

## POLITICAL OBLIGATION AND POLITICAL RECOGNITION

*Dan Khokhar*

IMAGINE that things were like this. You live in a liberal society governed by a substantially just legal system, whatever precisely you take that to mean. Each of your fellow citizens is like Justice Oliver Wendell Holmes's bad man: he views the law in a predictive fashion and complies solely to avoid sanction.<sup>1</sup> Further suppose that the state is an ideal enforcer—it enforces all and only substantially just directives against all and only violations of those directives—and each bad man knows about this and never breaks the law because of his prudential outlook. So you know that others will not interfere with your liberties, body, or property, at least not in ways proscribed by law. Now ask yourself: Is something important missing from this picture, something you have reason to care about as a person living amongst others in a political society? Obviously, it is better to live in this community than one in which people routinely harm you in unjust ways. But I hope you think that something important is missing in the society of bad men. My tentative suggestion, although I will return to this later, is that you care not just about whether people conform to just law but about whether they have a certain attitude towards it—namely, respect for the law itself. And given that the bad men never break the law, the value of that attitude does not depend solely on how it enables compliance.

The idea that respect for the law is noninstrumentally valuable will undoubtedly be familiar to those who have delved into the philosophical literature on authority and obedience. But the novel thought I will develop is that this value, properly understood, grounds a general obligation to obey the law or, to use common terminology, political obligation. The *recognitional account* of political obligation defended here consists of the following claims:

1. Citizens of a liberal polity have obligations to recognize one another as free and equal members of their own political community and communicate this recognition.
2. Under certain conditions, having respect for the law of one's state is a crucially important way of affording and communicating such

1 Holmes, "The Path of Law."

recognition, and so we are obliged as citizens to have such respect under those conditions.

3. Being obligated to have respect for the law entails having a general obligation to obey it.

Taken jointly, these claims show how the following three concepts—political recognition, respect for law, and political obligation—are united in a normative nexus that yields a demanding but deeply attractive interpersonal ideal for political life.

The plan for the paper is as follows. In section 1, I provide a minimal conception of political obligation that draws on ordinary moral experience and incorporates the most important features from existing discussions of the concept. In sections 2–4, I develop the recognitional account of political obligation. Section 2 provides a preliminary characterization of political recognition and its values. Section 3 argues that an important function of just liberal law is to provide a vehicle through which citizens can afford and communicate recognition of one another as free and equal moral persons by having respect for the law. Section 4 argues for the obligatoriness of respect for the law and establishes its link with political obligation. Section 5 discusses some issues concerning the relation between law and justice on the proposed account, including the question of whether there are political obligations to obey unjust laws as well as laws that are consistent with but not required by independent considerations of justice. And finally in section 6, I discuss two kinds of “meta-skepticism” about political obligation that question the concept’s importance for political philosophy. The first form denies that the existence of political obligations would make a significance practical difference for what individuals have reason to do, while the second form denies that political obligations are important for addressing potential objections to the state’s activities. I argue that the recognitional account justifies a philosophical interest in political obligation even if both forms of skepticism are true.

#### 1. WHAT IS THE GENERAL OBLIGATION TO OBEY THE LAW?

The literature on the obligation to obey the law is enormous, and many discussions raise reasonable worries about even its most plausible elements. Rather than delving into those intricacies, I will provide a minimal characterization that reflects some important parts of ordinary moral/political thought and that should be acceptable to most people working within this general tradition. First, the obligation is *content independent* in that those who have it ought to do what the law dictates *because* the law dictates it. Political obligation is

thereby importantly similar to promissory obligation: you ought to do what you promised *because* you promised to do so and not simply because of promissory-independent reasons.<sup>2</sup> But content independence should not be mistaken for *content insensitivity*.<sup>3</sup> Immoral promises do not bind, but that does not mean that one's reason to keep a promise is not the fact that you promised. Instead, it just means that the content of a promise must satisfy certain criteria in order for the promise to generate a content-independent reason. Similarly with political obligation. And in order for this obligation to be content independent, the fact that the relevant actions are required by law must play an essential role in the obligation's justification.

Second, the obligation is *general* in that it applies to all the law's subjects and to all those laws in all circumstances to which they apply.<sup>4</sup> Third, the obligation is *particular* in that it is owed specially to one's own political society (the state itself, the collective community, or its members individually) rather than to other societies/states that one interacts with.<sup>5</sup> This feature seemingly captures an element of ordinary political thought such that rejecting it would objectionably discount our shared moral experience.<sup>6</sup> Moreover, the particularity requirement ties the obligation to citizenship in an intuitively plausible way. As Robert Paul Wolff remarks, "[When I] return to the United States, I have a sense of reentering *my* country, and . . . I imagine myself to stand in a different and more intimate relation to American laws [than to others]. They have been promulgated by *my* government, and I therefore have a special obligation to obey them."<sup>7</sup>

Other features of political obligation are often proposed, in particular the purported *moral nature* of the obligation. For example, A. J. Simmons says that the problem of political obligation concerns "whether or not there's a *moral* duty to discharge our assigned legal duties" where a moral duty's "normative force derives from independent moral principles beyond any conventional or institutional 'force' . . . or widespread social expectations for conduct."<sup>8</sup> But what exactly is the point of the morality requirement? Simmons suggests that it is

2 See Hart, "Commands and Authoritative Reasons"; Raz, *The Morality of Freedom*; and Green, *The Authority of the State*.

3 Raz, "The Obligation to Obey the Law"; and Valentini, "The Content-Independence of Political Obligation."

4 Raz, "The Obligation to Obey the Law," 234. Not everyone accepts this feature, e.g. Simmons, *Moral Principles and Political Obligations*, 35–37.

5 Simmons, *Moral Principles and Political Obligations* and "The Particularity Problem."

6 Simmons, "Justification and Legitimacy," 67–68.

7 Wolff, *In Defense of Anarchism*, 18–19.

8 Simmons, "The Duty to Obey and Our Natural Moral Duties," 93–94.

needed to ensure that the problem of political obligation does not concern the simple issue of whether there is a legal duty (i.e., one internal to the law *qua* system of norms) to obey. But that point can be granted while avoiding some difficulties created by the morality requirement. First, there is a question of what 'moral' means in this context. Does morality concern the principles governing what we owe to one another simply as persons whose interests count equally? If not that, then what? Second, and building off that, some senses of 'moral' seem to automatically rule out intuitively plausible accounts. For example, an associative theory might ground political obligation in the nonmoral value of a certain kind of relationship. Why should such a view be dismissed at the outset? Alternatively, one might think that the morality requirement captures the thought that you cannot opt out of political obligation once you have it. Once morality gets a grip on you (perhaps just in virtue of the fact that you are a moral agent), it holds you for as long as you have the relevant properties; so too for political obligation. But whatever plausibility that thought has, it is hard to see how it is not captured by the generality requirement, which states that you have an obligation to do what the law dictates in all circumstances in which it applies to you. So if the law applies to you here and now, you cannot opt out by saying so. Furthermore, the fact that you cannot opt out of political obligation might just reflect the fact that the obligation serves your own interests independently of whether you in fact take an interest in it.<sup>9</sup> But that does not necessarily make political obligation moral in any interesting sense. So we can acknowledge that the problem of political obligation is not just about legal obligations without thereby accepting some version of the morality requirement. And without some clearer justification, it is unclear why it should be accepted.

One last worry is that, strictly speaking, there is no problem of political obligation since law does not have the form needed to make that problem intelligible. One might think that talking about a general duty to *obey* incorrectly assumes that some parts of the law contain commands. Instead, so the objector claims, the law specifies other kinds of norms. But that is not concerning so long as those norms can be associated with content-independent obligations.<sup>10</sup> And that is plausible even for laws that are not phrased with words like 'obligation' or 'duty' (e.g., anyone who does *x* is guilty of offense *o*). Alternatively, one might think laws are best understood as conditional announcements of what will happen (e.g., sanction) if you act in certain ways. But while states

9 I owe this point to Daniel Viehoff.

10 Many laws cannot be construed as obligation-imposing norms (Hart, *The Concept of Law*, ch. 3). Laws concerning contracts and marriage confer legal powers on people to alter rights and duties by specifying the qualifications and procedures for exercising them. I address the significance of such powers for our problem in section 3 below.

almost universally claim that they will punish lawbreakers, that does not preclude many laws from being commands or obligation-imposing norms. And it simply does not seem plausible to interpret even the criminal law as merely amounting to threats or conditional announcements.<sup>11</sup> Moreover, it is not conceptually necessary that the law provide for sanctions to count as law or have the normative features of interest here.<sup>12</sup>

It is important to stress that my characterization does not capture everything that might be meant in talking about political authority. It seemingly includes too little because it does not concern anything related to coercion or territorial rights. It also seemingly includes too much, as there are some theoretically interesting notions of authority that are not particularized and potentially also ones that do not entail that those subject to authority have a duty to obey.<sup>13</sup> But we should reject the idea that there is a single concept of political authority, as many different notions are normatively significant and worth distinguishing from one another.<sup>14</sup>

## 2. THE VALUES OF POLITICAL RECOGNITION

The first step in defending the recognitional account is to provide a preliminary characterization of political recognition's values. I will develop the central ideas of the account using a Rawlsian framework, but it is important to stress that this is a nonessential feature; it is simply a way of putting some illuminating flesh on a theoretical skeleton. One need not be a card-carrying Rawlsian or accept anything like the difference principle to endorse the recognitional account. All that one needs to accept (although this will not be fully clear until later) is that just law within a liberal society can play a certain normative role—namely, providing a crucially important vehicle for citizens to afford and communicate their recognition of one another as persons conceived of in whatever way matters fundamentally for thinking about liberal political life and the justification of our institutions. So the recognitional account could in principle be detethered from the Rawlsian ideas I employ without any real loss of theoretical substance.

11 Scheffler, "Membership and Political Obligation," 18.

12 Consider Raz's society of angels as well as a small commune in which nobody ever uses force but where questions of obedience might still intelligibly arise (*Practical Reason and Norms*, 159).

13 Johann Frick and Daniel Viehoff argue that a soldier's lacking a duty to obey their superior's orders does not establish that the superior has no practical authority over them ("Authority Without the Duty to Obey").

14 Christiano, *The Constitution of Equality*, 241.

So then why not articulate the recognitional account in more theoretically neutral terms? There are a couple reasons. First, many of the recognitional account's key elements, including, as I will discuss, its emphasis on political recognition's effect on individual self-respect, fit well within Rawlsian thought, and so the ideas are clearer when situated within that apparatus. Second, when it comes to political obligation, Rawls is typically interpreted as providing both natural duty and fair-play accounts, which come with their own suites of problems.<sup>15</sup> So it is theoretically worthwhile to consider whether Rawlsian theory has resources for defending an alternative account of political obligation, one that might even align better with Rawls's own central commitments.

A foundational element of Rawlsian justice is a particular political conception of personhood, namely, an ideal of free and equal moral persons. The specification of this ideal, as well as its justificatory role, partially gives Rawls's liberalism its distinctive flavor.<sup>16</sup> Free and equal moral persons are understood as possessing two moral powers: a capacity for reasonableness (i.e., having an ability and willingness to cooperate with others under fair terms) and a capacity for rationality (i.e., having an ability and interest in developing, pursuing, and revising one's own conception of what makes life valuable and which involves the exercise of one's developed skills). Personhood of this kind lies at the heart of Rawls's defense of the two principles. In choosing between competing conceptions of justice, the parties in the Original Position are motivated to secure the conditions needed to realize their higher-order interests in being reasonable and rational, which then translates into an interest in acquiring an adequate share of the primary goods. And the constraints imposed by the Veil of Ignorance ensure that the parties are considered solely as free and equal moral persons. Now, in ordinary life, our self-conceptions as individuals with particular histories and distinctive pursuits inform our reasons to live in various ways. But the Rawlsian conception of personhood specifies what matters fundamentally in assessing the principles governing the basic structure and that thereby make the effects of the structure justifiable to each person.

So a just basic structure will afford each of us an adequate share of the primary goods, reflecting our status as free and equal moral persons. But it is generally not enough that we simply receive this fair share. For several important reasons, recognition of our status as free and equal moral persons, as well as

15 Rawls, *A Theory of Justice*, secs. 51–52. For criticism, see Simmons, *Moral Principles and Political Obligations*, chs. 5–6.

16 Scheffler illuminatingly discusses the evolution of Rawls's thought on the conception of personhood (“Moral Independence Revisited”).

the communication of that recognition, seems worth caring about.<sup>17</sup> First, such recognition is instrumentally valuable because it supports the kind of moral motivation necessary for people to act in ways that properly further everyone's interests as free and equal moral persons. It therefore plays an important role in promoting the stability of a cooperative society and might even support valuable solidaristic tendencies. Second, recognition of one's status as a free and equal moral person promotes individual self-respect, which involves both (1) a secure conviction that one's conception of the good is worth pursuing and (2) the confidence and desire to pursue that good on fair terms with others.<sup>18</sup> Without this kind of recognition, people may be more inclined to grow cynical and partly withdraw from social life, thereby making it less likely that they can fully endorse and pursue their own conceptions of the good.<sup>19</sup> Third, recognition of one's status as a free and equal moral person seems to be a finally valuable attitude that is constitutive of a valuable political relationship.<sup>20</sup> It is a familiar feature of ordinary life that we care about being recognized, even in the private mental lives of others, as having certain normative statuses rather than just acquiring the goods owed to us in virtue of them.<sup>21</sup> In some of the most quotidian cases (e.g., discrimination in employment contexts), we care that we have not been properly recognized as equals even when that does not deprive of us material goods. And the fact that we care about being so recognized does not reflect a psychological vulnerability that we would be happy to purge from our emotional repertoire; instead, it represents a justified and morally sensitive response to our circumstances and other people.<sup>22</sup>

17 The notion of citizenship invoked here is both broader and narrower than common forms of legal citizenship. Some legal citizens may not qualify (e.g., expatriates) while some legal noncitizens will (e.g., those who reside primarily in a foreign state). Compare Scheffler, "Membership and Political Obligation," 9.

18 Rawls, *A Theory of Justice*, 386, and *Political Liberalism*, 318. Stark claims that the confidence aspect of self-respect does little justificatory work in Rawls's own theory ("Rawlsian Self-Respect," 240). Even so, some form of political recognition could plausibly promote this dimension.

19 Consider the arguments for the difference principle given by Rawls, *A Theory of Justice*, 128–29.

20 It is plausible that being part of some finally valuable relationships (e.g., friendship) constitutively involves having certain attitudes towards one's relatives. See, e.g., Kolodny, "Love as Valuing a Relationship," 148; and Raz, "Respect for Law."

21 On caring about what others believe of us, see Basu, "Can Beliefs Wrong?" and "The Importance of Forgetting."

22 Shiffrin, *Democratic Law*, 167–68.

It is important to emphasize that some of political recognition's values are *communicative*, while others are not.<sup>23</sup> Take the instrumental values concerning moral motivation and individual self-respect. In order for recognition to promote those values, those who are afforded recognition must be able to reasonably believe that they are being afforded recognition, whatever precisely that involves. And one kind of communication occurs when, in a given context, an individual can reasonably form certain beliefs about the attitudes that informed or motivated another agent's action.<sup>24</sup> Suppose, to take a modified example from T. M. Scanlon, you do not invite me to the neighborhood block party because of your racial animus.<sup>25</sup> If I am the only minority in the neighborhood, you not inviting me communicates your prejudice insofar as I can form reasonable beliefs about what motivated your behavior. This is the sense in which the instrumental values of political recognition are *communicative*. But the third value concerning the final value of recognition is *noncommunicative* in that it can be realized without communicative uptake; we reasonably care about the simple fact that people have certain attitudes towards us. Given that, realizing all the values of political recognition requires that it be afforded in a suitably communicative way.

But what form of recognition could serve these values, and how could it be properly communicated? Even before getting clear on what recognition is, there seem to be several structural barriers both to having and to communicating it, at least within modern political communities.<sup>26</sup> First, much of our lives are organized around partial concerns. Granted, some may be able to afford others recognition simply by pursuing their own conception of the good (e.g., civil rights activists). But for those who live relatively private lives, their justifiable partiality makes it difficult to devote significant time and energy to affording others recognition. Second, our communicative means are fairly limited. In a state that is geographically very large, it is difficult (and perhaps impossible) to communicate recognition to some of our fellows given our limited interactions. And even though we live in the age of social media, the communicative reach of those mechanisms is still quite small. Furthermore—and here is the third

23 Thanks to an anonymous reviewer for highlighting the need for elaboration here.

24 Compare Scanlon on two different senses of "the meaning of an action" (*Moral Dimensions*, 53–54). Scanlon does not discuss communication exactly, but neither that nor the particular difference between the two senses he is interested in matters for present purposes.

25 Scanlon, *Moral Dimensions*, 52–53.

26 Shiffrin similarly argues both that there is a moral need to express our recognition/mutual respect *qua* citizens and that there are important structural barriers to achieving this (*Democratic Law*). My account incorporates some of her discussed barriers, but my solution is different from, although not incompatible with, hers.



problem—it is not clear that discursive affirmation of one’s fellows as free and equal (e.g., via some daily Twitter posting) suffices for political recognition in the absence of some associated actions.<sup>27</sup> So there is a need to afford and communicate recognition within our political community as free and equal moral persons, but these barriers make achieving that difficult. And to emphasize, it is not enough to sit in your house and spend time thinking about how much you care about freedom and equality. The next claim to be defended is that the legal system can serve as a vehicle for affording and communicating recognition when people have respect for the law itself.

### 3. THE RAWLSIAN FUNCTIONS OF LAW AND RESPECT FOR LAW

Different things may be meant in speaking of the functions of law or a legal system.<sup>28</sup> On the one hand, there are its *conceptual functions*—namely, those things it must do to qualify, definitionally, as a legal system. But there is also a question about its *normative functions*—namely, those things that it ought to do and how it ought to do them. Now these two features are not entirely independent; the conceptual functions of a legal system set constraints on its intelligible normative functions. Thinking otherwise would be like saying that a carburetor ought to be used for writing.

So what are law’s normative functions within a society governed by Rawls’s principles? One function is to protect people’s interests in the two moral powers of reasonableness and rationality in a way that is fitting given the law’s conceptual functions.<sup>29</sup> And while Rawls’s principles holistically regulate the whole basic structure, the legal system plays some distinctive roles in furthering the ideals underlying the principles. First, the legal system specifies private norms of individual conduct (e.g., criminal and tort law), which collectively provide a public basis for people to act in ways that fairly promote others’ interests in being reasonable and rational. Even many mundane laws, such as traffic regulations for parking in major cities, play this role. Such laws help solve a coordination problem, which in turn enables people to pursue their adopted ends while making fair and efficient use of public and private spaces.<sup>30</sup>

Second, the law provides individuals with various legal powers (e.g., contract and marriage) that can be used to enter normative arrangements through

27 Shiffrin, *Democratic Law*, 153.

28 Raz, “The Functions of Law,” 164–65.

29 I assume that most plausible ways of specifying a legal system’s conceptual functions will allow it to fulfill the normative functions described below.

30 Shiffrin, *Democratic Law*, 167–68.

which people might better pursue their conceptions of the good. The justifiability of a private conduct norm or the provision of a legal power partially depends on whether general compliance with the norm (or the availability of the power) properly furthers the fundamental interests of all in a fair way. And this point is not threatened by the fact that different legal systems contain different private norms and provide different powers. Even keeping fixed the normative function of Rawlsian law under consideration here, particular cultural histories and sentiments make some legal powers perfectly intelligible and worthwhile in some communities, while they are odd and perhaps even pointless in others (e.g., a power to authorize your child's marriage).

Third, the legal system sets constraints on what the government may do (e.g., constitutional laws concerning freedom of speech), which, when observed, ensure that people are given fair opportunities to exercise fundamentally important liberties in the pursuit of their goods. Fourth, the legal system plays an important role in regulating other elements of the basic structure, including the political and economic systems. Given that part of the point of having those other institutions is also to, in their own distinctive ways, fairly protect our interests in freedom and equality, the legal system plays a quite expansive role in furthering the normative function of the entire basic structure. These considerations do not mean that the ideal of free and equal moral persons provides the only justification for or constraint on the content of a legal system. It may be acceptable to promulgate laws that do not implicate this status (e.g., prohibiting the destruction of protected forests because of their final value). The key point for present purposes is that one normative function of Rawlsian law is to fairly further the fundamental interests of all citizens in being reasonable and rational.

I suggest now that law within a just Rawlsian society has another normative function—namely, to provide a vehicle through which people can afford and communicate recognition of one another as free and equal moral persons. To see how this is possible, we must say something about what it is to have respect for the law. Respect for the law is a complex attitude, and its fullest form has three dimensions, which are logically separable though usually coexisting.<sup>31</sup> First, it has a cognitive dimension involving (1) certain beliefs about the moral value of the law as an institution that protects our status and interests as free and equal moral persons and (2) associated affective attitudes that are appropriate in virtue of those beliefs (e.g., pride that one's society is governed by such an institution). Second, it has a practical dimension involving a robust disposition

31 Raz discusses the first two elements ("Respect for Law," 251–53), although I differ from him slightly in articulating them in terms of free and equal personhood. Thanks to an anonymous reviewer whose objections necessitated a revised characterization of respect for the law.

to obey the law (i.e., to treat law as a source of political obligation) whereby the motivation for obedience is that the law is a fundamentally important institution that protects our status as free and equal moral persons.<sup>32</sup> Given this characterization, the bad man does not have respect for the law, as his obedience has a solely prudential motivation. The practical dimension may also involve associated affective responses such as guilt when one unjustifiably violates the law or approval of others who obey it out of respect. Third, respect for the law has another practical dimension, which involves a robust disposition to not abuse one's legal powers. Abusing a power, in one sense, involves attempting to exercise it while believing that it will not serve the values that justify its use/availability or being indifferent to that issue.<sup>33</sup> And legal powers can be abused in ways that express disrespect for the law. Think of corrupt judges who issue judgments in order to further their financial interests or businesspeople who knowingly attempt to contract in legally unconscionable ways. Behaviors like these do not involve disobeying the law for the simple fact that there are no laws with the form necessary to make the idea of disobedience intelligible. Nevertheless, insofar as a person seeks to exercise their legal powers, they should take due care in following specified norms and not abusing those powers. Otherwise, they express disrespect for the law.

Now we establish the link between respect for the law and political recognition. A just Rawlsian legal system—in virtue of its structure, content, and underlying justification—embodies the ideal of free and equal moral persons living together on fair terms and aims to protect those interests by serving as a regulating institution for an enormous amount of social behavior. One who has respect for the law itself will thereby, in virtue of all three of this attitude's dimensions, afford and communicate their recognition through their cognitive and practical activities. Take the second dimension. If you have the articulated disposition, then your will is sensitive to certain kinds of reasons, specifically ones related to what the law demands *qua* law. This kind of practical acknowledgment yields a practical recognition of your fellow citizens as free and equal given that the legal system foundationally reflects this status and that your disposition is sensitive to this fact. By having this attitude, acting on it when appropriate, and understanding the normative underpinnings of just Rawlsian law, one affords recognition to one's fellows in a way that they have reason to care about simply

32 An alternative characterization of the practical dimension might be as follows: respect for the law involves a disposition to obey the law whereby that disposition is explained in part by the cognitive dimension of an individual's respect for the law (i.e., their beliefs that the law has a special moral importance as an institution that protects our status and interests as free and equal persons).

33 On the arbitrary exercise of power, see Raz, "The Rule of Law and its Virtue," 219.

because that seems to be a finally valuable attitude. Because of this, respect for the law promotes the noncommunicative value of political recognition.

Moreover, affording others recognition via having respect for the law can secure the communicative values articulated earlier as long as a particular publicity condition is satisfied—namely, that there is a reasonable public basis and culture for people with ordinary cognitive faculties to know that the legal system is structured so as to fairly protect their interests as free and equal moral persons.<sup>34</sup> If this condition is not satisfied, people will not be well positioned to reasonably believe that others have a valuable attitude of respect for the law, which in turns means that the communicative values tied to moral motivation and individual self-respect will not be furthered. It is not really possible to precisely specify what is needed to satisfy this publicity condition, as that will depend on, to name just a couple things, cultural features and the community's level of technological advancement. It might be necessary to provide some kind of public education that enables people with ordinary cognitive faculties to understand, at some level, important political ideals that justify the content and structure of the legal system. This does not mean that *A Theory of Justice* must be included on all summer reading lists for third graders, but it is perhaps important that there be readily available secondary education classes that teach young persons about basic moral ideals and how the legal system should be designed in light of them. It might also be necessary for government officials to routinely and publicly express how the legal system's design and operation is consistent with the ideals embodied by the Rawlsian principles (e.g., a sitting president publicly supporting a Supreme Court decision concerning free speech). Much more could be said here by way of illustration, and it will likely be quite difficult to satisfy the publicity requirement in modern states. But the main point is that if we are reasonably well positioned to know why the law of a liberal society is important, then others having respect for the law can be a basis for us forming reasonable beliefs that we are being afforded recognition via their compliance with law, and that can serve the communicative values of recognition. Given all that, law is, in a sense, the medium that enables us to relate to each other in a distinctive way by affording and communicating recognition of all of our fellows as free and equal.

One might object that other people having respect for the law cannot promote the communicative values of political recognition since we are not

34 In articulating a different publicity principle, Christiano distinguishes between an implausibly demanding requirement that each person actually see that they are being treated justly and a more plausible requirement that each person be capable of seeing that they are being treated justly given a reasonable effort on their part to exercise ordinary cognitive faculties. See Christiano, "The Authority of Democracy," 270.

mind readers, and publicly observable compliance with law is consistent with a number of internal motivations. After all, for all we know, maybe each person conforming to the law is really just a bad man. In response, recall the sense of communication described above in articulating political recognition's values. An agent's action can communicate something in a context if others are well situated to form reasonable beliefs about that agent's motivating reasons for performing the action. When the publicity condition is satisfied, and people have respect for the law, others are well positioned to (1) reasonably believe that people have respect for the law and (2) interpret their behaviors as communicating a clear message about the importance of our status as coequal free persons. Even if we sometimes make mistakes about people's motivations for complying with the law, the obtaining of 1 and 2 means that we can have knowledge of people affording one another political recognition when they do so. So when people have respect for the law, the communicative values of political recognition can be secured even if some bad men still live amongst us. And it is worth emphasizing not just that we believe that we are being afforded recognition but that we *reasonably* believe that we are being afforded it and that others are actually affording it.

It is important to note that respect for the law does not just afford and communicate recognition to those who will be affected by your immediate actions. Granted, when I obey a traffic law because it is the law, I afford recognition to other drivers on the road who need to make fair, safe, and efficient use of roadways. But I also afford recognition to others who are not driving on the road now and perhaps even people in faraway parts of the state. This is because of the encompassing nature of law mentioned earlier, the generality of its application, and its regulative functions. To have respect for the law is in a way to say, "I recognize that this institution matters for *all* of us as free and equal moral persons engaging in public life, and so I recognize *all* of you in obeying when and because the law applies to me." But having respect for the law does not require blindly following it on all occasions. If you are driving at night, and the traffic light has remained red for an unusually long period of time, it is acceptable to look carefully in both directions and proceed with caution. Doing so does not involve any disrespect for the law, nor does it fail to afford your citizens proper recognition. But if you lack the standing disposition to obey speeding regulations during busy hours or if you knowingly attempt to exercise your legal powers in unconscionable ways, you express disrespect for the law and in turn for your fellow citizens.

Apart from the publicity condition, these remarks point to a need for something like a *totality* condition: in order for the law to serve as a vehicle for affording and communicating political recognition, the legal system must be substantially just in its totality. In the present context, this means that the legal system must have the content needed for it to play its proper role within a basic structure

governed by Rawls's two principles. One might object that the preceding traffic example cuts against the need for a totality condition.<sup>35</sup> Even if the law is substantially *unjust*, there might be traffic laws, for example, that properly protect our interests as free and equal moral persons by fairly playing their coordinative role. Would an individual not then afford recognition to their fellows by obeying a traffic law because it is the law? In response, I will say that the individual may afford recognition by doing what the traffic law dictates simply because they see why having such laws matters. But I do not think that having the *disposition to obey the law* in the way involved in having respect for the law properly affords/communicates recognition unless the legal system is just in its totality. Think of it this way. When I have respect for the law, my motivation of obedience, which psychologically grounds my disposition, is tied to my appreciation of the law as a fundamentally important institution that protects our status as free and equal moral persons. But if the law does not actually do that, I struggle to see how recognition of our status is afforded and communicated. What is important is not just that I do what a just law within an otherwise unjust legal regime dictates; what matters is that I obey the law because I am motivated by an appreciation of the fact that the legal system, *qua* institution, fulfills a certain normative role—namely, protecting our status as free and equal moral persons. So something like the totality condition seems needed for respect for the law to properly play its role in affording and communicating recognition.

#### 4. LINKING RESPECT FOR LAW AND POLITICAL OBLIGATION

The discussion so far has aimed to show both (1) that it is valuable for members of a liberal political community to afford and communicate recognition as free and equal moral persons and (2) that having respect for the law is a crucially important way of affording and communicating such recognition given some structural features of modern social life. To complete the defense of the recognitional account, we must now establish both (3) that we have obligations to afford one another political recognition via respect for the law and (4) that the obligatoriness of respect for the law entails that there are political obligations.

One might doubt that respect for the law could be obligatory simply because it is an attitude. But respect for the law, in each of its dimensions, may be cultivated. As Raz remarks, “whether or not one respects the law is up to the individual. A person may decide that the law deserves to be respected and that he will respect it. . . . Such decisions do not create or terminate the attitude overnight, but they may signal the beginning of a process leading to its acquisition . . .

35 Thanks to an anonymous reviewer for raising this worry.

and they may demonstrate one's control over its existence."<sup>36</sup> If respect for the law can be cultivated, then common control-based worries often levied against the obligatoriness of belief do not apply.

But how can the obligatoriness of political recognition and, in turn, respect for the law be established? It is worth noting that many philosophers, especially those with deontological sensibilities, are quite willing to accept that some forms of recognition or respect are obligatory. For example, Seana Shiffrin says that there is a moral imperative of communication among citizens insofar as "the social bases of self-respect are not merely material in nature but communicative."<sup>37</sup> In a different vein, Stephen Darwall says that persons are entitled to recognition respect, which involves taking seriously and weighing appropriately the fact that other individuals are persons in one's practical deliberation.<sup>38</sup> So if political recognition is valuable in the ways described earlier, it is plausible that we are obliged to afford it to our fellows and are thereby obliged to have respect for law. But can more be said in favor of recognition being obligatory? There is a difficulty here, as there are many different philosophical views about the constitutive features of obligation and how to "build" one, so to speak. On my preferred way of thinking about what is sufficient for  $x$  being obligatory, we consider the benefits and burdens in  $x$ -ing that would accrue to those subject to the obligation and compare those against other relevant considerations, including in particular the benefits and burdens that would accrue to others through general compliance with the obligation. If the burdens on those subject to the obligation to  $x$  are insignificant compared to the benefits enjoyed by others, it is plausible that there is a genuine obligation to  $x$ . In the present case, all citizens enjoy significant benefits by being afforded political recognition in a suitably communicative way and are subject to not so significant burdens in cultivating an attitude of respect for the law. Moreover, it is good for everyone, as both subjects and objects of the obligation, to live on terms of mutual political recognition with their fellows. And my interests in being afforded political recognition (via respect for the law) and having that recognition be communicated give me reasons to form normative expectations that my fellows will cultivate respect for the law and blame them when they do not.<sup>39</sup>

Now for the final question of the main argument: Why does the obligatoriness of respect for the law establish political obligation? Raz argues that

36 Raz, "Respect for Law," 258.

37 Shiffrin, *Democratic Law*, 149–50.

38 Darwall, "Two Kinds of Respect," 38.

39 For discussion of how normative expectations are constitutively linked to obligations, see Scheffler, "Morality and Reasonable Partiality," 110.

respect for the law is a morally permissible but not required attitude, and one who has respect for the law has an “expressive” reason to do what the law dictates. Expressive reasons are “so called because the actions they require express the relationship or attitude involved.”<sup>40</sup> For Raz, respect for the law expresses loyalty to and identification with one’s society, which he presumably thinks is nonobligatory. But if respect for the law is an obligatory attitude in virtue of its connection to political recognition, then one is thereby obligated to perform those actions that are associated with the attitude. The argument form for this is as follows: (1) *A* is obligated to  $\phi$ ; (2)  $\phi$ -ing entails  $\psi$ -ing; (3) therefore, *A* is, subsequent to  $\phi$ -ing, obligated to  $\psi$ . Additionally, respect for the law involves a robust disposition to obey the law when it applies to you. It is not possible to have practical respect for the law and not comply with it, at least in a rather large variety of circumstances, for then one would not have the disposition to begin with. Furthermore, practical recognition of others realizes its fullest value when that recognition is associated with actions that have both communicative and noncommunicative significance. Full recognition comes in a package and involves doing what the law dictates because of one’s respect for it. This means that the recognitional account establishes additional duties beyond those recognized by traditional answers to the problem of political obligation—namely, ones to cultivate a rich variety of cognitive and practical attitudes towards law, freedom, and equality and to obey the law because of those attitudes.<sup>41</sup> Only in doing so do we properly afford recognition to others and secure its values, ones that are partly tied to our reasonable beliefs that others think of us as free and equal moral persons and that they use that as a guiding ideal for their attitudes and actions.<sup>42</sup>

One might object that the obligatoriness of respect for the law presupposes political obligation, and so I have unacceptably reversed the explanatory order. To get a better grip on this worry, consider R. Jay Wallace’s view of interpersonal recognition, which involves treating moral requirements as presumptive constraints on behavior.<sup>43</sup> Because Wallace thinks of moral requirements as constitutively connected to claims held by other individuals, interpersonal

40 Raz, “Respect for Law,” 255, 259.

41 Thanks to an anonymous reviewer for help in clarifying how these additional duties should be specified.

42 There are some similarities with this line of thinking and Rawls’s discussion of the duty of mutual aid: “A sufficient ground for adopting this duty is its pervasive effect on the quality of everyday life. . . . The primary value of the principle is not measured by the help we actually receive but rather by the sense of confidence and trust in other men’s good intentions and the knowledge that they are there if we need them” (*A Theory of Justice*, 298).

43 Wallace, “Recognition and the Moral Nexus,” 4.



recognition involves acknowledging other persons as sources of moral claims, which is itself finally valuable. But for Wallace, the value of recognition is explained fundamentally by the moral claims we have on one another. So he thinks it would be a mistake to reverse the order and explain the reason-giving force of moral requirements in terms of recognition. So too one might think that the value of political recognition, and in turn its obligatoriness, can be explained only if there is an independent ground for political obligations. But I do not think there is a real problem here. The articulated values of political recognition and its communication—(1) support for the development/maintenance of moral motivation, (2) support for individual self-respect, and (3) the final value of relating to one another via the attitude—do not presuppose that there are independent obligations to obey the law *because it is the law*. The defense of the recognitional account just relies on the claims that we have a certain status that is embodied in a just legal system and that respect for the law is an obligatory means of acknowledging that status. Given that respect for the law also entails obeying the law because it is law, political obligations are established.

In closing this section, I will explain how the recognitional account establishes our three hallmark features of political obligation: content independence, generality, and particularity. As for content independence, the obligatoriness of respect for the law depends essentially on the law as a regulative institution embodying the ideal of free and equal personhood. Without that, respect for the law will not afford people the recognition they are entitled to. Given that and the link between respect and political obligation, the fact that certain actions are required by law plays an essential role in the justification of political obligation. So the content independence requirement is satisfied.

As for particularity, political recognition is, in the first place, a valuable way of relating to one another as fellow citizens, understood in the broad sense mentioned earlier. The underlying ideal of free and equal moral personhood sets a standard for a common framework of life within a single state, through which we might all pursue our own conceptions of the good on fair terms with others. It may be important for noncitizens traveling within the country to have respect for the law and to obey because it is the law. But the value of that attitude is importantly derivative on the valuable form of life that we share as citizens of a particular state. So the particularity requirement is satisfied.

The generality requirement is slightly trickier. If it is interpreted to mean that one always has a political obligation to follow any law, then the recognitional account cannot establish that, given the earlier remarks about significantly unjust laws that are inconsistent with the ideal of free and equal personhood. But that seems an overly demanding and implausible interpretation of the generality requirement. It is enough that respect for the law is obligatory for

all citizens in virtue of the generality of the duty to afford recognition. One who has respect for the law will have a stable and robust disposition to obey the law in all circumstances in which it applies to them, but this allows for the possibility that they may sometimes legitimately conclude that a particular law is substantially unjust or perhaps not particularly relevant in the circumstances and that they have no obligation to obey it.

##### 5. THE RELATIONSHIP BETWEEN LAW AND JUSTICE

It is important to now clarify the relationship between law and justice as it bears on political obligation. One question is whether there can be a political obligation to follow an unjust law. Some philosophers accept this possibility. For example, Thomas Christiano argues that democratic procedures have authority for citizens even when, within certain limits, they result in unjust decisions.<sup>44</sup> But if a particular law is significantly unjust insofar as it is inconsistent with the ideal of free and equal citizens, then the recognitional account cannot establish a political obligation to obey it, as the grounds of that obligation are inapplicable even if the remaining body of law is substantially just. If a law's content is such that conforming to it will deny someone something they are owed as a free and equal moral person, your obedience to that law does not afford them recognition; it might even be a way of denying them that recognition.

But what about a political obligation to obey a law that does not contradict what justice independently requires? To take one example, it is plausible that the Rawlsian ideal does not determine whether there should be a law prohibiting marijuana use in public spaces. If the rest of the law is substantively just, and the relevant publicity conditions are satisfied, is there a political obligation to obey this particular law? I think the answer is yes, and a comparison with requests within personal relationships can illuminate why this is the case. Suppose that your spouse falsely believes that one of the two driving routes you can take back home is more dangerous than the other. They request that you take the one they believe to be safer. You know that the two routes are equally safe, but you cannot convince them of this. So as far as your request-independent reasons are concerned, you have no reason to opt for one over the other, apart from your preferences. But if they ask you or perhaps if you promise to take your spouse's preferred route, you have a distinctive reason to take that route. And that is because, although the story needs to be developed, of the practical significance of their power to request certain things of you, even things you do not have independent reason to do, for the valuable relationship you share. In

44 Christiano, *The Constitution of Equality*.

assigning their request practical significance for your deliberation and acting on the basis of that consideration, you afford them recognition as your spouse, which is something they have reason to care about apart from whether you act in light of independent reasons, even ones that concern their interests. Similarly, even if justice does not settle the question of whether there must (or must not) be a law prohibiting marijuana use in public spaces, the fact that there is such a law can still provide a basis for affording and communicating recognition to one's fellows through respect for it, given that it is part of a body of law that properly acknowledges our status as free and equal moral persons. The fact that the marijuana law is part of a legal structure that plays the right kind of role in mediating the valuable relationship between fellow citizens is sufficient to give it normative significance for your deliberation insofar as respect for that law affords recognition. The content of a particular law does not settle whether there is an obligation to obey it, just like the content of a particular request (or promise) does not settle whether you have a reason to grant (or fulfill) it.

Another issue is whether law seems to drop out of the picture even if one accepts various elements of the recognitional account. To get a grip on the worry, return to the society of bad men that was described earlier. I conjectured that this story suggests that we reasonably care about whether our fellows take a certain attitude towards the law *qua* law. But a natural response is that this story shows only that we reasonably care whether our fellows are moved by considerations of *justice* rather than anything having to do with the law *qua* law. It is one thing, as Shiffrin notes, if someone begrudgingly complies with the law to avoid sanction, for that at best sends mixed messages about their commitment to coequal personhood.<sup>45</sup> But it is an additional step to assume that it is important that they respond to what law requires *qua* law rather than simply what justice requires. Put another way, the objection here is that respect for the law is not necessary for political recognition.<sup>46</sup> So the recognitional account faces a problem in that it cannot establish some special role for law and thereby cannot establish that there are political obligations.

In response, let me first acknowledge that some communities may be structured such that recognition can be afforded without any real need for the kind of law found in modern states. Imagine a small, isolated farming commune whose members have basically the same conception of what is important in life and possess common knowledge of a basic set of shared responsibilities. Given these two features, the values of political recognition may be secured simply by people conducting their daily lives in ordinary ways that are intelligible in their context.

45 Shiffrin, *Democratic Law*, 152.

46 Thanks to R. Jay Wallace and Daniel Viehoff for pressing this objection in different ways.

But I think that things are different, for several reasons, in the pluralistic liberal societies that we are most familiar with. First, as noted earlier, there are structural barriers to affording recognition that do not apply in the small commune, particularly issues of partiality and limited communicative means. In familiar modern societies, these circumstances generate a need for some unifying public institution to provide a vehicle for affording and communicating recognition of one another as free and equal moral persons. And I have argued that a legal system governed by the Rawlsian principles, in virtue of its content and expansive social role, is particularly if not uniquely well positioned to play this role.

Second, there is a deeper difference between familiar liberal societies and the small commune—namely, that the former contain citizens with wildly different political/moral worldviews and conceptions of the individual good. Given that such individuals cannot unite around a single such worldview or conception of the good, as the members of the small commune can, the need for political recognition in turn requires some unifying ideal and suitable public mechanism for affording that recognition. The Rawlsian conception of personhood supplies the ideal, and I confess that I cannot see how recognition of all persons can be adequately realized without something very much like a legal system to provide a public standard and mechanism for that acknowledgment. What other kind of public institutional structure or communicated doctrine could cover so much of social life?

Third, and relatedly, some of our interests as free and equal moral persons cannot be fully specified without a legal system. In order to adequately exercise the capacity to develop, revise, and pursue one's conception of the good on fair terms with others, some system of property rights, to take one example, needs to be respected. But potential property rights in a state of nature seemingly suffer from numerous problems that a legal system (and perhaps a scheme of coercive enforcement) is needed to rectify.<sup>47</sup> Without a legal system, how are we to determine what it takes to acquire a property right or what constitutes interference with one's property? So the gap between what justice demands and what the law dictates can be shrunk, at least concerning a reasonably broad set of important issues. And if the law plays this special role in specifying what is precisely needed to secure our status as free and equal moral persons, then respect for the law will be crucially important for political recognition.

47 This is an important element of Kant's legal philosophy. For helpful discussion, see Pallikathayil, "Persons and Bodies," 36–39.

6. SKEPTICISM ABOUT POLITICAL OBLIGATION AND THE  
SIGNIFICANCE OF THE RECOGNITIONAL ACCOUNT

In this closing section, I discuss some varieties of skepticism about political obligation in order to highlight the recognitional account's philosophical significance for our practical and political lives. When it comes to the problem of political obligation, first-order skeptics deny that there are or could be such obligations. Within this camp, in-principle skeptics offer *a priori* arguments that such obligations are impossible. So, for example, Wolff argues that there cannot be any such obligation because it would conflict, in an irresolvable way, with the "primary obligation of man" to be autonomous.<sup>48</sup> Other "indirect" skeptics are suspicious about the possibility of such *a priori* arguments but do not rule them out. Instead, their arguments aim to provide strong grounds for thinking that such a duty does not exist. One common indirect argument is that most plausible extant accounts of political obligation fail somehow.<sup>49</sup> A second argument is that a proper understanding of the societal roles of good/just law suggests that there is no general obligation to obey it.<sup>50</sup> Just law can still do everything it "needs" to do without positing a general duty of obedience.

Apart from first-order skeptics, there are meta-skeptics who raise doubts about the philosophical significance of political obligation and thereby question the value of devoting attention to the problem. Such a view might seem implausible. Wouldn't far-reaching implications flow from the fact that there are no political obligations? Wouldn't that render all governments "bad" in some distinctive and important way? Tempting as these thoughts are, at least two plausible versions of meta-skepticism appear in the literature. First, there are *no-difference skeptics* who, informally put, think that the general obligation to obey makes no real practical difference to those within the law's scope.<sup>51</sup> More formally put: for any (or most) possible circumstances in which an individual has a reason, grounded in the general obligation to obey the law, to do what a given legal directive *D* dictates, that individual would have a reason (of similar

48 Wolff, *In Defense of Anarchism*, 18.

49 Simmons, *Moral Principles and Political Obligations* and "The Duty to Obey and Our Natural Moral Duties." See also Raz, "The Obligation to Obey the Law" and *The Morality of Freedom*.

50 Raz, "The Functions of Law" and "The Obligation to Obey the Law."

51 Buchanan, *Justice, Legitimacy, and Self-Determination*, 239–40. In earlier work, Simmons seems to accept no-difference skepticism (*Moral Principles and Political Obligations*, 29, 193). But in later work, he explicitly denies that "a duty to obey is simply unnecessary to reasonable concerns in political philosophy" as it must be invoked to explain, for example, why it is morally wrong to compete with our authorities ("The Duty to Obey and Our Natural Moral Duties," 98).

normative weight and significance) to conform to *D* even if they were not subject to a general obligation to obey. So, to use the simplest example, you have a strong moral reason to conform to laws prohibiting murder regardless of whether you have any general obligation to obey the law. Importantly, no-difference skepticism does not entail the implausible claim that political obligations are absolute in that one has conclusive reason to obey the law in every circumstance it applies to you. Political obligation is almost universally understood as *pro tanto*, and many considerations justify not complying with the law on particular occasions.

Second, there are *no-complaint skeptics* who claim that political obligations are either insufficient or unnecessary for assessing the state's legitimacy or for addressing independent complaints about its activities. Many philosophers reject no-complaint skepticism, often because they think that political obligations are relevant for the justifiability of state coercion. For example, Ronald Dworkin claims that "no general policy of upholding the law with steel could be justified if the law were not, in general, a source of genuine obligations."<sup>52</sup> And Simmons says that "[a] state's (or government's) legitimacy is the complex moral right it possesses to be the exclusive imposer of binding duties on its subjects, to have its subjects comply with these duties, and to use coercion to enforce these duties," which suggests that the duty to obey and the permissibility of coercion stand or fall together, either logically or normatively.<sup>53</sup> And apart from the general question of whether coercion is in-principle permissible, one might think that political obligation is necessary for establishing the purported right of the state to be the sole enforcer of its laws.<sup>54</sup> And apart from any worries about coercion and force, one might think that there is something objectionable about the state issuing threats (or simply nonthreatening directives) unless there are political obligations.<sup>55</sup> But while many of us dislike being told what to do by people who lack authority, this does not seem a significant enough worry to warrant much interest in political obligation.

There is much to be said both for and against these two forms of skepticism. But the important question for present purposes is: Must both be rejected to justify a philosophical interest in political obligation? Perhaps one thinks the question of whether there are such obligations would still be significant simply because we are interested in categorizing the normative truths of the world. But I doubt that mere categorization of this kind is a significant goal of political

52 Dworkin, *Law's Empire*, 191.

53 Simmons, "Justification and Legitimacy," 130. See also Huemer, *The Problem of Political Authority*.

54 See Senor, "What if There Are No Political Obligations?" 263–64.

55 Kolodny considers different versions of this worry in "Political Rule and Its Discontents" and *The Pecking Order*.

philosophy if it does not shed light on something normatively important for our social and political lives. As a concessive note, I am willing to grant that the truth of no-complaint skepticism means we should abandon the common thought that the problem of political obligation is the fundamental question of political philosophy. But I do not think that accepting both forms of skepticism means we should deny the philosophical importance of the problem. And that is because the recognitional account shows how political obligations serve a distinctive value within a liberal community that matters for realizing an ideal political relationship and relating to one's fellows on terms of mutual recognition as free and equal moral persons. That is what makes political obligation philosophically important and relevant for our lives. And it is no objection that the full significance of the question emerges only with a particular answer in hand; that is simply what happens often with philosophical problems.

So according to the recognitional account, we are not interested in political obligation, as the no-difference skeptic would have us think, simply because we wish to understand whether there are reasons to do what the law says. There might well be many such reasons, both moral and prudential, even if there were no general obligation to obey. Similarly, the importance of the recognitional account does not rest, as the no-complaint skeptic would have us think, on the claim that there is something objectionable about the state's activities or the way it relates to its citizens if there is no obligation to obey. Rather, the recognitional account shows both (1) that political obligation matters for properly relating to one another as free and equal citizens via a distinctive form of recognition and (2) that an important evaluative dimension of a legal system concerns its capacity to serve as a vehicle for recognition. So the guiding ideals of our institutional structures extend beyond familiar concepts like liberty, equality, and fairness.<sup>56</sup> Instead, we should make room within institutional morality for a concern with recognition and respect, as expressive attitudinal matters, amongst citizens. Political obligation is a key element of this concern and is thereby part of a demanding but deeply important interpersonal political ideal.<sup>57</sup>

*New York University*  
*dak417@nyu.edu*

56 Compare Hussain's discussion in "Pitting People Against Each Other" of the value of community and the problem with institutional structures that "pit people against one another."

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