. Had there been no order, there would be no reason to go jogging that morning that would be similarly insensitive to the probability of its having the desired effect of improving morale.

Content independence and small-error-tolerance are related as different temporal manifestations of the same phenomenon. Content independence is the most prominent at the moment a moral power is exercised: the reason to comply with the duty created by the exercise of the moral power is independent of whatever reasons there may be at that moment to be in favour or against doing what will satisfy that duty. If I promise to stand in line at the discount store, I have a reason to do so even if there is no other reason to do so. That reason is similarly independent of the reasons existing, at the moment the power is exercised, in favour or against exercising it. I have a reason to keep my promise even if it was unnecessary or unwise to promise when and as I did.⁴

Small-error tolerance becomes prominent in the interval between the time of the exercise of a moral power and the time for performing what will satisfy the duty it created. Small-error tolerance refers to variations between the initially anticipated and the later-expected or actual effect of performance of the relevant duty. Unless an order or a promise is implicitly conditional, the duty it creates persists even though it becomes evident that it will fail to achieve, or will be less efficient than other means of achieving, what it was intended to achieve. If I promise to go jogging, or was ordered to, I have a reason to jog

⁴ Sometimes there are reasons to promise something even though there is—apart from the promise—no good reason to perform an action that would keep that promise. I might promise to show willingness to please someone, knowing that the action that will keep the promise will not otherwise be pleasing to that person.

that tends to persist (within limits) even after the discovery that jogging will not serve the aims that motivated the initial promise or order.

D. *Direct, Not Indirect*

Austin's distinction between illocutionary force—roughly, what we do *in* uttering—and perlocutionary effect—what we accomplish *by* uttering—is the heart of the distinction at issue here.⁵ Consider 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.

Suppose the reason I went drinking with you—drunkard that you are—was to bring myself under a duty to drive you home. (Maybe I have read that virtues are habits, and I figure I need practice.) I now have a duty, and I intended that I have a duty. Even so, the duty, when it arises, is not the product of a moral power, as it would have been had I promised. Joseph Raz relates this difference, between what he calls 'normatively' and 'causally' altering the normative situation, to Anthony Kenny's distinction between 'results' and 'consequences.' Thus, we have no shortage of terminologies; but can we reach a deeper understanding?

3. *Moral Powers and Intrinsic Reasons for Action*

Summarizing his attempt to locate a deeper explanation of the difference between causally and normatively altering a person's moral situation, Raz writes:

An act is the exercise of a norm-creating power if and only if it normatively affects the content or existence of a norm which is justified [at least in part] by content-independent arguments.⁶

Thus, if Junior has a duty to be at home by midnight as a result of Dad's telling him to, Junior has a reason to be at home that is independent of the merits of his being home. But what is it to be a norm justified by content-independent arguments? I will now argue that the *intrinsic value* of compliance with a parental command inevitably features in any 'content-independent argument' there may be for compliance. Intrinsic value explains the content

⁵ JL Austin, *How to Do Things with Words* (OUP, Oxford 1962) 116: "Thus we must distinguish "I ordered him and he obeyed" from "I got him to obey" ". See generally 108–19.

⁶ Raz (n 1) 466.

independence—as well as Estlund's small-error-tolerance—and not the other ways around.

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 with an epistemic reason for action. An epistemic reason for action 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.⁷ For 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.

The idea of intrinsic value has been variously understood. An action's intrinsic value is not necessarily tied to its intrinsic non-evaluative properties. There is no property intrinsic to a showing-up-at-the-cineplex-at-eight o'clock-sharp that accounts for its being a promise-keeping. Even so, if it is a promise-keeping it possesses intrinsic value. Nor can the intrinsic value of an action comfortably be cast as its value as an end: promise-keeping and fair-playing, and their instances, possess intrinsic value, but it is odd to think of them as ends-in-themselves, or valuable as ends-in-themselves.⁸

The argument for understanding moral powers as powers to give intrinsic reasons for action is straightforward. To say, as Raz does, that a moral power is a capacity to effect normative change in a way supported by content-independent argument is simply to say, in a roundabout way, that a moral power is a capacity to give intrinsic reasons for action. The 'content-independent argument' in support of a moral power will be an argument that relies, explicitly or not, on the idea that one action has imparted to another action a value that it would not otherwise have, and which might easily have been imparted to an action of a wholly unrelated kind. The argument justifying compliance is 'content independent' precisely because the exercise of a moral power endows compliance with intrinsic value, that is, with a value that it possesses only qua compliance. To promise is to exercise a moral power, rather than a mere side-effect power, precisely because keeping a promise has a value

⁷ Don Regan supports the intrinsic/indicative distinction by pointing to the varying opacity of the 'it is morally obligatory that...' context: the greater the referential opacity, the stronger the evidence that intrinsic reasons are at work. See DH Regan, 'Reasons, Authority, and the Meaning of "Obey": Further Thoughts on Raz and Obedience to Law' (1990) 3 Canadian J L Jurisp 3–28, 12, 18. I have doubts about this, but I won't go into them here.

⁸ Cf. S Kagan, 'Rethinking Intrinsic Value' (1998) 2 J Ethics 277–97; C Korsgaard, 'Two Distinctions in Goodness', in *Creating the Kingdom of Ends* (CUP, Cambridge 1996) 249–74. I do not think anything hangs on these issues, for present purposes.

in itself that is independent of—and indeed, extrinsic to—whatever the content of the promise might be.⁹

Similarly, the intrinsic value of compliance explains the small-error tolerance that characterizes duties that are the product of the exercise of moral powers. As I suggested earlier, small-error tolerance is content independence viewed towards the latter end of the interval between the time of exercise and the time for compliance, and with an eye towards the likely success and efficiency of compliance in securing the further end in pursuit of which the power was exercised as a means. If I have promised roses, it is roses I must deliver, even if the florist recommends freesia instead. If a jog before dress review is what was ordered, then the jog has value even though it turns out that it will poorly serve its intended purpose.

4. *Restating the Problem of Political Obligation*

If political authority is seen as a moral power, and in turn moral power is conceived as a capacity to create intrinsic reasons for action, there are implications for what political obligation can be, and how it can be legitimated.

A moral power to give and 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’.¹⁰ 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.

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, in virtue of being a person, is a self-originating source of valid claims.

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,

⁹ Where the intrinsic value of ϕ ing is weighty enough to trigger a pro tanto duty to ϕ , and there is no other value to ϕ ing, one might say, with David Owens, that not ϕ ing is a ‘bare wrong’. D Owens, ‘The Problem with Promising’, <http://ssrn.com/abstract=1342060> accessed 12 February 2009.

¹⁰ J Rawls, ‘Kantian Constructivism in Moral Theory’ (1980) 77 J Phil 515–72, 543. By citing Rawls I do not mean to suggest that the intrinsic worth of persons is simply *given* by their status as persons. Nor do I mean simply to conflate having intrinsic worth and being entitled to respect. But space does not allow me to explore these issues.

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 Ali and Bailey. It is not 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.¹¹ Its non-intrinsic value is independent of the promise, and this remains true even if we stipulate that the in-laws' invitation was 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.¹²

¹¹ Some may suspect (or have concluded) that, in the ultimate analysis, promise-keeping's *only* value will turn out to be instrumental, non-intrinsic value. But I suspect that from such a perspective, the very idea of a 'moral power' will have boiled away. Cf. S Kagan, 'Kantianism for Consequentialists', in AW Wood (ed.), *Kant's Groundwork for the Metaphysics of Morals* (Yale UP, New Haven 2002). In any case, here I assume the truth of the prevalent view that practical authority can be understood, and can only be understood, as involving a moral power.

¹² 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.

This is not to say that it is never obligatory to act upon non-intrinsic reasons, for quite often it is. We may, for example, 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.¹³ 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, either exercised or come into possession of 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.

If this is right, I can assert by way of summary that authority as a moral power to require citizens to respect non-intrinsic reasons is unintelligible; and that authority as a moral power to require citizens to respect its directives as intrinsic reasons *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.

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 then 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. The fact that consent theories fail, if (as I think) they do, does not show that they are of a type that might, given the right circumstances, succeed.

¹³ 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'. DH Regan, 'Authority and Value: Reflections on Raz's Morality of Freedom' (1989) 62 S Calif LR 995–1095, 1013.

5. Coordination and Fair-play Duties

Let me explain my point in the context of an issue in dispute between Regan and 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, 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.¹⁴ 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.¹⁵ 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 favourite source of examples. Suppose there is no rule of the road, but there is a 'background' moral duty to drive safely.¹⁶ Enter legal authority, which decrees that all shall stay to the right (it might just as well have been the left). Drivers comply better 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 say, instead, that the state's authoritative directive was a non-intrinsic reason for action, which, happily, seeded a general pattern of conforming behaviour 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 behaviour.¹⁷ 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

¹⁴ 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.

¹⁵ J Raz, *The Morality of Freedom* (Clarendon Press, Oxford 1986) 30–31, 48, 56–67.

¹⁶ The impotence of the state to legislate background morality is argued by Hart. See HLA Hart, *The Concept of Law* (2nd edn Clarendon Press, Oxford 1994) 176–78.

¹⁷ This is a truism with regard to most credible legal systems; but Matthew Kramer and Ken Himma have argued that it is not true of all conceivable legal systems. See, e.g. KE Himma, K. Einar, 'Law's Claim of Legitimate Authority' in J Coleman (ed.), *Hart's Postscript: Essays on the Postscript to The Concept of Law* (OUP, Oxford 2001); M Kramer, *In Defence of Legal Positivism: Law without Trimmings* (OUP, Oxford 1999) 78–112. Nothing here depends on it.

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.¹⁸ Let me use the term *coordination reasons* to designate reasons intended to make salient a certain solution to a collective action problem. Where a directive gives a coordination reason, and there is sufficient compliance, there is—let us assume for argument’s sake—a moral (‘fair-play’) duty to all those who cooperate.¹⁹

Coordination reasons are not intrinsic reasons. If the state decrees ‘Drive 55!’ and the practised solution is 65 mph, then the fair-play duty is to drive 65 not 55 mph. This would be so even if there would have been no drive-65 convention had the state not decreed a lower, 55-mph limit. Now suppose that the practised 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.²⁰ 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.

Another way of putting the point employs Mark Murphy’s conception of a reason for action as a *compact reason*. The basic idea is that ‘reasons for action include within them only facts that are at least partially constitutive of the choiceworthiness of the action for which they are a reason’.²¹ This stipulation serves to pare irrelevant facts away from the description of a reason for action. For example, the conjunctive proposition expressed by the sentence ‘The fish are jumping and the cotton is high’ does not state a reason to go fishing. That the fish are jumping is a reason to go fishing but the conjunctive proposition is not, because the component fact, that the cotton is high, makes no contribution to the choiceworthiness of going fishing. Murphy formulates the following general compactness principle:

[I]f R is a reason for A to ϕ , then there is no fact S included in R such that the choiceworthiness conferred on ϕ ing by R without S is identical to the choiceworthiness conferred on ϕ ing by R .

Now suppose that there is a practice P and coordination problem C such that P mandates that A ϕ , and the conjunction of P and C is a reason for A to ϕ of

¹⁸ ‘Where co-ordination is involved, directives may do more than indicate – they may create intrinsic reasons – but still without being intrinsic reasons themselves’. *Regan* (n 7) 14, citing *Regan* (n 13) 1019–31.

¹⁹ See HLA Hart, ‘Are There Any Natural Rights?’ (1955) 64 *Phil Rev* 175–91. As has been pointed out, further conditions must also be satisfied before a fair-play duty supervenes. That said, no one, so far as I am aware, has denied that fair-play duties can arise in the right circumstances. For discussion, see G Klosko, *The Principle of Fairness and Political Obligation* (Rowman and Littlefield, Lanham, MD 1992); WA Edmundson, ‘State of the Art: the Duty to Obey the Law’ (2004) 10 *Legal Theory* 215–59.

²⁰ Accord *Regan* (n 13) 1024–7.

²¹ MC Murphy, *An Essay on Divine Authority* (Cornell UP, Ithaca, NY 2002) 10.

sufficient weight that A has a *prima facie*, fair-play duty to ϕ . Suppose it is a further fact that P would not be practised had the state not decreed that P be practised. The state's decree is a coordination reason, but is it a reason to ϕ ? Clearly, if the state's decree that A ϕ is an intrinsic reason for A to ϕ , the state's decree is a reason for action. But the state's decree cannot be an intrinsic reason for action merely by dint of being a coordination reason. In fact, unless the state's decree is an intrinsic reason for action it is no reason at all to ϕ . The fact that the state's decree is the causal antecedent of P adds nothing to the reason constituted by the conjunction of P and C.

But what if it is also the case that the state's decree is causally necessary to the continued efficacy of practice P? What is causally necessary to the choice worthiness of some X is not *ipso facto* a contribution to the choice worthiness of X—what is a *conditio sine qua non* of choiceworthiness need not be a *conditio per quam*. That an ice age has not supervened is causally necessary to the fish jumping. But the non-supervenience of an ice age is not a constituent of the choice worthiness of going fishing. That they are jumping is a reason to go fishing, but that they are jumping and this is not an ice age is not. Similarly, the fact that practice P continues to be an effective solution to C only so long as the state so decrees is not a constituent of the choice worthiness of practice P and ϕ ing. The non-supervenience of an ice age is also a causally necessary condition of the fact that practice P continues to be an effective solution to C, but of course does not contribute to, and is not even partially constitutive of, the choiceworthiness of ϕ ing.

6. Conclusion

An easy conclusion to draw is that state's *de jure* 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 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.²² The state, I believe, claims more;²³ and the fact it seldom

²² I have argued this in detail in WA Edmundson, 'Social Meaning, Compliance Conditions, and Law's Claim to Authority' (2002) 15 Canadian J L Juris 51–67.

²³ 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 J Finnis, 'Law as Co-ordination' (1989) 2 Ratio Juris 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.

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.

The broader lesson is that the self-image of the state as a possessor of a general moral power to make obedience to its laws obligatory is one that can be legitimated at its face value only by strategies that represent obedience as (somehow) intrinsically valuable. This suggests an explanation for the persistence of consent theories: they are of the right kind insofar as they try to explain state moral power in terms of related moral powers, such as promising, which similarly involve endowing actions of a certain description with intrinsic value. Apologies in terms of fair-play, gratitude, samaritanism and necessity, in contrast, have more limited prospects insofar as they do not start out with moral powers—of some sort, possessed by someone—among their basic materials. Natural duty accounts represent the just state's authoritative moral power as, if not primitive, then at least not hostage to the demands of voluntarism. But it is also a weakness of natural duty accounts that they typically represent the just state's authority as underived, or derived from no richer material than what the justice of the state supplies. Where such accounts fall short is in explaining either how the state's moral power makes a difference when its exercise gets justice right, or why it should make a difference when its exercise gets justice wrong.

I conclude with a reminder that a virtue-ethical account of law-abidingness, like consent theory, embarks on its task with a notion of intrinsically valuable action already close to hand. Perhaps a virtue-ethical account²⁴ can deliver an apology of the needed kind, but that will have to be shown elsewhere.

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 WA Edmundson, *Three Anarchical Fallacies: An Essay on Political Authority* (CUP, Cambridge 1998).

²⁴ A first approximation appears in WA Edmundson, 'The Virtue of Law-Abidance' (2006) 6:4 *Philosopher's Imprint* 1–21.