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AUTHORITY AND CONSENT*

*Joseph Raz***

MY starting point is the assumption that there is no general obligation to obey the law, not even a prima facie obligation and not even in a just society. This assumption is perhaps becoming more popular. In recent years it has been defended by several writers.¹ There is more that needs to be said in its support, but I will not attempt to do so here. Instead, I will reflect on a problem posed by accepting it, a problem concerning the relations between an individual citizen and the state. It is common to think that the state has authority over its citizens and that they owe it allegiance. If there is no general obligation to obey the law, does it not follow that the state has no authority over its citizens and that they do not owe it allegiance?²

After first explaining briefly the assumption and the problem it creates, I shall consider different attempts at solving it which try to show that recognition of an authority does not entail belief in an obligation to obey that authority. These attempts at solving the problem fail. I shall then turn to one traditional argument concerning the foundations of the state's authority: the argument that political authority rests on consent.

I. THE PROBLEM

We are concerned with the proper attitude of a conscientious person toward a reasonably just state of which he is a citizen. No assumption is made that it is a perfectly just state. It is probably

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¹ See J. RAZ, *The Obligation to Obey the Law*, in *THE AUTHORITY OF LAW* 233 (1979); A. SIMMONS, *MORAL PRINCIPLES AND POLITICAL OBLIGATION* (1979); A. WOOLEY, *LAW AND OBEEDIENCE* (1979); Smith, *Is There a Prima Facie Obligation to Obey the Law?*, 82 *YALE L.J.* 950 (1973). From a different point of view, R.P. Wolff reaches similar conclusions. See R. WOLFF, *IN DEFENSE OF ANARCHISM* (1970).

² I will not be concerned with the relations between noncitizens and the state. "Citizen" in this essay is not meant as a legal category but as a moral and political one to which the law should conform. I will refer to the authority of the state, of the government, and of society interchangeably, for the considerations discussed in this article do not require distinguishing among them.

not humanly possible to maintain perfect institutions. On the other hand, the problems of one's attitude to a fundamentally iniquitous state are not of present concern. To deny that there is an obligation to obey the law is not, of course, to claim that one should disobey the law, nor even that it does not matter whether one obeys or disobeys. It is to deny that there is a sound general argument establishing as its conclusion that, if the law of a reasonably just state requires a citizen of that state to behave in a certain way, then he has an obligation so to behave. What is denied is that the fact that something is a law creates such an obligation. Therefore, the denial of an obligation to obey is compatible with the view that in most cases, or even in all of them, one is obligated to conform to the law provided that the source of the obligation is not always that the action is required by law. Furthermore, while not all citizens are bound to obey, it is possible that some are subject to such an obligation by virtue of, *e.g.*, a promise they made always to obey the law.

There is considerable practical importance to the assumption that there is no general obligation to obey the law. People informed by it are likely to find numerous occasions on which it will make a difference to their practical reasoning, leading them not only to revise their appreciation of the right reasons for complying with the law but, on occasion, to the view that the reasons for compliance, which might have been adequate had there been an obligation to obey, are inadequate in its absence. It is intriguing to investigate in detail the types of occasions on which our assumption is likely to lead to different valid conclusions as to what is best to do. But this, too, is a task not to be undertaken here beyond commenting briefly on one aspect of the question that is relevant to my main topic.

One category of acts of disobedience, the status of which is unaffected by the assumption, is the class of politically motivated acts of disobedience. There is a general and valid reason to refrain from political disobedience be it civil or revolutionary. One ought to support just institutions, and in a just state one ought to support the state. It does not follow, however, that one ought to obey the law of a just state, for many acts of obedience do not at all support the existence or the justice of the state and its organs, and many acts of disobedience do nothing to undermine them. Politically motivated disobedience, on the other hand, tends to undermine politi-

cal institutions whether it is intended to do so or not. To be successful, politically motivated disobedience must normally have publicly known consequences, and this normally ensures that, if successful, the fact that breach of law with political consequences occurred will be a matter of public knowledge; such knowledge tends to undermine the political institutions involved. Hence, one has reason not to engage in political disobedience in a just society. Much recent discussion of the obligation to obey the law was stimulated by reflection on the conditions under which civil disobedience is justified. Such discussion was often meant to establish that those proposing civil disobedience must have a strong case to justify such action, strong enough to override a *prima facie* reason not to engage in such action. I wholeheartedly agree with this view. Unfortunately, many writers have overstated their case by claiming to have established a general obligation to obey the law.

The assumption that

WA: A citizen has no general obligation to obey
the law even in a just state

raises a question concerning the proper attitude of a person to his state. The question can be brought into sharper focus by articulating another assumption that underlies much of what has already been said:

RSA: Just states are humanly possible.

Just states, it will be recalled, are not perfectly just ones. They are merely reasonably just, or just on the whole. Such states are not merely logically possible. They are also humanly possible. There is nothing in human nature or in the human condition, in nature or history, to make their realization an impossibility.

RSA is a rejection of strong anarchism. It is an admission that the state and the law can fulfill an important and valuable function. They do so primarily when, through the machinery of legal remedies and sanctions, they make more people behave as they should and when they initiate and maintain beneficial schemes of social cooperation that would otherwise fail because of prisoners' dilemma factors or other reasons. At the same time, *WA* is a weakly anarchic assumption, for it amounts to a rejection of the general authority of the state. To have authority, it has often been said, is to have a right to command, a right to which corresponds an obligation to obey incumbent on those who are rightly subject to that authority. *WA* denies the state, even the just state, author-

ity; *RSA* justifies, under certain conditions, the existence of the state. But is not a just state without legitimate authority a contradiction? Some aspects of this apparent paradox are the subject of this essay.

II. AUTHORITY AND JUSTIFIED POWER

One important attempt to dissolve the paradox is to reinterpret the notion of authority so as to make it consistent with *WA*. That is, legitimate authority should be understood in a way that entitles one to say that a just political power has authority even though its subjects have no obligation to obey it. In discussing three such interpretations, I will, though intending to return to the problems of political authority, extend the discussion to considerations affecting authority in general. Political authority shares with other kinds of authority its character as an authority. A discussion of the concept of authority cannot be confined to one type of the genus.

One interpretation of authority that, if successful, achieves the desired result makes legitimate authority dependent on *de facto* authority and defines legitimate authority as justified (in some sense) *de facto* authority. *De facto* authority is then defined as (a form of) power over people. Here the paradox is avoided, since one can admit that it is justified that a person has certain power without conceding an obligation to obey him.

This analysis fails because the notion of *de facto* authority itself cannot be understood except by reference to that of legitimate authority. *De facto* authority is not just an ability to affect people's actions and beliefs. Such power to influence, though possessed by people who have *de facto* authority, is not confined to them. Propaganda and advertising influence people, but those who use them do not necessarily have authority. Much power is exercised by changing the situation facing people. A strike by the workers or a lockout by their employer may affect people's actions and beliefs in the intended way, yet the exercise of such power has nothing to do with the possession of authority, *de facto* or otherwise.

The influence an authority has is more conscious or (at least potentially) rational. It is not exercised through manipulating people. It works through their reasoning about what to do or to believe. This condition may exclude certain forms of suggestive advertising and rousing propaganda; it will not exclude other forms of those activities that affect people by propagating information and views,

nor will it exclude activities that influence people by changing their circumstances. The power of authority is more direct. It is exercised simply by the authority expressing its wish that something is to be done or believed. But on reflection, this is much too wide a category. Parents are as much in the habit of acceding to their children's wishes as children are inclined to obey their parents, yet only the parents have authority. Children obey (at least sometimes) because they accept the authority of their parents. Usurpers differ from highwaymen in claiming that they are entitled to command, and that is why their success establishes that they have *de facto* authority. In other words, to have *de facto* authority it is not enough to have power to influence people. It is also necessary that such power is either coupled with a claim to authority or is efficacious at least partly through people's belief that the person or body who wields the power has authority to do so.

III. THE RECOGNITIONAL CONCEPTION

To perceive clearly our notion of authority, it helps to concentrate on the attitude of people who recognize its legitimacy. One can then most clearly discern what authority is by seeing what one acknowledges when acknowledging that a person has legitimate authority. The first point to emerge from the discussion so far is that the influence of authority is not manipulative but direct and normative. Characteristically, it affects people's practical reasoning by means of authoritative utterances. It is a necessary condition for a person to have authority, to be in authority, or to be an authority that some of his utterances are authoritative. In this essay only the nature of this condition is examined. A person who accepts that *A* has authority is a person accepting the soundness of arguments of the form:

A has authority;

A decreed that *x* is to ϕ (or *A* has said that *p*);

Therefore, *x* ought to ϕ (or one ought to believe that *p*).

Many conceptions of authority are different interpretations of this inference form. One such conception I shall call the recognitional conception. According to it, one ought to follow an authority because to recognize its authority is to realize that there are independent reasons to do or to believe as it advises. The recognitional conception regards acknowledging an authority as having confidence in its judgment, trusting its opinion. The assumption is that

an authoritative utterance informs one of what one has reason to do or believe anyway. To accept an utterance as authoritative is to regard it as a reason to believe that one has reason to do or to believe as told.

The recognitional conception aims to avoid our problem in a new way. Authoritative utterances are reasons, but they are reasons for belief, not for action. Therefore, regarding someone as an authority does not entail a belief that one has a reason to obey him, since reasons for obedience are reasons for action. It is best to evaluate separately the success of this conception to account for practical and for theoretical authority.

Practical authority is authority affecting what is to be done. According to the recognitional conception, the utterances of legitimate authority do not affect the balance of reasons. They are not themselves reasons for action, nor do they create any such reasons. They merely provide information about the balance of reasons as they exist separately and independently of such utterances. This is not to make light of the importance of authority as interpreted by this conception. After all, people act not on the reasons there are but on those they believe there are (insofar as they act on reason at all). Therefore, the recognitional conception has an explanation to offer as to how it is that authoritative utterances, though not themselves reasons for action, can affect one's reasoning about practical problems. Yet it is the essence of this view that all authority is essentially theoretical, *i.e.*, that it provides one only with reasons for belief, never with reasons for action. The so-called practical authority is reinterpreted as authority concerning belief in deontic propositions. The authoritative utterances of practical authorities are reasons to believe that one ought to do that which the utterance says one should.

Such an account of practical authority is fundamentally flawed. It is, for example, unable to account for the role of authority in the solution of coordination problems. Those are problems where the interests of members of the group coincide in that, among a set of options, the members prefer that which will be followed by the bulk of the members of the group above all else. One does not mind whether one drives on the left or the right provided everyone else does the same. There are many such problems of great importance to the orderly conduct of any society. A wise man can tell me which options belong to that set, but he cannot tell me which of

the set to choose before it is known what others will do. Sometimes that can be known on the basis of existing facts. Many people are likely to believe that many will choose a particular option and therefore they will choose it themselves; hence, one has reason to follow them and choose it as well.³ Sometimes, however, there is no option in the designated set that will be the obvious choice. In such cases, what one needs is something that will make a particular option the one to follow. This is something practical authorities often do (or attempt to do). They designate one of the options as the one to be chosen and, if their action is regarded as a reason to adopt that course of action, then a successful resolution of the problem is found. Since solving coordination problems is one of the important tasks of political and many other practical authorities and as their relative success in it can only be explained by regarding authoritative utterances as reasons for action, one must reject the recognitional account of practical authority.

This criticism is enough to show that the recognitional view is unacceptable. There is, however, some interest in showing first that the same objection cannot be raised against this conception viewed as an account of theoretical authority and, second, that all the same it cannot explain the nature of such authorities. Normally one's statement that something is the case is at best a parasitic rather than an original reason for holding that it is indeed the case. That is, normally a statement is a reason for belief in its content only to the extent that it is a reason to believe that the speaker had other grounds for accepting it. He saw it happen, or he had a firsthand account of the event, or he had other inferential grounds for reaching this conclusion. The two main exceptions to

³ I am grateful to J. L. Mackie for pointing out to me that this can sometimes be based on authoritative advice:

Imagine a society into which wheeled vehicles have just been introduced, but where there is as yet no rule of the road. There is a local wise man who is reputed to be able to foretell future events, but no government with local political authority. Observing the chaos on the roads, the wise man announces: "I foresee that from tomorrow morning most people will drive on the left." Since most people either believe that he has the power to foresee the future, or believe that most others believe this, nearly everyone who hears the announcement will, from sheer prudence, start driving on the left himself. The wise man's clairvoyance will thus be confirmed, and he will be in a stronger position to solve whatever the next co-ordination problem may be.

Letter from J. L. Mackie to Joseph Raz. Such cases, being based on shared false beliefs, are unlikely to be so common as to explain the function of authority in all coordination situations.

this rule are self-verifying utterances such as "I am alive" and avowals, *i.e.*, a person's reports of his own mental states or experiences. In both cases, there can in principle be other reasons for believing in the statement made. There are ways of establishing that a person is alive or is in pain other than his saying so, but his saying so is an original reason for the truth of the statement.

It is significant that we do not talk of people as authorities with respect to those utterances that are original reasons. The fact, which is quite separate from those just discussed, that a person is normally the best judge of his own mental states does occasionally lead one to say things like "and he is of course the best authority about his own feelings," but these statements are generally taken as a metaphorical extension of the use of "authority." It is more natural to say of someone that he is the best authority on another's (say, Stalin's) thoughts and intentions. Theoretical authority seems, therefore, to conform to the recognitional conception. Inasmuch as authoritative utterances are parasitic reasons to believe in their content, they tend to show that there are other independent reasons for accepting the truth of the statements made by the authorities concerned. It is equally clear that this is not enough to characterize theoretical authority: not every witness is an authority. Not everyone who has gone over the evidence and come to some conclusion is an authority. But both the testimony of the witness and the view of the man who worked on the evidence are parasitic reasons for belief. The missing element is that theoretical authorities must be experts. They may be experts because of their superior perceptual powers (an expert wine taster), or because of their privileged access to secret information (the only scholar allowed into the archive), or because of their superior ability to identify and evaluate the evidence (the expert pathologist). No account of theoretical authority is complete that does not explain the connection between being an authority and being an expert.

IV. THE INSPIRATIONAL CONCEPTION

The conception that I will call inspirational is perhaps marginal, but presents interesting features. It can best be introduced by reflecting on the well-known apparent dilemma in explaining the moral authority of God. Either the moral law is valid because it emanates from God's will or its validity is independent of God. If the latter is the case, then God is not the ultimate moral authority.

His own goodness and the justice of His commands have to be tested by the independent criterion of their conformity to the moral law. Morality is independent of belief in God, since agnostics and atheists can accept the independently valid moral law. God is irrelevant to morality.

On the other hand, how can the fact that the moral law is God's will endow it with validity? Why should one obey God's will? Admittedly He is omnipotent and can punish those who disobey Him. It may therefore be prudent to obey Him, but this can hardly endow His command with moral character. To reply that His will is to be obeyed because it is good is to presuppose an independent moral standard by which God's will is measured. To do this is to return to the first horn of the dilemma. Therefore, on either possibility God is irrelevant to morality. His will and command provide people neither with a standard that one has any reason to call moral nor with a motive for action that can be regarded as a moral motive.

There are various traditional ways of struggling with the dilemma. I shall not examine them, for my interest is not theological. One answer, which I think is the best and most promising one, is of present interest for the light it sheds on authority generally. According to it, all who know God love Him. It is possible to doubt or even to deny God's existence. Those who do so obviously do not love Him. Given human nature, however, it is impossible for those who know Him not to love Him. Loving Him includes wanting to do His will. This is a purely non-self-interested motivation and therefore a moral one. According to this view, God's will sets moral standards; it does not merely reflect independently valid standards. They are valid because they express His will. There is, however, no difficulty concerning the motivation to obey. The love that He inevitably inspires in all who know Him is that motivation. (This does not mean that those who love Him will always obey Him, for they may be overcome by other motives.) The unselfish, non-self-interested character of the motivation assures both it and the command toward which it is directed of a moral character.

This is inspirational authority, for the reason we ought to obey it is that we want to and the wish to do so is not preconceived, is not derived from our other interests and needs. It is inspired by the recognition of the nature of the person or body in authority. If this is the character of God's authority, is it the model on which all

human authority should be understood?

Similar attitudes are found in human relations. As we all know from our experience, affection for another often leads people to conceive desires and wishes, because the person toward whom they have the affection would be pleased if they had such wishes and tastes or acted on them. The appearance of such desires is one necessary mark for affection to count as love. The desires I have in mind are to be distinguished strictly from desires to do certain things in order to please the other person. Obviously, lovers want to please their loved ones and sometimes act for that reason. This is common in all friendly relations between people. I am referring to a much rarer phenomenon existing paradigmatically in loving relations, and not very frequently even there, in which one comes to desire something for its own sake because one knows that this will please the loved one.

One may, for example, come to enjoy Byrd's music because one's lover does and would be pleased if this taste were shared. The point is that one comes to enjoy Byrd's music in itself. One does not merely like to listen to it because one's desire to listen to it pleases the loved one. On the other hand, the pleasure in Byrd's music was induced neither suggestively by one's trust in one's friend's musical taste nor subconsciously. The "because he would have wanted me to" is not merely a non-reason-giving explanation. It is a reason, but a reason for liking Byrd's music in itself, a reason for wanting to listen to it because one enjoys it. For it is only this that the loved person wishes.

He may be pleased that I want to listen to Byrd to please him, but he does not want me to listen to Byrd for that reason. He simply wants me to listen to Byrd, and since doing so to please him is doing it, it pleases him. On the other hand, he has another wish, namely that I should like Byrd. It is a wish that I should like listening to Byrd in itself, for the pleasure it gives. Here he wishes me to do it for a particular reason. Doing it for another reason would not be doing as he wishes. The fact that I love him and that he wishes it is for me a second-order reason—a reason to act for a reason.

That second-order reason is not a desire to please him but a desire to have the desires and tastes that it would please him for me to have, because I love him. It does not matter whether doing so would please him. It may not please him, for he may never know of

it. Indeed, often people are motivated in the way I have described after the death of a person they love. It is rare to find such wishes and desires even in love. This rarity does not, however, diminish the importance of the phenomenon to our understanding of love. It seems to me to represent the spiritual aspect of the image of the lovers merging to become one. Aspiring to such fusion includes the desire to have one will, not only through gradual adaptation, but also by the more immediate transformation of the will through love.

What are the implications of this to our understanding of authority? Do the led love their leaders? A charismatic leader inspires enthusiasm and devotion, which can take many practical and psychological forms that are often combined. Among these, the one sometimes called blind devotion is characteristic. It is the feeling that one will follow one's leader to the end of the world. This attitude often involves unbounded trust, namely confidence that the leader knows best and that he has the right goals at heart. But it does characteristically involve more—the feeling that he is so unique and outstanding that one wants to do as he commands, because then one would be at one with him. Since charismatic leaders often influence masses of people, there is often the additional feeling of being united with one's community by embracing the leader's will. In such cases, I feel no hesitation in saying that the attitude of the people to their leader is one of love or devotion reinforced by love of the community that he represents. (None of this is meant to suggest that there is no more to love than the desire to unite one's will with that of the loved one. I am only suggesting that when this desire is present so are the other elements of love.)

I said that this attitude is often regarded as blind devotion. My explanation of it makes it appear no blinder than any other love. It is not inherently irrational, as one is often inclined to think. If it is generally undesirable, this could only be because one's attitude to one's leaders and community should not be one of love, because love is appropriate in personal relations but not in politics, or because all-embracing love is out of place in politics. Be that as it may, since not all authority is political, there may be proper room for inspirational authority in other contexts. Could it be, for example, that parental authority is sometimes quite properly of this kind? Here we face a major difficulty in the inspirational concep-

tion of authority.

First, even if some authorities are of this mold, it is clear that not all are and arguable that many should not be. Most political authorities and all scientific authorities are not recognized through love and are not inspirational in character; it is arguable that this conception has no role at all in the explanation of scientific and all other theoretical authorities, and that ideally no political authority should have this character. Second, even when love and authority are combined, as in the case of some parental relations, the two are distinct and should not be confused. After all, parents' love for their children can be every bit as great as and of a similar character to children's love for their parents, and yet parents do not as a rule admit that their children have authority over them. More generally, many loving relations involving the occasional transformation of the will that was described before do not involve any recognition of authority. It follows that even where, as in some cases of charismatic authority, the inspirational conception does illuminate an important aspect of the authority relation, it fails to explain why it is an authority relationship at all. It does not touch the essence of authority. It merely explains some features that may sometimes accompany its instantiation.

V. AUTHORITY AND REASON

The inspirational conception offers a solution to the problem concerning political authority with which we started. It allows that the authoritative utterances of political authorities are reasons for action, which is the source of the problem, but it places authority firmly in a context of a relationship and a network of preferences that guarantees that no sooner is an authoritative utterance made and recognized than its addressee desires to comply and has reason to do so in the context of relationship with the authority. The rejection of the conception and of the explanations of authority that we have examined only serves to reemphasize our initial problem, for the results of this discussion are not purely negative. They point to the fact that it is a necessary condition of a person's having authority that his authoritative utterances are themselves reasons for action or for belief.

Authoritative utterances can be called "content-independent" reasons. There is no direct connection between the reason and the action or belief for which it is a reason. The reason is in the appar-

ently "extraneous" fact that someone in authority has said so and within certain limits his saying so would be reason for any number of actions or beliefs, including (in typical cases) for contradictory ones. A certain authority may command me to leave the room or to stay in it. Either way, its command will be a reason. This marks authoritative reasons as content-independent. By this feature they can be distinguished from many other reasons, including various other kinds of utterances that are reasons.

There are, however, other content-independent reasons, and to be complete a characterization of authoritative utterances must distinguish them. One group, including promises and vows, is clearly different in that its members are reasons for the agent only, whereas authoritative utterances are reasons for others as well. It is interesting to compare threats and offers with authoritative utterances. Threats are reasons and they are content-independent. They are reasons for belief that a certain unpleasant eventuality will come about, if something that the threatened person is alleged to have at least a chance of controlling will occur (the triggering event). It is the conditional occurrence of that unpleasant event, and not the threat, that is the reason for avoiding the condition that will bring it about. Threats differ from ordinary communications of information about unpleasant future events conditional on the addressee's action, for it is alleged that the occurrence of the unpleasant future event is under the control of the person making the threat (or at least that he has a chance of controlling it), that he has decided to prevent it only if the threatened person will prevent the triggering event, and that this decision was taken in order to be able to try to make the threatened person prevent the triggering event by threatening him. In the absence of the last condition the utterance is not a threat but a warning.

Threats (and, for similar reasons, offers) are content-independent reasons for belief, because the speakers have privileged access to the information they are communicating. Their utterances are original rather than derivative reasons for belief and, as was seen in Section III, this excludes assigning to them authoritative status.

Requests are another kind of content-independent reason. It would be wrong to regard requests as a communication of information that the speaker or somebody else in whose interest the request is made needs or wants something and that he wants the addressee to help him get it. Although every request at least im-

plies some such information, it is possible to communicate such information without requesting. This is admittedly very rare, since understandably a conventional way of requesting is by telling a person that one would like him to do something. It is possible, however, to tell a person that, while I would like him to do something for me, I am not asking and am not going to ask him to do it. This may be said in reply to a question from a very close friend with whom relations are temporarily somewhat strained. The point of the distinction thus drawn is that, while one would be pleased if one's need will move the friend into action, one would be displeased if it takes a request to do so. This presupposes that the request is a reason over and above the need and the desire to be helped by the friend. This account explains why one might request even when one knows that the other person knows of one's need and of one's desire for help and that he and others know that one knows this.

None of this is meant to deny that requesting involves stating or implying that there is a reason for the addressee to act as requested, but the specific quality of requests is that they are acts intended to communicate to their addressee the speaker's intention that the addressee shall regard the act of communication as a reason for a certain action. The speaker's intention is not to make the addressee do as requested, but merely to create a reason for such action. The speaker realizes that there may be, unknown to him, overwhelming reasons against acceding to the request, and he does not wish the addressee to do as requested in such a case. The speaker leaves it to the addressee to judge what is right. He intends to influence him only by tipping the balance somewhat in favor of the requested action.

Orders and commands are among the expressions typical of practical authority, and it will help clarify the nature of authoritative utterances to compare requests and commands. Only those who have authority can command and, in purporting to command, one presents oneself as having authority to do so. The conclusion of the discussion so far leads to the view that both in requesting and in commanding the speaker intends the addressee to recognize the utterance as a reason for action. The difference between them is that a valid command (*i.e.*, one issued by a person in authority)

imposes an obligation, whereas requests are ordinary reasons.⁴

To conclude: legitimate authority implies an obligation to obey on the part of those subject to it. Since our starting point was the assumption that there is no general obligation to obey incumbent on citizens *qua* citizens, we are back with our original problem: does it follow that there is no legitimate political authority? It is important to remember that the foregoing considerations cast no doubt at all on the existence of *de facto* authorities. A person or body of persons has *de facto* authority if it claims legitimate authority and if its claim is accepted by some people, thus giving it actual power. The power of a governmental *de facto* authority can and normally does extend to people who do not accept its authority. They are subject to its power partly because those who accept its authority are willing to obey its instructions, even when they affect people who do not accept its authority. Governments are *de facto* authorities. They claim legitimate authority over a population, and they have power and control over it. A government remains a government regardless of whether or not it has legitimate authority. In a rough and ready way one can divide the ways in which a government controls and influences people into three. First, some accept its claim to authority and obey its instructions because they regard them as binding on them. Second, the government can and does manipulate the environment—physical, economic, and social—in which people live. It constructs roads, flattens hills, digs canals and harbours, fixes the rate of exchange of the currency, employs workers, and contracts for services. In all these and similar ways a government can exercise power and control over other people without attempting thereby to exercise authority over them. Finally, a government controls people by subjecting them to its rules even if they do not accept its authority and seeing to it that others will (either because they accept its authority or are under contract) enforce these rules.

These remarks are meant to show that governments govern not

⁴ See J. RAZ, *Legitimate Authority*, in *THE AUTHORITY OF LAW* 3 (1979); Raz, *Promises and Obligations*, in *LAW, MORALITY AND SOCIETY* (P. Hacker & J. Raz eds. 1977). Theoretical authorities do not impose obligations, but their authoritative utterances are reasons of a similar kind. In matters of belief, authority is enjoyed by the expert over the nonexpert. The latter, being unable to assess the experts' opinions against such direct evidence as is known to him, must give the expert opinion a peremptory status similar to that which obligations enjoy compared with ordinary reasons for action.

only through purporting to exercise authority. Does this fact solve our problem? Can one reconcile the rejection of strong anarchism and the assertion of the possibility of a just government with the rejection of a general obligation to obey the law by saying that a government can be just only if it does not purport to exercise authority? This reconciliation, attractive as it appears, fails for one simple reason. Though government can exercise power over people without asserting authority over them, it cannot exercise power without asserting authority over some people some of the time. A body that did not claim authority at all and did not purport to exercise it might be very powerful, but it could not be a government. If a just state is possible, then a just government is possible, and this implies the possibility of justified authority and hence, given the preceding analysis, of a binding obligation to obey the law. Can this conclusion be reconciled with the denial of a general obligation to obey the law?

The concept of "authority" is essentially relational. One can have authority over some people and not over others. If citizens have no general obligation to obey the law, then the state has no authority over them merely by virtue of their being citizens. It does not follow, however, that no one is subject to the authority of the state. The state can be given authority by some or all of its citizens, and it has authority over those who gave it authority. To explore this possibility, we should turn to the problem of consent as the foundation of political authority.

VI. CONSENT

The long tradition that regards consent as either the foundation or a foundation of legitimate political authority displays two separable strands of thought. One, deriving from Hobbes and Locke, regards the consent given as an expression of rational, enlightened self-interest. Its approach is instrumental. One consents to the establishment of a political society and to its authority because of the benefits one will derive from its existence. The other approach, deriving from Rousseau, regards consent noninstrumentally. The consent is a constitutive element both of the condition of the person who gives it and of the society resulting from it, which is good

in itself.⁵

In this section I will offer an analysis of consent. I will then show, in the next section, how the noninstrumental approach to consent allows for a natural extension of the notion of acceptance of an authority to some cases where there is no consent. "Consent" means consent to a change in the normative situation of another—to a change in his rights and duties. It is sometimes expressed and is spoken of in terms of what is agreed. Consent is, however, narrower than agreement and is roughly equivalent to the performative sense of "agreement." One can agree that another has or should have a right, that is, believe that he has or should have it, or agree to give him a right. The first is a cognitive agreement. The second is a performative one.⁶ By agreeing to give him a right, one purports to give it to him or one promises to do so in the future (the expression is ambiguous). Though consent, if valid, has normative consequences and can only be explained through its purported normative consequences, it does not bear its normativeness on its face. The typical expressions using "consent" are "X consented to Y's doing . . ." or "X consented to Y's being" The second is completed by specifying a position or role the occupier of which possesses certain rights and duties, and which the consent purports to allow Y to occupy. For example, "I consented to his being the leader." The first kind of sentence is completed by specifying an action, and the consent purports to give Y a right to perform it. Less commonly, consent can be given to duties or requirements imposed on other people. For example, "He consented to his son's being obliged to retake the examination." Consent is

⁵ Both types of consent arguments are based on actual consent and differ from the hypothetical consent views recently made popular by John Rawls, which are a form of moral argument concerning the way a fair-minded person should reconcile his interests with those of others. Hypothetical consent theories tend to share the instrumental attitude of the Hohbesian tradition.

⁶ Theories of hypothetical consent discuss not consent but cognitive agreement. It is the essence of consent that its actuality changes the normative situation. One may ask what one would have had to do had one consented, but this is in no way relevant to what one has to do given that one did not. What one would have believed in certain circumstances is equally immaterial to what one should now believe. But that one *should* have believed something in a hypothetical situation may and often is used as part of an argument to establish what one should now believe. See A. WOOLEY, *supra* note 1, at 93-97.

⁷ Impersonal consent sentences are quantified sentences of the kinds described: "You consented to your dismissal" means "you consented to being dismissed by whoever has authority to do so."

given by any behavior (action or omission) undertaken in the belief (1) that it will change the normative situation of another; (2) that it will do so because it is undertaken with such a belief; and (3) that it will be understood by its observers to be of this character.

The third condition characterizes consent as a (purportedly) public action.⁸ The core use of "consent" is its use in the performative sense. This sense is explained by the combination of the first two conditions, and since it is a performative purporting to affect the rights or duties of another, it has to be public at least in intention. Consenting is very similar to promising. Both change the normative situation of another, and both purport to do so by voluntary acts undertaken in the belief that they have these normative consequences. Yet consenting and promising, while overlapping, are not the same.

According to Simmons, consenting differs from promising in two ways:

First, consent in the strict sense is always given to the actions of other persons. Thus, I may consent to my daughter's marriage, to be governed by the decisions of the majority, or to my friend's handling my financial affairs. Promises, on the other hand, cannot, except in very special circumstances, ever be made concerning the actions of another person. Further, while both promises and consent generate special rights and obligations, the emphases in the two cases are different. The primary purpose of a promise is to undertake an obligation; the special rights which arise for the promisee are in a sense secondary. In giving consent to another's actions, however, our primary purpose is to authorize those actions and in so doing create for or accord to another a special right to act: the obligation generated on the consenter not to interfere with the exercise of this right takes, in this case, the secondary role.⁹

This is not quite right. One consents not only to actions but also to the holding of certain positions and to the imposition of duties and requirements. Promises quite often concern the actions of others: to consent to be governed by another is to promise to obey him; to consent to his joining the expedition is to promise to provide him with the facilities and the help made available to members of the

⁸ Consenting in one's heart is not a performative consent but a psychological state similar to coming to terms with.

⁹ A. SIMMONS, *supra* note 1, at 76.

expedition. Finally, these cases where to consent is to promise refute the suggestion that in one case the purpose is to confer rights and in the other to undertake obligations.

Promising differs from consenting in three respects. The first two make consenting wider and the third makes it narrower than promising. First, while promising always purports to impose obligations on the promisor, consenting does not always do so. Two cases of consent can be distinguished. In the first, consent does not purport to affect adversely the agent's personal normative situation. The President may consent to a bill imposing a new tax or conferring certain rights. The commanding officer may consent to his soldiers' being assigned certain duties by another officer. The second kind of case includes those where the agent's personal normative situation is adversely affected by his consent if it is valid, *i.e.*, if it has its purported normative consequences. In the first type of case, but not necessarily in the second, the consent is a response to a proposal initiated by another. Consent can adversely affect the normative situation of the agent either by placing him under an obligation or by derogating from his rights. One can waive one's rights by consenting but not by promising. There are, therefore, two kinds of consent that do not impose an obligation on the agent: First, where his personal situation is not affected by the consent; and second, where his personal situation is affected, but by waiving a right rather than by undertaking an obligation. It is worth noting, however, that consent to a political authority is the same as a promise to obey it. It is the undertaking of an obligation.

Second, promises are made by acts intended to undertake obligations and confer rights. Only acts whose purpose is to realize this result are promises; not so consent. Acts undertaken for another purpose and not in order to consent can constitute consent if undertaken in the belief that they will confer a right or impose a duty and if the fact that they are undertaken with such a belief is the reason for them having this result. Typical examples are cases where one is given notice that everyone who enters a certain house, club, or park must abide by certain rules, obey a certain authority, or do so at his own risk.

The third difference points to an aspect in which promissings are wider than acts of consent. Two kinds of rights can be distinguished that are sometimes referred to as rights of action (*e.g.*, a right to join the expedition) and of recipience (*e.g.*, a right to be

paid a certain sum of money). Many rights are no doubt mixed cases. Promises can be acts purporting to confer rights of either kind, whereas consent purports to confer rights of action or those that include a right of action. One does not by consent purport to confer a pure right of recipience.¹⁰

I have emphasized that consent is an act purporting to change the normative situation. Not every act of consent succeeds in doing so, and those that succeed do so because they fall under reasons, not themselves created by consent, that show why acts of consent should, within certain limits, be a way of creating rights and duties. We cannot create reasons just by intending to do so and expressing that intention in action. Reasons precede the will. Though the latter can, within limits, create reasons, it can do so only when there is a non-will-based reason why it should. Admitting this, it might nevertheless be claimed that a person's consenting entails, as a matter of the meaning of consent, not only that he acted in the way I have described, but that his action has its purported normative consequences. Against this interpretation lies the evidence that we can and do say, when appropriate, things like "of course he consented to the operation, but that does not entitle you to perform it since he is just a child" (or he did not know how dangerous it is). I would, therefore, suggest that consent is to be explained by reference to its purported normative consequences only.

On what grounds is it ever justified to regard consent as having its purported normative consequences? In special circumstances, there may be a variety of occasional reasons that make the consent valid. Most common, perhaps, are those cases where the person to whose rights the agent consented was misled, through the agent's fault, to believe that the consent was valid and acted reasonably on this belief to his detriment. The agent might, for example, be at fault if under the circumstances the consent could be taken as sufficient evidence that the agent had the power to consent (*i.e.*, that there were reasons for holding the consent to be valid) and the agent should have realized this. In such cases, the agent's liability is to make good the detriment thus caused to the person to whose rights he consented. Occasionally this requires recognizing that the

¹⁰ When one's act obliquely intends to confer a pure right of recipience, the act is neither a promise nor a consent, but an agreement to confer such a right and undertake the corresponding obligation.

consent and the circumstances surrounding it create the rights it purported to create.¹¹

It is clear that such a justification not only depends on very special circumstances but is essentially parasitic. It presupposes a reasonable belief in the existence of some other reasons for which consent is valid in some circumstances and the misled person's mistaken belief that these reasons apply to his case. Are there nonparasitic reasons that justify acknowledging the validity of consent in certain classes of cases?

One is tempted to say that consent is valid if one has a right that the normative consequences will not occur without one's consent. To say this is to say both too much and too little. It is saying too much in that the same normative consequences can sometimes be reached by different routes. For example, a person may consent to his child's staying the night with a friend only to find that his spouse has already allowed the child to do so. It is saying too little in that to ask for the reason for the validity of a consent to certain normative consequences is the same as to ask for the reason for recognizing a person as holding a certain right to bring about these consequences.

Many justifications of consent are instrumental. If the rights or duties consented to exist, then they and their creation will have good consequences that outweigh the bad consequences to which their creation or existence may lead. The most common type of instrumental argument relies, as a reason for recognizing the validity of consent, on the facts that the agent has the best information to judge whether it is best to create a right or not and that he is sufficiently motivated to act for the best. One such case is where the consent, if effective, will not affect third parties, provided that the agent is a normal adult able to judge his own interests in the area involved and that the same is true of the person receiving the right, assuming he is able to refuse it if he so wishes. Other cases

¹¹ This case differs from the case in which the agent cognitively agreed, *i.e.*, expressed a belief that a person has certain rights in a situation in which he should have known that the hearer may reasonably rely on the utterance to his detriment. The liability of the agent may be similar in both cases, but the reasons for it differ in detail. A more complicated case is the one known to lawyers as a warranty, where the agent, possibly believing that the right exists, performatively agrees that it exists, *i.e.*, guarantees its existence. Such a guarantee can sometimes be given by an act that is both a cognitive and a performative agreement, *e.g.*, by saying that I agree that you are the leader.

are those where the agent's knowledge and motivation can be surmised from the circumstances of his life (parents or children) or where a special arrangement is made to bring it about (*e.g.*, when legislators are periodically elected, thus providing them with motives to find out what are their electors' best interests and to satisfy them, at least where the prestige, power, and lawful remuneration of their office are their only rewards and where these rewards are themselves substantial).

Another common instrumental justification of consent turns not on the benefits of consenting but on the benefit of being able to do so. It is sometimes a way of endowing a person with a responsibility that trains him to fulfill various roles in the future, or that it is hoped will change his character for the better, or that endows its holder with prestige, or that gives him a certain hold on other people and makes them be more likely to act in his interests.

There are no doubt other forms of instrumental justification, but these are the most common. In addition to these or other kinds of instrumental validation, consent can be given noninstrumental validation in many contexts. Through consenting, as through promising, a person attempts to fashion the shape of his moral world. All too often, moralists tend to regard a person's moral life as the story of how he proves himself in the face of the moral demands imposed on him by chance and circumstance. Crucial as this aspect is, it is but one side of a person's moral history. The other side of the story revolves around the person not as the object of demands imposed from the outside but as the creator of such demands addressed to himself. We are all to a considerable degree the authors of our moral world. This theme is impossible to explore here in detail. A few brief observations will suffice for present purposes.

Essentially, this view of people as each one partly creating his own moral world is to be justified through arguments concerning the nature of morality and of moral knowledge. These provide the framework within which generally valid considerations justify the specific ways through which people can impose moral demands upon themselves and can endow their life with value or with moral significance. Broadly speaking, such considerations refer to two kinds of moral value. First, and most obviously, they depend on the value of some human relationships. The precise course of such relations and the detailed moral requirements they generate depend on the way individuals choose to develop them and the dif-

ferent normative implications with which they deliberately endow the relations (consider, for example, the variety of morally permissible and even valuable courses that relations between children and their parents can take, and their different moral implications). With many relationships the case for self-creation is even stronger, since in them the fact that one chose to have a relationship of a certain kind and chose one's partner is part of what makes the relationship valuable (compare ideals of love of which this is true with those of which it is not). The second kind of moral value involved in the justification of different ways in which persons mold their moral world is the value of forming and pursuing projects that give shape and content to one's life. This is reflected in our admiration for people who have made something of their life, sometimes against great odds, and in our somewhat disappointed judgment of those who merely drift through life.

Consenting as well as promising often serves such projects and relationships instrumentally, but beyond that it is sometimes a constitutive element of relationships between people. There are relations that can be created by expressions of consent, and there are many in which such acts form or can form a component of their creation or perpetuation, a constituent element in their existence being expressive of the person's continued acknowledgement of the relation. Consenting to have one's mail opened by another, to be visited without prior arrangement, and to have another arrange aspects of one's plans or activities without prior consultation in certain conditions (such as accepting invitations in one's name) may or may not have instrumental value, but in any case such actions are taken in our culture as expressing the existence of certain attitudes, as (in part) constituting those attitudes. What actions express an attitude is largely a matter of social convention. Our conventions and those of other societies do differ, but to the extent that they regard consent as expressing certain worthwhile relations, as a constituent element of such relations, they provide validation of the appropriate kinds of consent.

VII. CONSENT AND RESPECT

Turning to the relevance of consent to the obligation to obey the law, we will here be concerned not with the well-known problem that most citizens in any given society have not consented to the authority of their government, but with the prior question

whether their consent, if given, would have been valid. The main lesson of the discussion of the previous section is that judgment on the validity of consent has to be discriminating. Consent may be valid in certain contexts or subject to certain conditions and invalid in other contexts or when the conditions are not met. From the fact that in some circumstances consent is valid, it does not follow that consent to the government's authority is valid. One has to examine closely what arguments can establish the validity of such consent.

Doubts about the validity of consent to political authority are sometimes expressed on the ground that citizens have no choice but to consent. Therefore, their consent is tainted by duress and is invalid. Such arguments, useful as they are in showing that not everything that some political theorists are willing to call consent is consent, are powerless to establish the invalidity of genuine consent to a political authority. First, there is normally no pressure amounting to duress on people to consent. I have not consented to any political authority, and I have come to no harm. Duress that invalidates consent consists either of a credible threat to take substantial action against the agent or against a person or a cause that he values if he does not consent or to the taking of substantial measures against him or against persons or causes that he values with an offer to restore the situation if he does consent. Either way, duress is always action designed to exert pressure in order to secure the consent. This explains why duress invalidates consent. There is no harm in a person using his power to consent in order to avert a threat or to extricate himself or others from a dire situation. A person's power to confer rights on others by his consent does, however, expose him to blackmail and abuse. Given that, whatever the justification of giving him such power may be, it has nothing to do with encouraging blackmail, such action frustrates the purpose of validating the consent and is to be discouraged for its bad consequences. Therefore, consent is invalidated by it. Consent to a political authority secured by threats of legal penalties is not binding, but consent by a person in Hobbes's state of nature can be perfectly valid.

Is consent to a political authority instrumentally valid? The assumptions on which this article is based are that an obligation to obey the law is not a necessary condition for the existence of a just government. In a society of morally conscientious citizens, a just

government will enjoy all the support it requires even without any belief in the obligation to obey the law. If this is so, the utility of consent to the authority of just governments is to be seen as reinforcing other moral motives to support just institutions where those may fail due to human ignorance or weakness. Consent may produce the results that belief in other reasons should but may fail to produce. This is of value generally, but is particularly important in the case of government officials, because of their power to affect the public—or sections of it—and because of the importance of public confidence in their loyalty. The existing practice to require an oath of loyalty from certain officeholders is best interpreted in this light, *i.e.*, as a way of reinforcing their natural obligations.

Against this undoubted benefit, one has to set the likely bad consequences of recognizing the validity of consent to political authority. It may lead people to obey the law where, but for the consent, it would be better to disobey it. In these circumstances, the factors that will tilt the balance in favor of obedience will be the consent, *i.e.*, in effect the reason that led to its being given. Those are likely to be considerations of the agent's self-interest. They will color his attitude to the laws of his country and may prevent the agent from giving due weight to moral considerations. An extreme example of this kind of distortion is provided by the scruples of many German generals about breaking their oath of loyalty, which they had given in order to be able to pursue their chosen careers in the armed forces. Denying such consent any validity and educating people in that conviction could prevent such distortions.

A second consideration against allowing consent to political authority's general validity turns on the undesirability of allowing consent that binds for life and affects wide-ranging aspects of a person's life. In these circumstances, the presumption that the agent is a competent judge of what is best to do is very hard to maintain. Regarding political authority, the most obvious danger is of a change of government or a change of circumstances that turns a reasonably just government into an unjust one. Human knowledge is as yet unable to predict such changes, the danger if not the actual occurrence of which has been felt in all societies within our lifetime. These costs of consent to political authority suggest that, on instrumental grounds, it could be validly given only to a reasonably just government on condition that it remain so.

These restrictions apply also to the noninstrumental validation

of consent to a government. Relationships and personal projects are valuable only if they realize something of value. It is the autonomous realization or pursuit of a goal or an activity of value in itself that makes relationships and personal projects valuable. Hence, to the extent that consent is justified noninstrumentally as a constitutive element in a relationship between a citizen and his society, it is valid only if it exists between a citizen and a reasonably just society. I say a reasonably just society and not a reasonably just law, for consent to obey the law expresses not an attitude to the law but an attitude to society and to the law as an aspect of that society (which it can be only if it is felt to express social conventions and outlook).

There are various attitudes toward society that consent to the authority of its laws can express. They can all be regarded as so many variations of a basic attitude of identification with the society, an attitude of belonging and of sharing in its collective life. Attitudes belonging to this family vary. They can be more or less intense. They may be associated with some features of society more than with others. They may, but need not, express themselves in one's attitude toward the law.

Rousseau's vision of the citizen's attitude toward his community is, of course, an example of an attitude of identification. It is, however, an extreme example. Identification includes much less intense and less exclusive attitudes. A person who finds value in identification need not be attracted by Rousseau's vision. He may prefer one of the milder varieties of this attitude. All that is necessarily involved is a sense of belonging that excludes indifference to the group as well as alienation from it.

That consent to be bound by the law is an expression of such an attitude of loyalty and identification (*i.e.*, a sense of belonging) is a matter of fact. As was noted, the forms in which relations and attitudes express themselves are conventional. In many societies, the convention regarding consent assumes formalized and ritualistic forms, as with requirements to give such a formal consent upon assuming an important public office or when naturalizing. These are meant not merely, if at all, to serve a useful instrumental function, but also to be solemn, ritualized expressions of loyalty and identification. To say this, of course, does not mean that the consent is not binding on the agent. It is precisely because it is thought to be binding that it can function as an expression of iden-

tification. For while the ways one expresses such attitudes and relationships are conventional, the means chosen by the convention are suitable for their role by virtue of some of their features. Undertaking an obligation to be bound by the law is an appropriate means of expressing identification with society, because it is a form of supporting social institutions (see the earlier argument for the instrumental validity of such consent), because it conveys a willingness to share in the common ways established in that society as expressed by its institutions,¹² and because it expresses confidence in the reasonableness and good judgment of the government through one's willingness to take it on trust, as it were, that the law is just and should be complied with.

The upshot of this discussion is that consent to the authority of a just government is noninstrumentally valid if given as an expression of an attitude of identification with their society.¹³ Consent theorists, correctly perceiving that consent to the authority of a just government does endow it with authority over the agent (assuming that the other conditions for the validity of acts of consent are fulfilled) and faced with the fact that few people actually consent to the authority of their government, have often tried to extend the notion of consent to cover more cases. What we need, however, is not to stretch consent out of recognition but to examine whether the reasons that validate consent to authority cannot also be applied to some cases not involving consent; I think that they can.

Many people regard themselves as under a defeasible obligation to obey the law as such. With some, this view does not coherently mesh with their other beliefs, and one cannot attribute to them any coherent justification of their belief in such an obligation. Others think that the obligation is based on the sort of reasons that philosophers have adduced in support of an obligation to obey the law and that have been refuted by the works cited at the beginning of this article. There are others still who do not provide such fallacious arguments but regard the obligation as one incum-

¹² See J. FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

¹³ I agree with J. L. Mackie's comment that respect for law can express not identification but some other attitudes, such as acknowledgement on the part of tourists that each country is entitled to regulate its own affairs in its own way. See Mackie, *Obligations to Obey the Law*, 67 VA. L. REV. 143, 154 (1981). I have focused attention on identification with the society as being the most characteristic attitude thus expressed by citizens.

bent on them because they are citizens of the state or members of the society, because the government is their government or the law their law. Whether this is the way they will express themselves does not matter so long as we can establish that this is the substance of their view. Such views are often condemned as blind belief in an obligation without any reason. This is a mistake. They indicate that their holders identify with their society and accept an obligation to obey the law as expressing such an attitude. This acceptance is not consent. It is probably not something made by any specific act or at any specific time. It is likely to be the product of a gradual process as lengthy as the process of acquiring a sense of belonging to a community and identifying with it. But in a reasonably just society this acceptance of an obligation to obey the law, this attitude of respect to the law, as I have called it elsewhere,¹⁴ is as valid as an obligation acquired through consent and for precisely the same reasons. It is instrumentally useful in the same way, and it expresses the same worthwhile attitude of identification with the society.¹⁵ Therefore, people who share it have an obligation to obey the law that they acquire through their conduct of their own lives, as (part) authors of their own moral world.

VIII. CONCLUSION

Regarding those who consent to authority or respect the law, a reasonably just government has authority, the right to command. Not everyone consents or respects the law. Those who do not consent have no obligation to obey, but they owe the government the lesser obligation to support just institutions and, of course, they should comply with the law whenever there are good independent reasons for doing so. Identification with a just society is a worthwhile attitude, but it is not obligatory. Nor need it, where it exists, manifest itself by an attitude of respect to the law. There are plenty of other ways in which it can express itself. It is morally permissible for a person to adopt an attitude of conscientious watchfulness, complying with the law only where reasons not de-

¹⁴ For a discussion of this attitude in greater detail, see J. RAZ, *Respect for Law*, in *THE AUTHORITY OF LAW* 250 (1979).

¹⁵ A belief in an obligation to obey based on mistaken reasons is of course instrumentally useful, but our commitment to the truth overrides such considerations.

pendent on an obligation to obey indicate that this is what ought to be done.