Political obligation as a moral necessity

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CHAPTER 6 POLITICAL OBLIGATION AND THE DUTY TO OBEY: A RESPONSE TO RAZ

1. INTRODUCTION

There remains one task: as noted before, we treat "political obligation" as a concept interchangeable with "the moral obligation to obey the law." Yet it is not without controversy, although not many scholars linger on the distinction between the two concepts. In addition, I have so far considered one major form of skepticism about political obligation—philosophical anarchism—the main claim of which is that we can provide neither a general nor a particular basis for political obligation. As such, its primary target is the credibility of the argument for political obligation. However, there is another kind of skepticism that focuses not on whether such an obligation can be proved to exist but on its acceptability in our moral reasoning. Thus, even if political obligation does exist, it cannot be a legitimate consideration in people's actions, hence, should be ruled out in our moral reasoning.

These two points invite a separate discussion of Raz's arguments about political obligation, particularly since he champions both distinctions. What is more, Raz's standpoint is too singular to subsume under any of the theories previously canvassed. I have explored the approach based on a Kantian justification of the moral necessity thesis, according to which political obligation essentially refers to a moral obligation to obey the law and support the government. What is morally necessary for people to discharge their moral obligations and live morally and peacefully is the law and the political condition in general as a social institution facilitating and creating the conditions for people to do so. Thus, political obligation as a moral necessity entails a general obligation toward the law as whole. The equation of political obligation and a duty of obedience forces us to respond to those who distinguish between these two obligations, which is why Raz's theory of the moral attitude toward the law deserves particular attention here.

As we saw in Chapter 2, skeptics of political obligation and legitimacy typically assume the integration thesis, to the effect that legitimate authority as the right to rule and political obligation as the obligation to obey are the

two sides of the same coin. As a consequence, acceptance of one of the three components of the integration thesis—legitimate authority, the duty to obey, and/or the conceptual correlation—commits one to acceptance of the other components. Raz, however, is unique in that, on the one hand, he espouses all three elements and the integration thesis, while on the other hand he is skeptical toward a general moral obligation to obey the law. Raz's peculiar skepticism is results from a purported gap between political obligation and the duty to obey. Raz believes that legitimate authority requires a conceptual correlation of political obligation, but that such a political obligation does not amount to the general moral obligation *to obey the law*. The gap is the result of the different ranges of the two obligations, as Raz claims that political obligation, or "the duty to support and uphold good institutions, the existence of which need not be denied, is insufficient to establish an obligation to obey. It [scil. political obligation] extends directly to *those laws setting up and maintaining the just institutions*. It provides reasons to obey other laws only to the extent that by doing so one sets a good example or that by failing so to act one sets a bad example."[1] We may define this gap as follows:

> *The Gap*: while the duty to obey the law denotes a moral obligation to obey *all the laws of a state*, political obligation—the duty to support and uphold just institutions—demands the obedience of *laws only with regard to the existence of those institutions*.

According to Raz, political obligation refers to the correlate of legitimacy as "the duty to support and uphold just institutions," and the scope of such a duty cannot extent to the whole legal system.

This brings out another idiosyncratic aspect of Raz's account of political obligation and authority. For adherents of the integration thesis a positive or negative conclusion about legitimacy depends on success in justifying political obligation. By contrast, the Razian account argues the other way around, from the justification of legitimacy to political obligation.

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[1] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 241. Italics added.

As Raz states, "One has a duty to uphold and support authorities if they meet the condition of the service conception."[2] According to Raz's service conception, a government has legitimate authority if by following its directives, the subjects would likely better comply with reasons that apply to them independently than by conforming to their own reasoning, and they incur a duty to support and uphold the government, though not a general duty to obey the law.[3]

With the separation of political obligation and the duty to obey, as well as the rejection of the latter, Raz's account poses two challenges to the moral necessity thesis. Firstly, the Razian criticism of various approaches to the duty to obey the law might also be applied to the moral necessity thesis. Raz not only doubts the plausibility of such a general duty to obey but even describes it as a kind of moral perversion. It is not just the case that political obligation cannot be justified; rather, it is the *content* of the obligation per se that is not acceptable in our moral reasoning. Thus, even if we are able to ground political obligation, Raz would still deny political obligation as a legitimate consideration for people's actions. By implication, this denial would extend to the moral necessity thesis. Secondly, the moral necessity thesis is supposed to ground political obligation, the content of which includes general compliance with the law. However, if *The Gap* exists, the moral necessity thesis would not be able to have any bearing on people's attitudes toward the law, let alone to claim general obedience of the law. Therefore, there are two tasks for the investigation of this chapter. One is to scrutinize the soundness of Raz's arguments against theories of the duty to obey. In Section 3, I conclude there are three kinds of attack scattered throughout Raz's refutations of specific theories of the duty to obey, and I argue that none of them is successful. Hence, without further elaboration, Raz's criticism of those theories cannot be conclusive. The other task is to examine if *The Gap* exists, and if it does, whether the duty to uphold the government can exist without the duty to obey. I contend in Section 4 that *The Gap* is very difficult to uphold. Moreover, due to his variable usages of "political obligation," "a general duty to obey," "a general reason to obey,"

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2 Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 66.

3 Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, pp. 53-6.

and "a general attitude of respect for law," Raz's accounts of these similar yet subtly different ideas are not clearly differentiated. Thus, taking up these two tasks, I would like to resolve the ambiguity by sketching the structure of Raz's conception of the moral attitude toward the law, illustrating the connection between the moral obligation to obey the law, the moral attitude toward the law, and the moral reason to obey the law. Hereafter, I use "political obligation" merely to refer to the duty to support and uphold the government, while the duty or obligation to obey the law represents the sort of moral obligation that contemporary political obligation theories, including the moral necessity thesis, argue for, i.e. the obligation to obey the law as a whole.

2. THE STRUCTURE OF THE MORAL ATTITUDE TOWARD THE LAW

Raz places his rebuttals of the duty to obey within a larger framework of "the proper attitude towards the law." Within this larger framework, Raz unfolds his denials of the duty to obey the law, a general moral reason to obey the law, and a general moral attitude to the law. Each of these three ideas is intertwined with the other two. According to Raz, the appropriate attitude toward the law is "respect for law," which is valuable and does give rise to a duty to obey and a general reason to obey the law. Yet it can only ground a duty to obey and a general reason to obey on the part of those who have expressly adopted this attitude. According to Raz's argument, the fundamental and general reason why respect for law is insufficient to ground the duty to obey is because this appropriate and valuable attitude can merely be permissible but not obligatory. Thus, Raz's skepticism of these three ideas flows from the impossibility of providing an adequate *general* justification for any of them. I will consider Raz's skepticism in the following sections, and, in the current section, I will explain the hierarchy of the Razian structure of the attitude toward the law and articulate the relationship among the three ideas of the structure: a duty of obedience, a general reason to obey, and respect for law.

The core of Raz's skepticism consists of three propositions, rejecting each of the three ideas:

P1: There is no general duty to obey the law;
P2: There is no general moral attitude toward the law, viz. respect for law;
P3: There is no general moral reason to obey the law.

Firstly, I will start with Raz's view of the connection between P2 and P3—respect for law as a general moral attitude and a general moral reason to obey the law. According to Raz, respect is itself a reason for action (i.e. a practical reason), and respect for law is itself a reason to obey the law.[4] However, only those who respect the law have a practical reason to obey the law. Since respect for law is not found generally among all or most of subjects, the reason generated by this attitude consequently falls short of generality. In short, "*P2, therefore P3.*"

Two points call for clarification. First, the practical reason is relative to agents who 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."[5] Thus, for Raz, respect for the law is not a ubiquitous or general reason for at least most subjects of a given legal system because such an attitude is posited as only held among some of them. Second, respect for law refers to various things: it expresses confidence that the law is morally sound;[6] it expresses one's identification with the community;[7] it is also a belief that one is under an obligation to obey because the law is one's law

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[4] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253, 259, 260. Raz terms this sort of practical reason "expressive reasons" because the actions they require express the relationship or attitude involved. For example, "friendship is an expressive reason for those actions which are (in the agent's culture) fitting to the relationship and against the unfitting ones." See Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 255-6, 259.

[5] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 259.

[6] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 261.

[7] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

and the law of one's country.[8] Moreover, Raz stresses that the inference can only be a unidirectional argument as "P2, therefore P3, not *vice versa."* Raz argues that even if there is no duty to obey or general moral reason to obey, we can still defend respect for law as a valuable attitude toward the law, and one that is defensible if we conceive it as an independent and more fundamental attitude than a duty to obey and a general reason to obey. Thus, respect for law to Raz is a defensible and valuable attitude, yet it is not a sufficiently general source for a duty to obey or a general reason to obey. In an important passage, Raz stresses the independence of respect for law and the direction of inference:

> Having concluded […] that there are no such general moral reasons it seems to follow that practical respect for law is an unjustifiable attitude. This conclusion is inescapable if practical respect is derivable from an independently based obligation to obey and is itself justified as being the attitude which facilitates compliance with that obligation. Practical respect is morally defensible only if one can *reverse the order of justification* and derive an obligation to obey from an independently defensible attitude of practical respect.[9]

According to the inversion of the order of justification, practical respect is an independently defensible attitude capable of deriving a duty to obey and moral reasons to obey instead of a conclusion following from such a general obligation or reason. Moreover, this inversion also has a strong implication for the connection of P1 and P2, as I will illustrate later.

Secondly, regarding the logical relation between P1 and P3, it should be pointed out that whenever there is an obligation to φ, there is a reason for φ-ing, but not *vice versa.*[10] If you promise your friend that you will meet her at the theater at 8 p.m., the *obligation* incurred by your promise is a *reason* for

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[8] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

[9] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253, emphasis added.

[10] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 233-4.

you to leave your office for the theater at a quarter to eight. However, the opposite does not hold. Obligation, according to Raz, should be understood as a sort of practical reason that satisfies a demanding threshold, as he claims that an action is obligatory only if it is required by a "protected reason."[11] By "protected reason," Raz means a fact that is both a reason for an action and an exclusionary reason for disregarding reasons against it.[12] Your promise to your friend, according to the idea of protected reason, is not only a reason for you to meet your friend on time, but also an exclusionary reason for you to considering the pros and cons of doing so. Your promise is protected by the "second-order" or exclusionary part, and it is your obligation. Hence, to Raz, all obligations are reasons, whereas only the special sort of protected reasons are obligations. We may conclude that if there is no reason for *φ*–ing, there cannot be an obligation to *φ*. Thus, for the duty to obey to be justified, it is not sufficient to prove that there exists a general reason to obey the law. Additionally, if we deny the existence of a general reason to obey the law, the denial of a duty to obey follows as a corollary, but the reverse does not hold. In short, "*P3, therefore P1, not vice versa*." In other words, the denial of a general reason to obey calls for an argument with a more general scope than that of a duty to obey.

Lastly, as to the relation between P1 and P2, Raz believes that P2 contributes to P1—namely, if there is no general respect for law, there is no duty to obey. He argues that, as previously quoted at length, "[p]ractical respect is morally defensible only if one can reverse the order of justification and derive an obligation to obey from an independently

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[11] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 234-5; Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, pp. 223-5.

[12] See Joseph Raz, "Legitimate Authority," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 17-8; Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, pp. 221-2; Joseph Raz, *Practical Reason and Norms*, Oxford University Press 1975, Ch. 1 and 2.

defensible attitude of practical respect."[13] This is a "the cart and the horse" argument, as according to Raz, respect should be the source for the duty to obey, not the other way around. Respect as a reactive attitude does give rise to certain kinds of moral obligation. According to Stephen Darwall, there are two kinds of respect—recognition respect and appraisal respect.[14] By "appraisal respect," Darwall refers to the sort of respect that consists in a positive appraisal of a person or his or her qualities.[15] This is a common type of respect, for example when we express our respect or admiration for the extraordinary skills of a violinist. Recognition respect, on the other hand, is the kind of respect that is able to accommodate Raz's view of the duty to obey as derived from people's respect for law. This kind of respect "consists in giving appropriate consideration or recognition to some feature of its object in deliberating about what to do," and the typical examples of the objects of this sort of respect include "the law, someone's feelings and social institutions with their positions and roles."[16] With this distinction in mind, it seems plausible and reasonable for Raz to contend that "those who respect the law have a reason to obey, indeed are under an obligation to obey. Their

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[13] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253.

[14] In his celebrated "Freedom and Resentment," P. F. Strawson argues that holding people morally responsible necessarily includes a wide range of participant reactive attitudes—even if it is "unscientific and imprecise"—which belong to the involvement or participation with others in inter-personal human relationships, such as gratitude, resentment, forgiveness, love, and hurt feelings. See P. F. Strawson, "Freedom and Resentment," in his *Freedom and Resentment and Other Essays*, Routledge 2008, p. 5. These attitudes are essentially natural human reactions to the good or ill will or indifference of others toward us, as they express "how much we actually mind, how much it matters to us, whether the actions of other people—and particularly *some* other people—reflect attitudes towards us of good will, affection, or esteem on the one hand or contempt, indifference, or malevolence on the other" [10-1]. Darwall argues for a conceptual nexus between moral obligation and moral responsibility, accountability and blameworthiness. See Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability*, Harvard University Press 2006, p. 91.

[15] Stephen Darwall, "Two Kinds of Respect," *Ethics*, Vol. 88, No. 1 (1977): 39.

[16] Stephen Darwall, "Two Kinds of Respect," *Ethics*, Vol. 88, No. 1 (1977): 38.

attitude of respect is their reason—the source of their obligation."[17]

Even though the duty to obey can be derived from respect for law, the attempt to endorse this strategy to justify the duty to obey is doomed to fail because of the lack of generality of respect for law as mentioned before. Therefore, we might succinctly formulate the connection between the duty to obey and respect for law as "*P2, therefore P1, not vice versa*." Apart from the lack of generality, another reason that Raz offers for the impossibility of deriving a duty to obey from respect for law is that while it is never morally wrong not to respect the law, it can be morally wrong to respect the law of some fundamentally iniquitous states.[18] It is just morally *permissible* under certain circumstances to respect the law. In other words, you are never morally wrong in not respecting the law of a democratic, constitutionalist country whose legal system is reasonably just, but you are indeed morally wrong if you respect the law of Nazi Germany or the apartheid regime of South Africa.

In the previous paragraphs, I have tried to articulate the Razian structure of the moral attitude toward the law constituted by three components, the relations between these components, and their relative strength. The underlying concept for the Razian structure is the permissible nature of respect for law. Hence, it is the failure to satisfy the requirement of generality that is fatal to P1 and P3. To summarize briefly, the gist of Raz's theory consists of these three conclusions:

1. P2, therefore P3, not vice versa;
2. P3, therefore P1, not vice versa;
3. P2, therefore P1, not vice versa.

By these three propositions, Raz has provided a stronger claim against the duty to obey than other skeptics such as A. J. Simmons, M. B. E. Smith, and R. P. Wolff. The main statements of these skeptics merely go against the

[17] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 253, 260.

[18] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 258-9, p. 260.

existence of the duty to obey, while Raz's conclusion is more inclusive in rejecting a general reason to obey. If conclusions 1-3 hold, the situation for proponents of the duty to obey is devastating. But, fortunately for them, the Razian structure is founded upon an over-demanding assumption that appears to me indefensible.

Conclusions 1 ("There is no general respect for law [P2], therefore there is no general moral reason to obey the law [P3], and not vice versa") and 2 ("There is no general respect for law [P2], therefore there is no general duty to obey [P1], and not vice versa") indicate that the focus of the argument against a duty to obey and a general reason to obey concerns the generality of respect for law: P1 and P3 follow from P2. This argument, nonetheless, presupposes that respect for law—a "self-satisfied and complacent attitude"[19]—is the *exclusive* source for a duty to obey and a general reason to obey, and that no independent moral principle or other sort of ground can justify them. This means that Raz would have to reject all sorts of justifications based on grounds *other than respect for law*. Hence, he needs to refute almost all of the approaches to the duty of obedience, such as theories based on the fairness principle, consent, associative obligation, as well as the moral necessity thesis defend here. Otherwise, even if it is justifiable for Raz to claim that without general respect for law there can never be a duty to obey based on this very attitude, it is still possible to justify the duty to obey without resorting to this attitude at all. Therefore, the next section discusses whether Raz provides a convincing argument based on this exclusive character of respect for law. I will only concentrate on his rebuttals of the duty to obey, setting aside the arguments against a general reason to obey.

3. THREE ARGUMENTS AGAINST THEORIES OF THE DUTY TO OBEY THE LAW

Some might object to Raz that, because he does not offer specific arguments against every single contemporary approach to the duty to obey, his attempt to provide a compelling exclusive argument fails. For example, Raz does not

[19] Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 261.

refute theories of the duty to obey the law based on natural duties, gratitude, or the moral necessity thesis. In itself, this does not neutralize Raz's skepticism, firstly because his specific refutations of certain theories of the duty of obedience might also apply to other theories, but also because of his general criticism of *any* attempt to justify this duty, as a perversion in our moral reasoning. I identify three arguments that Raz offers to support his skepticism toward particular theories of the duty to obey as well as its general justifiability. I will call these three arguments "The Innocuousness Argument (*Innocuousness*)," "The Quasi-Voluntary Obligation Argument (*Quasi-Voluntary Obligation*)," and "The Perversion Argument (*Perversion*)." For each argument, I will start by introducing Raz's elaborations and the targeted theories, and I will then reject each of them. As a consequence, Raz's skepticist objections against the duty to obey the law misfire.

3.1 The Innocuousness Argument

3.1.1 Innocuous Disobedience

When Socrates argues that one should never do wrong in return, nor do any man harm whatever he may have done to you, he implies that even if the law of your state wrongs you, you should not answer by violating or disobeying it. He eloquently questions Crito: "Do you not by this action you are attempting intend to destroy us, the laws, and indeed the whole city, as far as you are concerned? Or do you think it possible for a city not to be destroyed if the verdicts of its courts have no force but are nullified and set at naught by private individuals?"[20] According to Socrates, disobeying the law of Athens may cause destruction to the law, the people, and the city, and he has a moral obligation not to destroy them, upon which the duty to obey rests. Though Socrates's statement focuses on only one individual's violations of the law, the cumulative effect of individuals' disobedience could be destructive for a legal system. In other words, the reason that Socrates advocates the duty to obey is because without the constraint of such a general moral obligation, the state and the legal system would collapse.

However, Raz does not believe in such a consequentialist justification of the duty to obey the law, because most individuals' capacity to undermine

[20] Plato, "Crito," in his *Complete Works*, edited by John Cooper, Hackett 1997, 50b-c.

the law is limited, and their noncompliance is innocuous. The innocuousness follows from two features of ordinary citizens. First, countless offenses to the law are too innocuous to be detected, such as violations of traffic regulations, tax laws, and so forth.[21] It would be at best an exaggeration to accuse a pedestrian of destroying the legal system for disregarding a red light. Second, not many people have Socrates's ability to set a bad example, because most of us have restricted influence on others.

Additionally, if we view our political community as a cooperative venture, such as theories based on the fairness principle or fair play,[22]

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21 Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 237-8.

22 Notably, Hart, Klosko, and (in his earlier works) Rawls argue for this version of the duty to obey the law, notwithstanding disagreement on the conditions of the principle. Hart first proposes that "when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission." See H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 185. Similarly, Rawls argues that the duty to obey, as a special case of the duty of fair play, is a moral obligation owed by people who have accepted and intend to continue accepting the benefits of a cooperating scheme to their fellow cooperating citizens. See John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, edited by Samuel Freeman, Harvard University Press 1999, pp. 122-3. However, compared with Hart's claim that all special rights arise from previous voluntary actions (not deliberately incurred), Rawls stresses the dependence of the duty to obey on our own voluntary acts. Klosko, on the other hand, attempts to establish the duty to obey without the constraint of voluntarism of moral obligations, as he argues that it suffices to justify a duty to obey based on benefits that no one can reasonably reject, which are called non-excludable goods. In other words, there would be no space for citizens to choose to accept or reject them if the cooperation generates benefits or goods of this kind. The principle of fairness is able to generate moral obligations to obey the cooperation scheme as long as the goods supplied by the scheme meet with three conditions: the goods must be (1) worth the recipients' effort in providing them; (2) "presumptively beneficial"; (3) have benefits and burdens that are fairly distributed. George Klosko, *The Principle of Fairness and Political Obligation*, Rowman & Littlefield 2004, p. 39. For a more detailed discussion of the theory of fairness, see Luo Yizhong, "I Should Not Be a Free Rider, nor Am I Obligated to Obey," *Ratio Juris*, Vol. 30 No. 2 (2017): 205-25.

disobedience would be unfair to those who contribute to the venture by the compliance of the law. To the fairness camp, citizens are morally obligated not to violate tax laws or traffic rules no matter how innocuous those violations are. Otherwise, they are morally blameworthy for being free riders, taking advantage of other fellow citizens' sacrifices, or arrogating unjustified privileges. Nevertheless, Raz maintains that the force of *Innocuousness* undermines the plausibility of the fairness approach, because innocuous disobedience *cannot* be unfair. Therefore, we may formulate this argument in the following proposition, which covers both the consequentialist approach and the fairness approach to the duty to obey to the law:

> *The Innocuousness Argument (Innocuousness)*: common violations of the law are too innocuous to impair the authority of law, the legal system, or the maintenance of social cooperation.

With respect to the fairness principle, Raz admits that it is unfair to not reciprocate the benefits received from a cooperative enterprise or to not contribute a fair share to the production of those public benefits. However, this principle still cannot adequately establish a duty to obey because "it cannot be unfair to perform innocuous acts which neither harm any one nor impede the provision of any public good."[23] Since many violations of the law are merely innocuous actions, "appeal[ing] to fairness can raise no general obligation to obey the law."[24] However, it seems to be a legitimate question why innocuous violations cannot be unfair, as Raz merely defines "innocuous acts" as violations that neither harm anyone nor impede the provision of any public good. For Raz to equate unfair actions with actions harming others or impairing the provision of public goods, the statement "innocuous actions cannot be unfair" needs further elaboration.

Firstly, we might come up with a causal interpretation according to

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[23] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 352.

[24] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 352.

which innocuous violations cannot be unfair *because* they neither harm anyone nor impede the provision of any public good. However, this interpretation remains unconvincing because harming others or hindering the provision of public goods relates to the moral principle of liberty or distributive justice rather than the fairness principle directly. The most common example involves people not purchasing tickets for the use of public transportation. While they do not harm anyone in particular nor hinder the provision of public goods, we still would blame them for not acting honestly and fairly. Thus, it is not clear how Raz can equate unfair actions with harmful actions. A more plausible way to explain how Raz's *Innocuousness* invalidates the fairness approach, I propose, is to argue that violations of the law maintaining social cooperation, sometimes called "free riding," are so innocuous that the detrimental influence on cooperation could be ignored. Jaywalking may be regarded as taking advantage of your traffic law-abiding fellow citizens' contribution to public order. It is just too innocuous to actually harm anyone or hinder traffic public good, while damage it inflicts on the legal system and social cooperation can also be ignored. So even if the violations are unfair, they are too trivial to be taken seriously. This is the most plausible way to explain Raz's *Innocuousness* against the fairness principle approach.

3.1.2 Irrelevant Innocuousness

If, as Raz maintains, the principle cannot generate a general duty to obey because innocuous disobedience cannot undermine social cooperation, this conclusion might also cast doubt on the credibility of the moral necessity thesis. Since the duty to obey to guarantee and facilitate people's discharging of moral obligations and living morally, Raz might also claim that minor violations of the law barely impact the ends that the duty to obey serves insofar as it is morally necessary. It would be an exaggeration to say that a person's running of a red light impairs a political community's public morals. Nevertheless, the consequentialist interpretation of *Innocuousness* is still a misplaced if the duty to obey the law is regarded as a *deontic* requirement instead of a consideration of the effect. Hart's version of the fairness principle can be taken as an example. It states that "when a number of persons conduct any joint enterprise according to rules and thus restrict their

liberty, those who have submitted to these restrictions when required have a right to a similar *submission* from those who have benefited by their *submission*."[25] According to Hart, the obligation of obedience as a rationale of fairness involves everyone being under a moral obligation not to take advantage of or exploit others' submission, endeavor, or sacrifices. Thus, in order to gain goods from a state as a cooperative venture, people should accept constraints on their behavior. No matter how innocuous the effects of violations of the law on the cooperation or the other cooperators, they are under a deontic obligation not to act unfairly. Therefore, innocuousness of their violations or free-riding actions seems to be an *irrelevant* factor in assessing whether one is acting fairly or not or discharging her obligations based on the fairness principle. Such a deontic understanding of obligations, including the duty to obey, concurs with Raz's own definition of an obligatory action, which he defines as an action "required by a categorical rule […], which applies to its subjects not merely because adherence to it facilitates achievement of their goals."[26] As a conclusion, the accusation of innocuousness does not affect the fairness principle approach to the duty to obey.

Moreover, *Innocuousness* could be extended to the denial of all theories of the duty to obey the law. Raz's argument implies that the justification for the fairness principle consists of two parts: first, an authority maintains social cooperation; second, we are morally refrained from impairing the authority. Since the second part of the argument does not yield a general obligation to obey all laws, but only laws regarding the existence of the authority and social cooperation, Raz contends that we are not morally required not to perform actions that would cause only innocuous damage to the authority. Further, Raz maintains that we are only morally obligated to obey those laws that, if ignored, would substantially undermine a justified authority. However, since Raz has transformed the duty to obey into a duty

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[25] H. L. A. Hart, "Are There Any Natural Rights?" *The Philosophical Review*, Vol. 64, No. 2 (1955): 185, emphases added.

[26] Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, p. 223.

not to impair the authority, while holding that innocuous disobedience cannot impair an authority, *Innocuousness* might spread to all sorts of theories of the duty to obey the law, no matter how the authority is justified. For instance, if a group of people has consented to a state and promised to obey the its laws, they have a promissory moral obligation to obey the law. But, according to Raz's *Innocuousness*, the promissory duty of obedience is not couched in the moral obligation to respect and keep promises, but in a moral requirement of not to cause damage to the established authority. However, it appears that what genuinely matters to the duty to obey in the promise approach or in the fairness approach is not a consequentialist reason for the existence of the authority. Rather, what matters is to keep the promise or treat others fairly regardless of the consequences. Raz's emphasis on the duty not to harm the authority leads him to mistake the genuine bases of theories of the duty to obey the law. Even if some actions are too trivial to be noticed or to affect the practice and existence of a legal system, the triviality of those behaviors might still go against certain moral principles. In addition, the innocuousness should have no role in the moral judgment as long as the moral principle involved is regarded as deontological. It is on this very point that the innocuousness should be deemed an irrelevant concern for the moral necessity thesis. What matters for this thesis is that people's living a moral life renders the general obedience of the law morally obligatory. Hence, no matter how innocuous the damage that the defiance of specific laws inflicts upon the morally necessary institution, innocuousness should not be regarded as an excuse for a wrong action.

3.2 The Quasi-Voluntary Obligation Argument

3.2.1 The Two-Tier Structure

The second argument—*Quasi-Voluntary Obligation*—covers an even broader range of theories of the duty to obey the law. It has a pivotal role in Raz's refutations of justifications for the duty to obey and his advocacy of respect for law as the proper and morally valuable attitude. Raz agrees with both proponents and opponents of the duty to obey generally acknowledge that voluntary actions, including promising and consent, are capable of giving

rise to moral obligations.[27] His response to consent-based theories of the duty to obey concentrates on the lack of generality. He argues that even if consent *can* give rise to a duty to obey, most people do not commit themselves in this way; consequently, consent cannot provide a sufficiently general ground.[28] Furthermore, Raz also challenges involuntarist theories in terms of the requirement of generality. Unlike some opponents of involuntarist theories who claim that an involuntary basis cannot generate moral obligation in general, Raz admits that for certain sorts of moral obligations voluntary actions are not a necessary condition: we may think of, moral obligations arising from family, friendship, citizenship, and other kinds of relationships. Take friendship as an example. Even though you have never voluntarily promised loyalty to your friends, you incur the moral obligation because it is constitutive of the relationship as friends. Raz draws an analogy between friendship and membership in political communities: "Respect for law does not derive from consent. It grows, as friendships do; it develops, as does one's sense of membership in a community."[29] This analogy indicates that if the duty to obey is to membership of a community as the moral obligation of loyalty is to friendship, then the duty to obey could have an

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[27] For instance, as Raz states, "Consent to obey the law of a relatively just government indeed establishes an obligation to obey the law." Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 353. Also, Simmons, who denies there being any plausible justifications for political obligation, admits that factual consent can give rise to moral obligations to obey the law. A. John Simmons, *Moral Principles and Political Obligations*, Princeton University Press 1979, pp. 57-61. Obviously, classical social contract theorists advance political obligations on the basis of consent (e.g., Locke, Hobbes, Rousseau). There are also contemporary theorists advocating this tenet. See Harry Beran, *The Consent Theory of Political Obligation*, Croom Helm 1987; Mark Murphy, "Surrender of Judgment and the Consent Theory of Political Obligation," *Law and Philosophy*, Vol. 16 (1997): 115-43; reprinted in Edmundson (ed.), *The Duty to Obey the Law*, Rowman & Littlefield 1999; David Estlund, *Democratic Authority: A Philosophical Framework*, Princeton University Press 2008.

[28] Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 239.

[29] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

involuntary ground. However, the fact that voluntariness is not necessary for obligations does not imply that, for Raz, there exists a plausible involuntary source for the duty to obey the law. He contends that obligations resulting from relationships, friendship, or membership are not genuine obligations and that "respect for law grounds a quasi-voluntary obligation."[30] We can rephrase his second stream of criticism as follows:

> *The Quasi-Voluntary Obligation Argument (Quasi-Voluntary Obligation)*: semi-voluntary bases such as attitudes and relationships generate quasi-voluntary obligations rather than genuine obligations.

Remember that in the last section, we saw that Raz argues for a unidirectional inference from P2 to P1; there is no general duty to obey because there is no generally expressed respect for law. But theories of membership and citizenship have considered the possibility that the duty to obey does not rest upon an expressive obligation (though Raz had claimed this),[31] because such a duty is intrinsic to a relationship that binds members of a political community, and this relationship provides a sufficiently general basis. What Raz now argues is that a relationship-based theory still cannot resolve the problem of generality because these underlying relationships themselves lack generality. Friendship, for instance, essentially consists of the duty of loyalty; without it, friendship cannot exist. In Raz's term, the duty of loyalty is *intrinsic* to this type of relation. The duty of loyalty, nevertheless, still cannot be conceived as a genuine obligation; it is merely a quasi-voluntary obligation, inasmuch as no one is morally obligated to establish a friendship. In other words, the duty of loyalty is generated based on a hypothetical premise that *if* one has established a friendship, he or she incurs this duty. Raz analogously applies this argument about friendship to membership: so that as long as we are not obligated to identify ourselves with the membership of a community, or to feel a sense of belonging to our community, there cannot be a general duty of obedience. Membership or

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[30] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354.

[31] See note 4.

citizenship as such cannot justify a general duty to obey the law, because a relationship-based duty is not a genuine moral obligation. Raz's verdict is as follows:

> An obligation to obey which is part of a duty of loyalty to the community is a semi-voluntary obligation, because one has no moral duty to identify with this community. It is founded on non-instrumental considerations, for it constitutes an attitude of belonging which has intrinsic value, if addressed to an appropriate object. Vindicating its existence does not, therefore, establish the existence of a general obligation to obey the law.[32]

It seems that *Quasi-Voluntary Obligation* is similar to Raz's rejection of respect for law, since in the end both membership and respect for law imply wholehearted endorsement, and this implication means that semi-voluntary obligations are not genuine. To understand the meaning of "semi-voluntary" or "quasi-voluntary," it is important to determine the components of fully voluntary obligation. From the argument quoted we can infer a two-tiered qualification for a fully voluntary obligation. First, a fully voluntary obligation is incurred with the commitment of an action, the endorsement of a relationship, or an attitude that entails a moral obligation. Second, the commitment and endorsement should be obligatory *per se*. We may say that the double qualification for a fully voluntary obligation contains (1) an "obligation in, obligation out" mode and (2) an obligatory commitment. Moral obligations generated by, for instance, membership does have an obligation as input: the duty of loyalty is intrinsic to the relationship, which

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[32] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 354. Raz believes there is no obligation to identify with a community; as he states, "One does not have a moral duty to feel a sense of belonging in a community; certainly there is no obligation to feel that one belongs to a country (rather than one's village, or some other community). I talk of a feeling that one belongs, but this feeling is nothing other than a complex attitude comprising emotional, cognitive, and normative elements. Feeling a sense of loyalty and a duty of loyalty constitutes, here too, an element of such an attitude."

provides the source or input for the output of an obligation of obedience. This means that relational obligations can satisfy the first condition of the "obligation in, obligation out" mode, yet they fail to meet the obligatory commitment requirement, which demands not only a source for obligation but also people's obligatory commitment to the source. In other words, membership and its constituting duty of loyalty are capable of generating the duty of obedience, the duty generated still fails to be fully-voluntary because the commitment to the membership is not obligatory. In Chapter 4, I argued that an obligation cannot be *sui generis*, that a prior moral duty must entail that obligation as a particularization. I therefore agree with Raz on the "obligation in, obligation out" mode. Nevertheless, I do not believe that the requirement of obligatory commitment is necessary, as a duty can also be particularized or incurred by specific people as a result of coincidence (as I pointed out in my discussion of the particularity requirement). In the next section, I will respond to Raz's obligatory commitment requirement based on my argument in Chapter 4.

The range of *Quasi-Voluntary Obligation* is not confined to theories couched in terms of citizenship, membership, or associative obligations; it should also be a potential challenge, though have not been actually raised, to approaches based on the fairness principle or gratitude, for example. Rawls, for instance, argues in his early writings for the duty to obey as dictated by the principle of fairness. He contends that the duty to obey the law, as a special case of the duty of fair play, is a moral obligation owed by people who *have accepted and intend to continue accepting* the benefits of a cooperative scheme to their fellow cooperating citizens.[33] In other words, the duty to obey can only be incurred by citizens' *voluntary* acceptance of benefits from the cooperating scheme. Although the duty to obey is voluntarily incurred, it would still be incapable of meeting Raz's second requirement of a genuine obligation, because no voluntary acceptance of benefits or acceptance of the membership in a cooperating scheme is obligatory. Thus, even if the Rawlsian duty of obedience satisfies the "obligation in, obligation out" mode by resorting to the principle of fairness, it falls short of the obligatory

[33] See John Rawls, "Legal Obligation and the Duty of Fair Play," in his *Collected Papers*, edited by Samuel Freeman, Harvard University Press 1999, pp. 122-3.

commitment requirement.[34]

According to *Quasi-Voluntary Obligation*, identifying oneself with a community, consenting to join a community, or voluntarily accepting benefits from the government cannot tell the whole story of the duty to obey. Thus, these theorists are still just building a "sandcastle," i.e. a duty of obedience based on a hypothesis. However, the two-tier requirement of obligation also exposes the ambiguity of what Raz means in speaking of fully voluntary obligations as the only genuine ones. As we have seen in the Rawlsian duty of obedience, even if the duty is incurred by the voluntary acceptance of public benefits from social cooperation, it still fails to mark the voluntary acceptance as morally obligatory. Hence, real reason for Raz's rejection of semi-voluntary duties is not the absence of fully voluntary actions, attitudes, or commitments to some relationships. Rather, it is the lack of obligatory foundations for actions, attitudes, or commitments. In sum, we can concisely capture Raz's second argument against the duty to obey as follows: there is no general duty to obey the law, because the duty of loyalty remains merely semi-voluntary, and the semi-voluntariness is resulted because of no obligation to identify with any political communities.

3.2.2 Quasi-Voluntary Obligations as a Mere Middle Ground

The two-tier structure shows that the semi-voluntary duties are just a middle

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[34] A. D. M. Walker, as a proponent of political obligation as gratitude, does not require voluntary acceptance of benefits from the state to impose a moral obligation to obey the state. Thus it cannot satisfy the first tier of the Razian qualification. As a result, his conception of political obligation cannot be a genuine obligation for Raz. Walker presents a five-step argument to justify the moral obligation to obey the law on the basis of the obligation of gratitude:

(1) The person who benefits from X has an obligation of gratitude not to act contrary to X's interests.

(2) Every citizen has received benefits from the state.

(3) Every citizen has an obligation of gratitude not to act in ways that are contrary to the state's interests.

(4) Noncompliance with the law is contrary to the state's interests.

(5) Every citizen has an obligation of gratitude to comply with the law.

See A. D. M. Walker, "Political Obligation and the Argument from Gratitude," *Philosophy & Public Affairs*, Vol. 17, No.3 (1988): 205.

ground: whether a duty to obey can arise from membership or other sorts of relationships hinges on the question whether there is an obligatory commitment that is necessary for such a moral duty. Or does membership generate a duty to obey only if we are obligated to identify ourselves with political communities? I challenge *Quasi-Voluntary Obligation* on two counts: the first concerns the burden of proof; the second is of a more fundamental and familiar nature. This concerns the necessity of an obligatory commitment for moral obligation in general.

To start with the burden of proof challenge, proponents of membership and associative obligation theories may pose an obvious question with regard to quasi-voluntary obligations: What if the duty to obey the law is a merely quasi-voluntary obligation? Or, why is a quasi-voluntary obligation insufficient for grounding the duty to obey? Unfortunately, Raz does not offer answers to these questions. The ultimate pathology of associative obligation theories, according to Raz, is that although relationships have the potential to generate obligations, and identifying with a political community is intrinsically valuable, "[o]ne does not have a moral duty to feel a sense of belonging in a community; certainly there is no obligation to feel that one belongs to a country."[35] But this diagnosis is not fatal unless Raz convincingly dismisses the possibility of founding a duty to obey on a semi-voluntary obligation, meaning that in terms of the burden of proof, he needs to reinforce the argument in order to decisively denounce, for instance, Ronald Dworkin's approach of associative obligation theory. Dworkin argues that the duty to obey the law is a form of associative obligation because "political association, like family and friendship and other forms of association more local and intimate, is in itself pregnant of obligation."[36] More importantly, not only does Dworkin couch the duty to obey in the associative obligations, but also he makes it explicit that the duty to obey belongs to the category of semi-voluntary obligations. The duty to obey, according to Dworkin, is less involuntary than various family obligations because people may make choices to emigrate to

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[35] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, pp. 353-4.

[36] Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, p. 206.

other political communities. However, this does not make the membership of political communities generally the consequence of voluntary choices. Most people do not choose their political communities; rather, they are born into them. Hence, "along a spectrum ranging from full choice to no choice in membership, political communities fall somewhere in the center." [37] We have a consensus about what pivotal political attitudes are, which include officials' special responsibilities and main obligations, the central one of which is that of general fidelity to law, associated with political communities.[38] As a result, the duty to obey does not require a fully voluntary basis or an obligatory imposition, and the burden of proof compels Raz as a skeptic to explain why semi-voluntary obligations cannot suffice to ground the duty to obey the law.

Even if Raz were able to reinforce his arguments to discharge this burden, *Quasi-Voluntary Obligation* might be seen as overly demanding, which is the second challenge. I contend that many of our moral obligations do not stem from an obligatory incurrence, and Raz's second tier of a fully voluntary obligation cannot be conceived as a requirement for the duty to obey. As noted, when attacking Simmons's strong version of the particularity requirement, I concluded that moral obligations, resting upon valid moral duties, can be generated or particularized not only by voluntary or obligatory actions but also by accidental events. Thus we should not unduly restrict the ways genuine obligations are brought into being or particularized. Suppose that A, accidentally hits B by car, and although A's reckless driving—the action incurs moral obligations—is neither intentional nor obligatory, she nonetheless incurs a moral obligation to save B because of the special relationship offender and victim the accident has brought into being. Suppose further that A runs away leaving behind B, who is severely injured. A passer-by C happens to witness the in the whole scene. Since no other people are around, B will die if C does not call an ambulance and try to save B. Clearly C is under a moral obligation to save B, yet the obligation is not generated because of C's voluntary commitments. Or we may say that there is not obligatory commitment that triggers C's natural duty to rescue.

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[37] Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, p. 207.

[38] See Ronald Dworkin, *Law's Empire*, Harvard University Press 1986, pp. 207-8.

Neither A's nor C's moral obligation to save B rests upon an obligatory commitment. Although the moral obligations incurred by A and C are categorially different, both moral obligations are genuine. Therefore, it is not convincing that the justification for the duty to obey has to ultimately rest upon an obligatory identification of membership, citizenship, and so forth, and even if the duty to obey is a semi-voluntary obligation, it still can be a legitimate justification, as Dworkin argues.[39]

We can also clarify the redundancy of an obligatory commitment by appealing to the moral necessity thesis. The moral necessity thesis fits the "obligation in, obligation out" requirement, since we are morally obligated to obey the law that serves the purposes of discharging moral obligations and avoiding wronging others capriciously. However, the moral necessity thesis refutes the second tier of an obligatory commitment, as the obligation in the first tier arises from special circumstances, which also particularizes the obligation by binding the subject to a certain group of people. What Kantians call "the proximity principle" is such a kind of special circumstance Therefore, to be committed to a legal system and incur a duty to obey it is not necessary to be obligated to undertake any action. Merely living within a political community is sufficient.

In summary, Raz's second argument, which is mainly against theories of membership and associative obligations, falls apart, because it demands too much of a genuine obligation. Moreover, it does not meet the burden of proof lying on the constructive arguments offered by supporters of the duty to obey the law, such as Dworkin's. Unless Raz can reinforce the argument against founding a duty to obey on what he calls a "semi-voluntary" obligation, it is unreasonable for us to raise the threshold for moral

[39] It is not clear whether Raz requires for a voluntary action to give rise to an obligation. In an earlier paper, he seems to take a loose view on this point where he argues that "[w]hat one ought to do depends in part on oneself, and this not only because the behaviours, needs, tastes, and desires of the agent count just as much as those of any other person, but because the agent has the power intentionally to shape the form of his moral world, to *obligate himself to follow certain goals, or to create bonds and alliances with certain people and not others*." Joseph Raz, "Promises and Obligations," in *Law, Morality, and Society: Essays in Honour of H. L. A. Hart*, edited by P. M. S. Hacker and Joseph Raz, Oxford University Press 1977, p. 228, emphasis added.

obligation by requiring an obligatory source or hinging on obligatory commitments.

3.3 The Perversion Argument

3.3.1 The Paradoxical Duty of Obedience

Finally, Raz raises a general argument against any attempt to justify the duty to obey the law from the perspective of practical reasoning. This is *Perversion*, which goes as follows:

> *The Perversion Argument (Perversion)*: the duty to obey is a moral perversion because it alleges that our moral duties of restraining ourselves from committing certain actions, such as murder, raping, or stealing, arise from our moral obligation *to obey the law* prohibiting murder and rape, rather than directly from our judgment of the nature and merits of those actions.

In all three articles on the topic of the duty of obedience, Raz mentions the presence of "the air of paradox," a "paradoxical claim," or "the apparent paradox" haunting this topic.[40] The paradox stems from the redundancy of the duty to obey, inasmuch as we have pre-existing moral obligations to act in accordance with certain moral imperatives. Those actions are simply *confirmed* by reasonably just legal rules. For instance, criminal laws prohibit us from committing murder, not for the moral obligation to comply with specific laws concerning the crime of murder, but because we are moral obligated not to murder. Raz reinforces the redundancy argument by claiming that the duty to obey is not only superfluous but also humiliating for morally conscientious people; thus, it is a moral perversion. A decent person would be offended or insulted by the suggestion that the reason that he or she refrains from murdering is because of the moral obligation to obey

[40] See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 343; Joseph Raz, "The Obligation to Obey the Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, p. 245; Joseph Raz, "Respect for Law," in his *The Authority of Law (Second Edition)*, Oxford University Press 2009, pp. 250-3.

the specific law.[41] As Raz eventually concludes, "The more just and valuable the law is, it says, the more reason one has to *conform to it*, and the less *to obey it*."[42] It is a conclusion about the tension between substantive moral judgments merits, i.e. reasons to *conform to* the law, and judgments of the duty to obey, i.e. reasons to *obey* the law. This paradox between the two types of judgment is that we would have less reason to *obey* the criminal law proscribing murder than to *obey* the traffic rule that requires us to "drive under 50 km/h"; on the other hand, we would have more moral reason to *conform to* the criminal law than to the speed limit. Murder, as a *malum per se*, is morally wrong, and the wrongness of such an action per se offers us a conclusive reason not to do it. Hence, with or without a criminal code proscribing his crime, people have the moral obligations to refrain from murder, and less reason to obey a criminal law prohibiting it. Speeding, on the other hand, does not carry much moral weight, and it would not be intrinsically wrong for people to speed as long as they pay due diligence to the safety of others. So we do not have as much reason not to speed as to refrain from murder, and we need a stronger reason provided by the duty to obey.

Perversion, unlike the previous two arguments targeting specific theories of the duty to obey, is a general rejection from the point of view of the alleged "wrong" role that the duty of obedience would play in our moral reasoning. Moreover, this is the very reason that even though Raz does not offer comprehensive rejections of every theory of the duty to obey the law, those theories fall within the spectrum of his three arguments, especially *Perversion*. Nevertheless, this general argument is also flawed, for two reasons. The first reason concerns the misconceived conception of the duty to obey that Raz undertakes. Raz's misconception invites a familiar objection to *Perversion*, the one that I employ to clear up the misconstruction of the duty of obedience as a cumulative project of moral obligations to obey specific laws. According to the Kantian approach that I defend, it is not particular

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41 See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 343.

42 Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 343.

laws and their moral merits that contribute to a general duty to obey; rather, it is for the sake of the law and the general political condition as a whole, as well as the ends that they serve, that general compliance is morally necessary. The second consideration is to pinpoint why the tension between the reason to conform to the law and the reason to obey the law does not stand.

3.3.2 Two Independent Judgments

To recall the argument in Chapter 2, the correct method to approach the problem of the duty to obey is to conceive of the law, and all sorts of political institutions as a whole, as what Kant calls the political or rightful condition. Whether we are under a moral obligation toward the political institutions and its legal system depends on the nature of the political condition as a whole in our moral life. This is the method of the "top-down justification." However, in his perversion argument Raz applies the wrong kind of "bottom-up justification," because he focuses on moral *obligations* to obey *laws* in particular contexts such as murdering or stealing. This weakens the force of *Perversion* since it is aimed at the wrong target. Raz contends that a morally conscientious person would be insulted if the duty to obey the law implied that the reason for her not to commit murder is because it is forbidden by law. Yet the so-called duty to obey here actually refers to "the moral obligation to obey the law *against murder*" rather than to "the moral obligation toward the law *as a whole*." This betrays the weak spot of this argument: even if the specific moral obligation to obey the law against murder provides a perverse reason, the obligation of obedience remains intact. A person's prior reasons for deciding whether to obey the law against murder include the moral wrongness of murder, the threat of sanctions, and a moral obligation to obey this very law. If she decides to comply with this law out of awareness of the compulsory obligation or the fear of sanctions, instead of recognizing the wrongness of the action per se, we would be able to say that the moral obligation to obey the law against murder is a perverse reason. However, as I have emphasized when proposing the distinction in Chapter 2, the moral obligation to obey specific laws and the duty to obey should be taken as two *independent* obligations, inasmuch as the duty to obey the law cannot be plausibly understood as the *aggregation* of moral obligations to obey all the laws.

Furthermore, Raz's method aggravates difficulty of upholding the distinction and tension between conforming to the law and obeying the law. The analogy with promising may help to clarify this. Suppose that a person A promises loyalty to his wife B by taking a vow, and A has thereby incurred a promissory obligation to be loyal. Since loyalty is also an inherent moral requirement for the two parties of a marriage with or without the vow, A has a pre-existing obligation of loyalty. Therefore, A has two reasons to be loyal. According to *Perversion*, A's obligation to respect his promise is not only redundant but also a perversion of his moral reasoning. The more reason A has to *conform to* the loyalty requirement, the less reason he has to *obey* the requirement. Thus, *Perversion* would not be confined to the duty to obey the law, unless Raz can elaborate on what feature makes an obligation to respect promises different from the duty of obedience. Also, we can see that the moral obligation to keep one's promise is affected by the same erroneous method, because the investigation into the point of such an obligation concerns whether we are morally obligated to honor and keep our promise in general as a social institution instead of whether we are obligated to keep one particular promise. Moreover, the reason for us to conform to the law and the reason to obey the law are derived from different considerations, and no tension exists between the two. Suppose that I promise you that I will kill a person whom you strongly resent. The reason for me to kill this person corresponds to what Raz implies by the reason to conform to the promise, while its moral wrongness should prevent me from killing anyone. However, the reason for me to keep my promise is generated on the basis of other considerations such as a natural duty, honesty, or fairness. Thus, even if I have every moral reason not to kill a person (*reason for conformity*), I am still under a moral obligation to keep my promise (*reason for obedience*). For this promissory obligation, there is no tension between the reason for conformity and the reason for obedience. Correspondingly, the reason to conform to the law and obey the law are independent from each other, and we should reject Raz's statement that the more just and valuable the law is, the more reason one has to *conform to it*, and the less reason one has *to obey it*.[43]

[43] Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the*

The incorrectness of treating specific laws as the locus of the duty to obey the law notwithstanding, even if we have weightier moral reason not to kill than to drive under fifty kilometers per hour, we do not necessarily have less reason to obey the law against murder than the law against speeding The weight of the two moral judgments may affect the weight of moral reasons to *conform to* the two legal rules with specific content, but it has a trivial impact on moral reasons to obey the two legal rules of the same legal system. For instance, according to the fairness principle, disobedience of the criminal law against murder and the law against speeding should be seen as an infringement of the moral obligation of doing one's fair share to maintain social cooperation. The extent to which each of acts of disobedience defies fairness-based duty of obedience depends on the different impacts of murder and speeding on social cooperation and the violation of the fairness principle. In other words, the weight of both the reason to obey the law against murder and of the reason to obey speed limit are determined by the parameter of fairness, rather than the moral merits of the two actions of murder and speeding. I believe that this is also the reason why proponents of the duty to obey the law build justifications upon independent moral principles rather than the analysis of the value of specific legal rules. If the argument so far is correct, there is no tension between the reason to conform to the law and the reason to obey it, since they have different sources and are therefore independent of the other. As a consequence, there is also no apparent paradox between the duty to obey and a just legal system.

This analysis allows us to return to the refutation of the duty to obey as a moral perversion. Suppose that a morally conscientious agent A refrains from committing murder because of a particular duty to obey rather than the wrongness of murder as such. It seems that the perversion resides *not* the idea of or the reason provided by the duty to obey but A's moral reasoning. At this point, we may conclude that *Perversion* has missed the point of the duty to obey the law, and that it fails to provide us with a general rejection of all theories of the duty of obedience from the viewpoint of moral reasoning. However, Raz presents an argument following up on

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Public Domain, Oxford University Press 1994, p. 343.

Perversion: only if *every law* can make a difference to our moral obligations can we justify a general duty to obey. Laws prohibiting murder and rape make little difference to the pre-existing moral obligations, and "[i]f these laws do not make a difference to our moral obligations, then there is no general obligation to obey the law."[44] Again, this argument is evidence of Raz's mistake of method. He regards the duty to obey the law as moral obligations to obey all particular laws instead of the legal system as a whole. Even if we put aside this mistake, this argument still falls apart because Raz simply overlooks the independence of our moral obligations to do certain things from the duty to obey. By insisting that "laws make a difference to our obligations," Raz means that, for instance, the moral obligation to obey the law against murder should make the duty not to kill "stricter or weightier than it was without the law."[45] Nevertheless, I think the requirement of "making a difference" is also untenable. This point can be made with the help of the moral necessity thesis. If the duty to obey is supposed to facilitate discharging our pre-existing moral obligations by specifying the content of those obligations, it is not clear why the duty to obey adds weight to them. The obligation to obey the law against murder does not make a difference to our moral obligation forbidding murder; rather if such a law is part of an integrated legal system that maintains people's ability to live and act morally, then the obligation to obey the particular law is simply an inference from our obligation to comply with our legal system as a social institution. Or as I implied before, the weight of the moral obligation to obey a single law hinges not on the merits of the action that the law states, but how such a law relates to the morale or the end of a legal system as a whole. Also, we can see that Raz's requirement is not necessary for the fairness principle, according to which our duty to obey is a means to acting fairly in the context of social cooperation, and the moral obligation to obey the law against murder is embedded in the requirement of fairness represented by the whole legal system rather than in the singular duty to not

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[44] See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, p. 344.

[45] See Joseph Raz, "The Obligation to Obey: Revision and Tradition," in his *Ethics in the Public Domain*, Oxford University Press 1994, pp. 343-4.

kill. The duty to obey the law is thus a moral obligation independent of and parallel to our moral duty to not kill. Hence, the requirement that the duty to obey makes a difference to our moral obligations is untenable.

To conclude the investigation of Raz's three arguments against a general duty to obey the law, we should examine his claim that they form the "modest conclusion" that we are not under a general moral obligation, not even a prima facie one, to obey the law of a just legal system, but that respect for law is a valuable attitude toward the law, albeit not obligatory or general.[46] Still, all three arguments fail. As we have seen in the last section, both P2 (no general respect for law) and P3 (no general moral reason to obey the law) unidirectionally entail P1 (no general duty to obey the law). But for Raz's whole conception of the moral attitude toward the law to be plausible, he has to offer a conclusive argument that no justification for the duty to obey is sound: only such a conclusive argument can make the inferences from P2 or P3 to P1 meaningful. Yet the three flawed arguments leave open the possibility of justifying the duty to obey on other moral principles or moral considerations, and the inferences from P2 to P1 and P3 to P1 lose their point if they fail to establish their exclusive relevance.

4. THE DUTY TO OBEY THE LAW AND POLITICAL OBLIGATION

A remaining problem concerns *The Gap* identified by Raz between the duty to obey the law and political obligation that I identified at the outset of this chapter. This gap is a striking feature of his theory of political obligation and legitimacy. Unlike the common understanding of political obligation as a broader concept within which a duty to obey is included, Raz holds the opposite view: that a duty to obey is an obligation to obey all laws whereas political obligation concerns only some laws involving the existence and maintenance of the law. This difference in scope is responsible for *The Gap* and leads Raz to endorse political obligation and deny the duty to obey. I think it is pointless to argue about the meaning of political obligation as an obligation to obey the law and support political institutions in general, or as an obligation merely toward some laws that are essentially political. We need to figure out *the context* in which such an obligation arises and why it matters.

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[46] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 99.

Only when we do so, we ascertain what the exact content of political obligation is. On this point, I advance three objections to *The Gap*.

Firstly, for Raz, political obligation is justified as a correlate of political legitimacy. Legitimate authority is a Hohfeldian right to rule and according to Raz the correlative obligation is political obligation. It is out of this concern that he defines "political obligation" as a moral requirement to obey the laws so as to assure the right to rule. To the extent that not all laws of a legal system serve this purpose, political obligation cannot be generalized and *The Gap* opens up. Nevertheless, according to the separation thesis political legitimacy and political obligation are conceptually independent, and the justification for the latter cannot be derived from that of the former. It follows that even if Raz were right in claiming that the correlative obligation of legitimacy can only be a partial one, it would not succeed in refuting political obligation for its lack of generality. When philosophers argue for political obligation, they do not derive it from legitimacy; rather, they target it directly. Thus, what proponents of political obligation seek to justify is a moral obligation consisting of elements of a duty to obey and a duty to support the just state, while they treat the duty to obey as a corollary.

The second objection to *The Gap* stems from the moral necessity thesis, once we see why political obligation is not limited to laws controlling the existence of political institutions. According to this thesis, political obligation is justified because it is morally necessary for us to be bound by it in order to discharge our prior moral obligations and to live morally. Moreover, a political condition in general is indispensable for this end in that it confirms the content of our moral obligations and the boundaries of our rights and duties, acting as mediator, and so forth. Therefore, whereas we do have a moral obligation to comply with laws that are necessary for upholding the political condition, it cannot be the only constituent of a morally necessary political obligation. Political obligation is set up to maintain our moral lives, while the existence of political institutions and the law is a necessary means to realize to that end. Even if some laws are not significant for the existence and maintenance of political institutions, they still serve the purpose of maintaining our moral lives and helping us to discharge our moral obligations. That is why they should be perceived as a part of political obligation. Indeed, as Darwall argues, "[i]f the only way we can adequately

comply with our moral obligations is to treat an alleged authority's directives as pre-emptive reasons, then there seems to be a sense in which it is plausible to suppose that we would be under an obligation so to treat them."[47] Raz believes that the justification for the duty to obey can be divided into stages: first, where a state is reasonably just, one ought to support and maintain it; second, since disobeying the law undermines the state's authority, we ought not to disobey the law. It is the second stage that Raz takes issue with, since minor violations of laws cannot undermine a state's authority, and it would be an exaggeration to argue that they can.[48] However, the impairment that acts of disobedience cause to the authority of a state is not the foundation of the moral necessity thesis. Political obligation is a *deontic* requirement for us to fulfill our moral obligations and maintain our moral lives, and even if the defiance of certain laws would not cause any damage to the legal system and the authority of a state, we still should respect the moral obligation.

The third objection to *The Gap* is that even under Raz's service conception of authority, especially the normal justification thesis, it is groundless to draw a distinction between political obligation and the duty to obey.[49] First, the methodological pitfall also makes this distinction vulnerable. As Raz distinguishes laws relevant to the existence of political institutions and laws irrelevant to it, he takes the problem of the duty to obey as the moral obligation to obey all laws in a cumulative sense; yet this is not the correct method to approach this problem. To regard political obligation as an obligation toward the political condition and the law as entity whole, we cannot anatomize it as a set of particular moral obligations to politically relevant laws and to politically relevant laws and then separately offer justifications for them on different grounds. Rather, as long as both types of law are necessary for a legal system to exist, they are within the range of our moral obligation toward the legal system as a whole. This point

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[47] Stephen Darwall, "Authority and Second-Personal Reasons for Acting," in his *Morality, Authority, and Law: Essays in Second-Personal Ethics I*, Oxford University Press 2013, p. 148.

[48] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, pp. 101-2.

[49] See note 42 of Chapter 2.

further leads us to see why the distinction under Raz's normal justification thesis cannot hold either. He contends that "[o]ne has a duty to uphold and support authorities if they meet the condition of the service conception."[50] According to the service conception, people better conform to reasons applying to them if they follow the directives of the authority rather than following their own reasoning. That is to say, inasmuch as a state has the capacity to fulfill the condition of the normal justification thesis, a duty to uphold and support it comes into play. I am not sure why for Raz the only way to uphold and support an authority is by merely not imperiling the existence of it. Given that an authority is supposed to help us to better conform to our reasons in normal circumstances, the proper way to support it appears to be to generally follow its directives to promote conformity with our independent reasons. The purpose of the authority requires that people are not just obligated not to undermine the authority, but rather to generally follow the authority's directives.

The Gap between the duty to obey the law and political obligation is thus untenable, and conventional political obligation theories aim to directly justify the moral requirement of a general obedience of the law. Thus, if the justification for political obligation is sound, there exists a general moral obligation to obey the law.

5. CONCLUSION

According to the Razian conception of the moral attitude toward the law, we have no general obligation or reason to obey the law, nor do we have a general respect for law. The lack of generality is the main reason that pushes Raz to propose the three negative propositions within the structure: P1 (no general duty to obey) derives from either P2 (no general respect for law) or P3 (no general reason to obey the law). However, Raz's argument fails to produce an exclusive inference from P2 to P1 or P3 to P1. The consequence is that P1 can be overruled as long as we can justify such a moral obligation on grounds other than a general respect for law. I argue that theories such as the moral necessity thesis are able to offer us such a justification. Moreover, for Raz to uphold P1, he has to offer a conclusive refutation of all

[50] Joseph Raz, *The Morality of Freedom*, Oxford University Press 1986, p. 66.

approaches to political obligation, which is a task that his three major arguments cannot accomplish. Raz persistently misconceives the problem of political obligation as the aggregation of moral obligations to all particular laws, and this is the typical methodological pitfall of undertaking to found political obligation on the basis of a "bottom-up" justification or denial. In the "top-down justification," advanced here we have assumed that a state and its political institutions are reasonably just or nearly just, and on the basis of that assumption, we need to consider the role that political obligation will play in our ethical or moral life. Thus, political obligation is generally imposed if a political condition is able to play this role, be it as the mechanism to assure social cooperation, to ensure our better conformity with our moral reasons, or simply as a moral necessity. The mistaken methodology that Raz engages in also vitiates his distinction between political obligation and the duty to obey. This mistake misleads Raz into arguing that the duty to obey is a broader idea than political obligation, concerning only politically relevant laws. Contrary to the Razian view of the duty to obey entailing political obligation, contemporary political obligation theories approach political obligation directly. This is also the strategy of the moral necessity thesis. Since we need an integrated legal system to confirm our moral obligations, to facilitate discharging them, and to maintain our living morally, our political obligation to the political condition in general requires a general duty to obey.