

Authority after the Duty to Obey: Towards a New Theory of Political Legitimacy

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This article by **Martina Sammut** was previously submitted as part of CVL1024 and is being published with the author's permission. It critically examines the evolving relationship between state legitimacy and the moral obligation to obey the law and argues that legitimacy does not depend on a universal duty of obedience but rather on principles of normative power, consent, and fairness. Drawing on the works of theorists such as Raz and Edmundson, the paper reassesses classical justifications for obedience, including gratitude, fair play, and the general good, and demonstrates their insufficiency in establishing a comprehensive *prima facie* obligation. Instead, it contends that legitimacy is best grounded in the protection of rights, democratic participation, and the pursuit of justice. By shifting the focus from obedience to moral and institutional integrity, the paper invites a re-evaluation of what makes authority valid and worthy of respect in modern legal philosophy.

TAGS: Legitimacy, Duty to Obey, Authority

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Introduction

The concept of legitimacy has long been intertwined with the idea of obedience to authority. Historically, the legitimacy of an authority or ruler was often seen as contingent upon the willingness of citizens to obey their commands.¹ According to this view, an authority or ruler is considered legitimate if its subject recognises its authority and complies with directives,² and that legitimacy is crucial for the stability and functioning of any governing regime,³ where people willingly adhere to political decisions they consider just. Without at least a minimal amount of legitimacy, a regime would face challenges that could lead to its deadlock or collapse.⁴

Rousseau emphasised that true stability arises when obedience has become a duty and correction has become justice.⁵ When an individual perceives a political system as legitimate, they endeavour to adhere to its regulations out of a sense of moral duty. In such system, power is imbued with a sense of rightness, prompting people to dutifully comply with the decisions of those in authority because they are perceived as justified by shared standards within society.⁶

People's approval and recognition of the legitimacy of their political system's decisions and norms as a whole is referred to as political legitimacy.⁷ In a democratic context, legitimacy is derived from the consent of the governed, meaning that rulers are seen as legitimate because they have been elected by the people or are accountable to them through some form of representative mechanism.⁸

In modern times, there is the common concept of legitimacy without the duty to obey, which refers to a situation where although a governing authority may be considered as legitimate by certain criteria or standards, individuals within its society do not feel obligated to obey its commands or directives. Conceptual space should be given to the theory of power-liability which maintains that political legitimacy is a kind of normative power that

¹ Margaret Levi, Audrey Sacks and Tom Tyler, 'Conceptualizing Legitimacy, Measuring Legitimizing Beliefs' (2009) 53(3) *American Behavioral Scientist* 354.

² Max Weber, 'Politics as a Vocation' in H H Gerth and C Wright Mills (eds and trs), *Max Weber: Essays in Sociology* (Oxford University Press 1946) 77-128.

³ Joachim Blatter, 'Legitimacy' (*Encyclopedia Britannica*, 17 December 2018) <<https://www.britannica.com/topic/legitimacy>> accessed 1 May 2024.

⁴ *ibid.*

⁵ Jean-Jacques Rousseau, *The Social Contract* (first published 1762, Penguin Books 1968) bk 1, ch 3.

⁶ Samuel Hutchinson Beer, 'Modern Political Development' (2nd edn, Random House 1962) 22.

⁷ Jorge Aragon, 'Political Legitimacy and Democracy' in Kenneth F Warren (ed) *Encyclopedia of Campaigns, Elections and Electoral Behavior* (Sage 2008).

⁸ Allen Buchanan, 'Political Legitimacy and Democracy' (2002) 112 *Ethics* 689.

involves moral responsibility rather than always a moral claim-right that requires moral obligation.⁹

The argument that there is no general responsibility to observe the law is made by citizens of a reasonably just society who have a basic obligation to do so unless there are exceptional circumstances.¹⁰ This raises the fundamental question: if there is no general need to follow a State's laws, how can a State assert its right to exist?

Legitimacy Beyond Obligatory Obedience

The conventional understanding posits that individuals with political authority possess a rightful entitlement to govern, which in turn imposes a duty of obedience upon those under their rule. Nevertheless, in recent years, and partly influenced by philosophical anarchism, several philosophers have questioned this standard narrative by reimagining power in ways that break or weaken the connection between duty and political authority.

According to Joseph Raz, normative power is the capacity to change someone's motivation for action by influencing what they should do.¹¹ He makes a comparison between what someone has a reason to do and what they should do. Therefore, the capacity to change someone's motivations for acting is a necessary component of normative authority.¹²

Raz further defines normative power by introducing the concept of protected reasons referring to those reasons that are both a reason for action and an exclusionary reason. They provide a reason to act in a certain way and a reason not to act in another. If a law directs someone to do something, that direction serves as both a reason to comply and a reason to act against it. Orders are examples of protected reasons for action. So, when the law issues an order, it provides both a reason to follow it and a reason not to act contrary to it.¹³

The idea of legitimacy having normative power has been, nowadays, common to modern philosophers. The two normative relations that make up legitimacy are the ruler's moral immunity from coercive interference in the exercise and enforcement of legitimate rule and the moral obligation of those who are legitimately ruled by the laws to obey them.¹⁴ Legitimacy becomes distinct from the responsibility of obligation to persons in positions of

⁹ Arthur Applbaum, 'Legitimacy without the Duty to Obey' (2010) 38(3) *Philosophy & Public Affairs* 215.

¹⁰ William A Edmundson, 'Legitimate Authority without Political Obligation' (1998) 17 *Law and Philosophy* 43.

¹¹ Emma Molin, 'Legitimate Legal Authority and the Obligation to Obey An Analysis of Joseph Raz's Arguments on Legitimate Authority' (Master's thesis, Uppsala Universitet 2016) 12.

¹² *ibid.*

¹³ *ibid.*

¹⁴ Arthur Applbaum (n 9).

authority when it is viewed as a normative force.¹⁵

Detaching legitimacy from obedience emphasises the importance of consent in governance. Legitimate authority is no longer solely derived from the ability to enforce obedience but is instead based on the consent of the governed. This shift aligns with democratic principles, where the legitimacy of rulers is derived from the approval from the governed. John Simmons states that 'state legitimacy is the logical correlate of various obligations, including subjects' political obligations'.¹⁶ He thinks that for an authority to be seen as fair and right by its people, those people need to agree to it. There would be a strong link between legitimacy and responsibility if a subject's permission were a prerequisite for a state to be legitimate regarding that subject.¹⁷

Control over a subject in a domain is justified by the fact that the subject is more likely to act correctly by following the authority's orders than by trying to figure out and follow the rules on their own.¹⁸ There is no universal duty to follow the law, not even the laws of a good and just legal system, as following the law is not always the best course of action for everyone in all situations where the law has jurisdiction.¹⁹

Obligation to Obey the Law

Many political philosophers take this obligation to obey the law for granted. However, this moral duty should be demonstrated rather than assumed. A reflective person might actually be inclined to resist orders backed by force rather than obey them.

The notion of a *prima facie* obligation acknowledges that individuals may have a moral duty to obey authority in most circumstances, but yet, this obligation is not absolute and may be overridden by other moral considerations such as justice, fairness, or individual rights. Although people who are subject to an authoritative direction must frequently *prima facie* observe specific laws, such as when disobedience entails an act that is *mala in se* or has substantially unfavourable repercussions, they are not required to obey all of the authority's laws.²⁰

Legitimate authority always implied duty, but it is not necessarily dispositive duty when one considers justified breaches of legitimate

¹⁵ Christoforos Ioannidis, 'Legitimacy: An Essentially Contested Concept' (Doctor of Philosophy thesis, King's College London 2019).

¹⁶ A John Simmons, 'Justification and Legitimacy' (1999) 109(4) *Ethics* 739, 74; A John Simmons, 'Voluntarism and Political Associations' (1981) 67 *Virginia Law Review* 19, 23.

¹⁷ Arthur Applbaum (n 9).

¹⁸ Joseph Raz, *The Morality of Freedom* (Oxford University Press 1988) 53.

¹⁹ H L A Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994) 233–49; Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford University Press 1995) 341 – 354.

²⁰ M B E Smith, 'Is There a Prima Facie Obligation to Obey the Law?' (1973) 82(5) *Yale Law Journal* 950.

legislation by introducing responsibilities that are superseded or outweighed. Occasionally, the obligation is merely presumed, *pro tanto*, or *prima facie*.²¹

However, an authority that overreached and claims the right to predict causes outside of its purview has not only failed to establish dispositive responsibility. By overstepping the bounds of its legitimate authority, it has also failed to maintain legitimacy.²² Should someone insist on referring to a directive as a *prima facie* duty at this juncture, they ought to likewise designate the authority that granted the directive legitimacy.²³

M.B.E Smith presents three arguments in his paper *Is there a Prima Facie Obligation to Obey the Law?*²⁴ for a *prima facie* obligation to the law; the argument of gratitude, the argument of fair play and the generalisation argument.

Benefits from the State create a debt of gratitude, thereby obliging one to obey the law.²⁵ However, State benefits are often provided without consideration for individual preferences and may serve the States's interests rather than those of the citizens. This complicates the notion that gratitude alone can justify a general obligation to obey the law.

The argument from fair play, as suggested by Hart, asserts that those who benefit from cooperative enterprises have an obligation to obey the rules established by the cooperation.²⁶ Rawls refines this by adding conditions, including the dependence of the enterprise's success on near-universal obedience and conformity to principles of justice.²⁷ Nonetheless, while fair play may necessitate obedience in specific circumstances, it does not justify a blanket obligation to obey all laws.

According to the generalisation argument, there would be terrible repercussions if everyone disobeyed the law, proving that there is an initial duty to follow the law. Since the authority is essential to ensuring the general good and compliance guarantees the authority's survival, there is an initial duty to obey the law.²⁸ However, this argument falters under scrutiny as it relies on an ambiguous principle of *prima facie* obligations and fails to account for scenarios where disobedience might yield better consequences.

Philosophers like Plato, Locke, and Ross argue that residing in a country and seeking protection from its laws imply implicit consent or a promise to

²¹ *ibid.*

²² Arthur Applbaum (n 9).

²³ *ibid.*

²⁴ M B E Smith (n 20).

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ M B E Smith (n 20).

obey.²⁹ Plamenatz suggests that indirect consent is established through voting, implying a *prima facie* obligation to obey the law.³⁰ Gewirth adds that the existence of certain institutional arrangements, like voting, justifies the State and establishes a *prima facie* obligation to obey the law.³¹

While each argument provides some justification for obeying the law in certain contexts, none of them individually or collectively establish a definitive, overarching *prima facie* obligation to obey all laws. The justification for legal obedience remains complex and context dependent.

Authority of the State without Obligation

William A. Edmundson, in his paper *Legitimate Authority without Political Obligation*³² introduces three classifications of how a state may be of legitimate authority with no general duty from the people to obey its laws:

1. If a State claims that its citizens have a general initial obligation to obey its laws and a general initial duty not to prevent their implementation, then that State is said to have legitimate authority.
2. Even in a just State, there may not be a universal first responsibility to respect the laws of the State, yet there is a general initial duty to refrain from interfering with the law's legitimate implementation.
3. Legitimate States are real, not just possible.

The law is abstract, broad, and often unfamiliar, even though we are expected to understand it. It addresses general actions using phrases like 'no one shall', rather than naming individuals. The true importance of laws and court decisions lies in their application to real-life situations which connects the legal text to everyday life.

Administrative prerogatives differ from broader institutional efforts to control populations over time because they focus on an official's attempt to influence an individual's immediate behaviour in a specific situation. These prerogatives highlight the immediate authority of the official's judgment, prioritizing it over considerations of the act's wisdom or legitimacy.³³

The general duty to obey the law has many exceptions and limitations, but the need to respect the administrative prerogatives of a just State is more strongly supported by arguments of necessity and practicality. Challenging administrative authority, especially in its role of enforcing the law, can cause more significant alienation from society than merely breaking the law. This

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² William A Edmundson (n 10) 43.

³³ *ibid.*

is because administrative actions are essential for maintaining order and the smooth functioning of the state.³⁴

Unlike the responsibility to obey the law, the duty not to oppose the administrative actions of a just State is often seen as context independent.³⁵ When an obligation is content independent, its presence and importance may be ascertained without considering the type and results of the options that the individual had at the moment. Since the moral significance of abiding by a particular rule depends on the morality of the conduct it controls and the circumstances in which it is applied, it seems implausible that the obligation to observe the law is content independent in this way.

The fact that this obligation persists even if the law the official is attempting to enforce is void is another proof of how crucial it is to respect administrative prerogatives. There may be a strong argument for deferring to the administrative authority of an official enforcing a law, even in cases where there is neither a moral nor a legal need to do so. We are more likely to heed Bentham's counsel to 'punctually obey, censure freely'³⁶ when legitimate administrative prerogatives are at risk. This means that while we should abide by administrative orders, we should also feel free to question them when needed.

Political power frequently claims that it requires citizens to obey it, but this assertion is not necessary for it to be legitimate. Rather, for an activity to be valid, persons must have the obligation to abstain from impeding lawful administrative acts.

Conclusion

The evolution of political theory detaches legitimacy from the traditional duty to obey authority, linking it closely with consent, fairness, and justice. Legitimacy now depends on the recognition and acceptance of authority by the governed, not just obedience to laws. This shift challenges the idea that obedience alone defines authority, emphasising alignment with democratic principles and respect for rights. By prioritising consent and accountability, this new understanding of legitimacy allows for a more dynamic governance where authority's legitimacy is continuously negotiated and reaffirmed through democratic processes.

Regarding the question of how the State can be a legitimate authority without a general obligation to obey its laws, several philosophical perspectives offer insights. One approach, as proposed by William A.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Jeremy Bentham, 'Fragment on Government' in J H Burns and H L A Hart (eds), *The Collected Works of Jeremy Bentham* (Cambridge University Press 1988).

Edmundson, suggests that legitimacy can exist even in the absence of a universal duty to obey laws.³⁷ In this view, individuals may recognize the State as legitimate because it upholds democratic principles, protects individual rights, and promotes the common good, rather than simply because they feel obligated to obey its laws.

Furthermore, Joseph Raz's concept of normative power suggests that legitimate authority can influence individuals' reasons for action without necessarily creating a moral obligation to obey.³⁸ In this framework, legitimacy is not solely dependent on obedience but on the ability of authority to shape and guide behaviour in ways that align with shared norms and values.

While obedience may still play a role in determining the legitimacy of authority, it is no longer the sole criterion, opening new possibilities for conceptualising governance in democratic societies.

³⁷ William A Edmundson (n 10).

³⁸ Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Clarendon Press 1979) ch 5.



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