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LEGALITY AND COMMITMENT

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Does law impose moral obligations?[1] Many thinkers—including political and legal philosophers—doubt that legal norms generate a general, content-independent, sanction-independent duty to obey them.[2] Yet there is a long tradition of attempts to ground duties of obedience in ideas like consent, fairness, natural duties of justice, and associative obligation.[3]

Might we be able to respond to skeptics about the duty to obey the law without giving up entirely on their claims? To my mind, those claims are at least plausible. Doubts about a general, content-independent, noninstrumental duty to obey the law seem at least warranted—particularly in the nonideal and unjust societies we inhabit.[4] Others might disagree and think that some version of consent, fairness, natural duty, or associative obligation is compelling. But what I wish to explore is whether, assuming the skeptics are right, we must conclude that the citizens and officials who believe that law does by itself change what they have reason to do are affected by a form of false consciousness.[5] As I understand it, these agents' belief is that law's prescriptions make a real difference—not contingent on content or prudential considerations—regarding what they should do. Throughout this paper, I will refer to this idea as law "making a practical difference."[6]

1 In this paper, I use the terms 'obligation' and 'duty' interchangeably.

2 In political philosophy, see Simmons, "The Duty to Obey and Our Natural Moral Duties"; and Wolff, *In Defense of Anarchism*. In legal philosophy, see Green, "Law and Obligations"; Murphy, *What Makes Law*, 109–43; and Raz, *The Authority of Law*.

3 For consent, see Locke, *Second Treatise of Government*. For fairness, see Hart, "Are There Any Natural Rights?" 175. For natural duties of justice, see Rawls, "Legal Obligation and the Duty of Fair Play"; and Waldron, "Special Ties and Natural Duties." For associative obligation, see Dworkin, *Law's Empire*, 195–216; and Scheffler, "Membership and Political Obligation."

4 Green, "Law and Obligations," 539; and Murphy, *What Makes Law*, 133.

5 Although I am lumping citizens and officials together here, I will return below to at least some potentially relevant differences between them.

6 Making a practical difference is compatible with that difference not being sufficient for determining the outcome of deliberation or what the agent has all things considered reason to do.

In other words, these citizens and officials believe in the truth of what we could call the *real practical difference thesis* (RPDT). According to the RPDT, the fact that law mandates (or prohibits) a behavior makes, in and of itself, a significant difference regarding what the agent should do.[7] For those who believe that the RPDT is true, the prescriptions of the legal system to which the RPDT applies make an important difference in their practical deliberation, simply because they are the prescriptions of the legal system. The RPDT thus posits that the mere mark of legality (or illegality) makes an independent practical difference in favor of (or against) the regulated behavior, independently of the substantive content of the law and prudential considerations.

The question is whether the individuals who believe the RPDT is true could be right even if skepticism about a general duty to obey the law is warranted.[8] My answer will be a qualified yes. As I will argue, individual agents can have genuine reasons to conform to legal prohibitions or prescriptions because of their commitment to law.[9] More specifically, an agent's commitment to law can generate a reason in favor of their doing what the law requires, with a certain independence from law's content and the sanctions threatened in cases of noncompliance. Thus, whether law makes a content-independent, sanction-independent normative difference depends, at least in part, on whether individuals have adopted a commitment to law.[10] While this commitment might be

7 The RPDT is based on the practical difference thesis—namely, "the claim that, in order to be law, authoritative pronouncements must in principle be capable of making a practical difference: a difference, that is, in the structure or content of deliberation and action." Coleman, "Incorporationism, Conventionality, and the Practical Difference Thesis," 383.

8 A recent similar attempt (published after this paper was submitted for review) to find a middle ground between these two positions, also relying on the notion of commitment, can be found in Valentini, *Morality and Socially Constructed Norms*. I engage with Valentini's suggestive argument in section 2.5 below.

9 The question about how law can generate reasons for action has been the focus of recent legal and political philosophy. The question, for those who have addressed this issue, is whether—and under which conditions—the law can generate reasons for action directly, rather than merely manipulate the circumstances to trigger preexisting reasons. My focus here is not, however, law's ability to generate reasons on its own (I assume it does not) but rather its practical impact given the existence of agents' commitments. See Enoch, "Reason-Giving and the Law"; and Monti, "Against Triggering Accounts of Robust Reason-Giving."

10 An important caveat: on some views, our desires, inclinations, and attitudes never (or rarely) generate genuine reasons for action in and of themselves. See, e.g., Scanlon, *What We Owe to Each Other*, ch. 1. For anyone who adopts this starting point, my argument will initially seem unpersuasive because it rests precisely on the idea that our attitudes can indeed have such normative impact. All I can ask of readers who would adopt such a starting point is to entertain my argument with an open mind for now. I doubt the argument will lead readers who are deeply committed to this starting point to revise their

explained by a variety of considerations, as I will argue, compliance with the rule of law is an important reason (particularly in societies characterized by substantive moral disagreement) why individuals have reason to, or at least might, make such commitment.[11] Thus, belief in the RPDT need not rest on a mistake.[12]

One important caveat. The RPDT is somewhat less committal than the proposition that there is a duty to obey the law. It invites us to ask a simpler question: whether the law can make a significant practical difference, independently of its content and of the sanctions threatened for its violation. This question is, in principle, compatible with seeing that impact in terms of ordinary reasons; of particularly weighty reasons that might not be conclusive; or even (in certain cases) of obligations, understood as exclusionary or protected reasons. I will have more to say about how commitments relate to these different forms of practical impact below. But the central concern of the paper is how commitments allow law to make a practical difference—not the specific form of that difference, which, as I will explain, might vary from individual to individual.

Here is a road map. Section 1 introduces the value of legality (or the rule of law) as the specific virtue of law and explains why it is insufficient to ground, by itself, law's practical impact. Section 2 argues that agents who believe in the truth of the RPDT are still not necessarily mistaken. Their belief in the RPDT might be vindicated given the existence of a (permissible) commitment to law. Moreover, the value of legality is a central reason why agents ought to adopt such a commitment. Section 3 addresses three potential objections. Section 4 offers some concluding remarks.

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entire conception of practical reason. But revising their deeply held views about practical reason is in fact not necessary because the practical impact of commitments can itself be grounded in general, agent-neutral reasons, as I will explain below. In the meantime, these readers can approach this paper in the spirit of conditional exploration: if it were the case that our attitudes can impact our reasons for action, our commitments to law could ground reasons to act in accordance with law. For my argument as to why commitments can indeed have this impact even if one does not believe that attitudes and desires generate reasons in and of themselves, see section 2.2.1 below.

11 Compliance with the rule of law is not binary but a matter of degree. In this respect, I follow Raz, "The Rule of Law and Its Virtue," 211, 215.

12 I articulated a version of this idea in embryonic form in Jiménez, "Law, Morality, and the One-System View." As we will see below, the notion of a commitment is similar in spirit and orientation to multiple ideas that are present in the literature about law's practical impact. These ideas include arguments based on consent, respect, and dispositions. I aim to bring out what to my mind is the common insight underlying these different views, without the drawbacks that—as I will explain—affect them.

1. Legality

1.1. The Value of Legality

Legality is the particular virtue that characterizes legal systems that are virtuous *as* legal systems. The virtue of legality, as I understand it, is realized through compliance with the formal idea of the rule of law and the main desiderata comprised by that idea, such as publicity, nonretroactivity, consistency, congruence, and stability.[13] As the rule of law tradition argues, governance by law is morally better—both in its instrumental efficacy and in its respect for human autonomy—when it complies with the formal requirements of the rule of law, independently of the substantive content of the particular norms of the legal system.

This is a formal conception of the value of legality. The formal conception understands the rule of law as a purely formal virtue, characterized by the constraints mentioned above, and compatible with different substantive contents. In contrast, a substantive conception of the rule of law includes substantive elements (such as the protection of private property, democracy, economic justice, or human rights) as part of the idea of the rule of law.[14] I think (although I do not argue for this claim here) we are better off separating the rule of law from other political ideals, and hence take the rule of law to be a purely formal virtue. This formal conception is undoubtedly a contested view about the value of the rule of law. There is much that could be said about the issue, and about why this relatively thin and formal conception of the rule of law is attractive even though it is compatible with some forms of substantive injustice.[15] A full defense of this view would require a separate paper (and more).[16] So instead of offering a full argument for it, I will take the correctness of the formal view for granted. This assumption avoids a too easy and direct vindication of the RPDT

13 See Fuller, *The Morality of Law*; Raz, "The Rule of Law and Its Virtue"; Waldron, "Does Law Promise Justice?" and "The Concept and the Rule of Law," 6.

14 See Waldron, *The Rule of Law and the Measure of Property*, 1–75.

15 On formal and substantive conceptions of the rule of law, see note 11 above.

16 There are many grounds on which one could articulate why this formal conception is preferable to a more demanding and substantive one. In my view, one clear advantage of the formal conception is conceptual clarity: the rule of law is, as Jeremy Waldron puts it, only one star in our constellation of political values. The formal conception clearly separates the value of the rule of law from the values of democracy, human rights, efficiency, and the protection of private property. See Waldron, *The Rule of Law and the Measure of Property*. But there are other criteria in virtue of which one could articulate the advantages of the formal conception. For example, continuity between our treatment of law and our treatment of other kinds subject to internal standards of evaluation might count in favor of the formal conception. For recent discussion of the rule of law in terms of the continuity between law and other goodness-fixing kinds, see Atiq, "Law, the Rule of Law, and Goodness-Fixing Kinds."

via the value of a richer, substantive, and more ambitious conception—as we will see in the next subsection. But it also allows us to explore whether we can vindicate the RPDT in relatively well-ordered legal systems (namely, those that comply with the formal conception of the rule of law) that are still somewhat deficient from the perspective of other values, such as democracy, human rights, or distributive justice. This, I take it, is a relatively common situation in many contemporary liberal and broadly democratic legal systems. A vindication of the RPDT for this type of situation seems more practically significant than a similar vindication for ideally just legal systems.

The rule of law (understood formally—a qualification I drop henceforth) is thus different from other moral norms to which legal systems should ordinarily conform. It refers to a set of standards that most (or perhaps all) functional legal systems realize to some degree and—all else being equal—ought to realize as much as feasible, *because* they are legal systems.[17] Given that legality is just one value, it is consistent with law being defective along other morally significant dimensions.[18] Precisely because of its compatibility with moral deficiency, it is worth asking why we should think that the rule of law is morally valuable. The rule of law does not guarantee justice or a flourishing society. It does not guarantee equality. It is compatible with certain forms of oppression.

An important part of the value of the rule of law, however, is its distinctive contribution to the achievement of justice and equality, the flourishing of society, and the avoidance of oppression. That contribution is not (or at least not directly) substantive. It is instead adverbial.[19] The value of the rule of law is not about what we do through law but the way in which we do it. The rule of law allows the complex political communities we inhabit, where people disagree about political morality, to be bound by predictable standards that allow for social coordination. This allows, in democratic systems, political communities to speak—as much as the circumstances of politics allow—with one voice, even if that voice is not quite the voice of (any specific conception of) justice.[20] It also allows individuals, even in nondemocratic systems, the space to plan their affairs and to know what is coming their way, even when what is coming their way is not the application of a rule they agree with.[21]

In response to this line of thought, particularly when it comes to nondemocratic systems, one might argue that compliance with the minimal formal

17 Gardner, "The Legality of Law," 192.

18 Raz, "The Rule of Law and Its Virtue."

19 See Gardner, "The Supposed Formality of the Rule of Law," 211.

20 See generally Waldron, *Law and Disagreement*.

21 See Raz, "The Rule of Law and Its Virtue."

requirements of the rule of law are purely instrumental: they are necessary for law to function *as law*, no matter how benign or evil the content of the law and the motivations of legal officials.[22] Perhaps so. It is certainly possible (and, in fact, a recurrent reality in regimes of autocratic legalism) for compliance with the rule of law to exist alongside injustice and oppression. Even in these cases, though, a regime that complies with the rule of law secures a minimal degree of respect for dignity (no matter how unintended and antithetical to the other features of the legal regime). That respect is evinced in how legal requirements are publicly presented, in how their procedures allow for argument, in how they present people with choices and opportunities for self-application, and so on.[23] The idea is that even morally deficient laws can be presented, implemented, and enforced in more or less morally decent ways, and the rule of law is concerned with the latter rather than the former set of moral concerns.

This is all familiar, given the long tradition of thought about the rule of law as a political ideal.[24] As that tradition emphasizes, a legal system that complies with the rule of law has something (morally) going for it, because of the moral value of compliance with these procedural and formal requirements. That compliance is necessary, even if not sufficient, for exercises of legal authority to be consistent with a minimal degree of respect for human agency.[25] A legal system that complies with the rule of law, thus, satisfies at least one moral standard that can be used to evaluate law—in fact, the basic moral standard to which law is subject as a specific mode of governance, and one on which people with good faith disagreements about substantive moral and political values can nevertheless agree. The question is whether this formal virtue is sufficient to directly vindicate the RPDT.

1.2. From Legality to Obedience?

One possibility in this regard would be to claim that the rule of law directly grounds the RPDT. In his reconstruction of Hobbes and Bentham, Dyzenhaus writes: "In Hobbes and Bentham it is the legitimating theory of legal order that transmits … normative force to the determinate content of positive law."[26] We could be tempted to vindicate the RPDT through an analogous argument. Under this argument, a legal system that complies with the demands of the rule

22 For an argument along these lines, see Kramer, *Objectivity and the Rule of Law*, 102–3.

23 See Waldron, "How Law Protects Dignity."

24 See Burgess, "Neglecting the History of the Rule of Law."

25 Raz, "The Rule of Law and Its Virtue," 221. See also Rawls, *A Theory of Justice*, 241.

26 Dyzenhaus, "The Genealogy of Legal Positivism," 57–58. For a similar reconstruction of Hobbes with some connections to the account offered here, see Horacio Spector, "Legal Reasons and Upgrading Reasons."

of law, and therefore has value, transmits this value to its specific prescriptions, making them genuinely normative.[27]

There is something attractive about the simplicity of this potential argument. But it moves too quickly from the value of the formal features of a legal regime to a substantive conclusion about individuals' reasons for action. Compliance with the rule of law does not entail that the law's prescriptions ought to be obeyed, full stop.[28] It also does not entail the weaker proposition—in which we are interested here—that law gives us content-independent reasons for action. In simple terms, it seems implausible that we could have a reason to commit moral wrongs simply because the legal system (which, we are assuming, complies with the rule of law) makes such wrongs legally obligatory. We should resist this overvaluation of the legal status of a norm, even when the legal system complies with legality.[29]

An obvious response here might be the following. One could say that the law's compliance with legality merely generates *pro tanto* reasons. If the substantive content of what the law requires is plainly morally wrong, the *pro tanto* reason provided by compliance with legality will be outweighed by the substantive wrongness of the required behavior.

There are three problems with this reply. The first is that, arguably but plausibly, reasons retain their force even when they are outweighed.[30] While acting against an outweighed reason is rational, it is still acting against how one should have acted from the perspective of that reason. It seems to me there is something odd about the idea that, merely because law complies with the demands of the rule of law, we could have reasons to commit moral wrongs that are merely outweighed.[31] It seems much more plausible to deny that law can have that impact on what we have reason to do merely because it complies with the formal demands of the rule of law. The concern is not that a given reason might or might not be outweighed but that there is no such reason in the first place.

Here is one way to think about why there might not even be a reason to be outweighed in the first place. If the reason generated by law's compliance with the rule of law has at least some weight, in some cases it will not be outweighed even though compliance with the law seems ridiculous and simply uncalled for. For instance, imagine a law that states that "every morning, after waking up,

27 For an exploration of an argument along these lines, see Walton, "Lon L. Fuller on Political Obligation."

28 See Waldron, "The Concept and the Rule of Law," 42.

29 See Hart, "Positivism and the Separation of Law and Morals," 618.

30 Gardner and Macklem, "Reasons," 464.

31 For an explanation, see Gur and Jackson, "Procedure–Content Interaction in Attitudes to Law and in the Value of the Rule of Law," 129–33.

each person over the age of eighteen shall touch their nose three times." If the response were right, those governed by this law would have reason to touch their nose three times every morning, independently of any prospect of sanctions.

An additional problem is that a derivation of the RPDT from the value of the rule of law is too undifferentiated: it applies in the same way, generally and across the board, to everyone subject to the legal regime. Yet not everyone is equally situated vis-à-vis the legal system. There are differences between ordinary citizens and legal officials, as well as within these categories—differences that are directly connected to the goods produced by compliance with the rule of law—that a general connection between legality and the RPDT that aimed to vindicate the RPDT as a general matter would simply ignore. The goods produced by the rule of law—such as certainty and predictability—are not equally distributed between, for instance, well-off investors and poor migrant workers.[32] This is not to say that the goods produced by the rule of law are irrelevant to the latter. The claim is simply that a general connection between compliance with the rule of law and the RPDT would posit such a connection for all individuals without considering the impact of these important differences on the force and scope of that connection for each specific agent. Thus, we should reject the idea that mere compliance with the rule of law makes a general, content-independent, sanction-independent difference regarding what *all* agents should do.

Perhaps a different possibility would be that the *pro tanto* reason provided by compliance with the rule of law, in these cases, is not outweighed but rather undercut, silenced, or some such.[33] The claim would not be that the injustice of a particular law might outweigh the reason to act according to law; rather, when it obtains, injustice makes it the case that what would otherwise be a reason is not a reason after all.[34] In these cases, the reason does not retain its rational force, and we would not have (even an outweighed) reason to commit a wrong. This modified claim, however, gives up the argument: through the idea of undercutting, the argument accepts that the rule of law cannot generate a general reason to act consistently with the law, precisely because in specific cases the reason will simply not exist as a reason.

Still, this argument might be too fast. I might have a general reason to spend my salary on records, the relevance of which *as a reason* in any given occasion is determined upstream by some other reason—say, my reason to be a good

32 See section 3.1 below.

33 There might be differences between reasons being undercut or silenced. For my purposes, though, what matters is the idea that reasons are not being outweighed by conflicting considerations but rather that, at a previous level, injustice makes it the case that the *pro tanto* reason does not even count as a reason.

34 See Schroeder, "Holism, Weight, and Undercutting," 334.

parent and provide for my child's basic necessities.[35] Being a good parent, on this view, makes it the case that my general preference for vinyl records ceases to have any role as a normative reason in certain cases. By analogy, perhaps the injustice of a rule makes it the case that the legal system's compliance with the rule of law fails to generate any reason in such cases, even though it might play a role more generally.

So stated, a general connection between compliance with the rule of law and a general, *pro tanto* reason that can be silenced in cases of injustice might exist. In other words, while I have certain doubts, this weaker connection is certainly possible. But, stated in this way, the connection is not of the right kind. The reason for this is that this weak connection between compliance with the rule of law and *pro tanto* reasons that can be silenced in cases of injustice does not amount to vindicating the RPDT. Recall here that the RPDT amounts to the idea that legal prescriptions make a significant difference regarding what the agent should do, and the mere legal status of a certain behavior makes an independent practical difference in favor of (or against) the regulated behavior, independently of the substantive content of the law and of prudential considerations. The weak connection we are discussing does not vindicate the idea that legal prescriptions make a *significant* difference *independently of the content of the law*. On the contrary, it states that the difference that law makes and its practical significance (its very operation as a reason for action) disappear or are silenced in cases of injustice. In this way, this argument would make law's practical difference contingent on questions of content.

This leaves us with two general ideas. First, law is valuable when it complies with the rule of law. Second, law cannot *by itself* make a genuine practical difference merely because it complies with the rule of law. The issue is that at least some—and perhaps many—people (and not just lawyers), even in moderately unjust societies, believe that law does make a practical difference. The concern is not simply that individuals routinely state the content of the law by making formally normative statements, but that at least some of them, in fact, seem to see the *oughts* of the legal system as genuine and binding *oughts*, particularly when the relevant system complies with the rule of law.[36]

35 See Scanlon, *What We Owe to Each Other*, 52–53.

36 This is a falsifiable empirical claim, of course. But it strikes me as a plausible hypothesis and, as such, one we are warranted to take as true unless (and until) there is significant and reliable empirical evidence to the contrary. For the observation that people routinely state the content of the law by making formally normative statements, see Hart, *Essays on Bentham*, 144–45. As Raz notes, it is possible to make statements about legal obligation and prohibition in a detached way, without endorsing the law's claims. Raz, *The Authority of Law*, 303–12. See also Gardner, "Nearly Natural Law," 160.

It is true, as legal positivists claim, that one can account for these attitudes while remaining agnostic about the question of whether law is genuinely binding. While legal statements traffic in the language of 'duty', 'obligation', 'wrong', 'right', 'and 'ought', these normative statements are not necessarily genuine *oughts*.[37] It is certainly true that in any functional legal system many individuals will adopt what Hart called the internal point of view and treat these legal *oughts* as reasons for action.[38] But under this framework, whether the legal regime generates genuine reasons for action is always an open moral question.

The question for us is not just whether people treat law as providing them genuine reasons—both Hart's internal point of view and the fact of people's belief in something like the RPDT tell us as much. Rather, the question is whether this attitude is something we can rationally vindicate, at least under certain conditions. From this perspective, the mere observation that some (or many) citizens and legal officials adopt the internal point of view is insufficient. The adoption of an internal point of view—or to put it in more theoretically neutral terms, the treatment of legal norms as reasons for action—is compatible with those who adopt it being simply mistaken.

Perhaps a possibility here would be to attempt to vindicate the semantics of legal propositions and the attitudes of those who adopt the internal point of view *directly*, by arguing that, as recent nonpositivist theorists like Hershovitz and Greenberg would argue, legal obligations are just moral obligations, or the moral obligations generated by the actions of legal institutions.[39] That path is perhaps plausible, particularly for those already committed to a nonpositivist view about the nature of law. But it is not without difficulties. For starters, the nonpositivist view might simply not be the right view about the nature of law. Note too that, just like statements of legal obligation could be detached and avoid any expression of acceptance or commitment to the norms of the legal system, so too for statements of moral obligation: they need not reflect an acceptance of, or commitment to, any particular conception of morality or set of moral norms. Claims of legal obligation could be (as a nonpositivist would have it) claims of moral obligation, but these claims might be detached. They might be *assuming* or *simulating* acceptance of a set of moral norms.[40] Because of these considerations, here I want to pursue a different and more

37 Murphy, *What Makes Law*, 111–12.

38 Hart, *The Concept of Law*, 56–57, 88–90.

39 Greenberg, "The Moral Impact Theory of Law"; and Hershovitz, "The End of Jurisprudence."

40 See Raz, *Practical Reason and Norms*, 172–73; and Toh, "Legal Judgments as Plural Acceptance of Norms," 110–11.

ecumenical route that does not turn on any contested views about the nature and the grounds of law.

1.3. A Different Strategy

My strategy to vindicate the RPDT will attempt to preserve the idea that there might be a connection between the value of legality and the normative effect of legal norms. But it will do so in a way that avoids the implication that all citizens and officials might have reason to commit moral wrongs merely because of the law's compliance with the rule of law. According to the view I will articulate, the connection between the value of legality and law's practical difference is mediated by agents' commitments. While the value of legality is not sufficient to directly generate reasons for complying with law, it can give agents a reason to adopt commitments that ground law's practical difference.[41] I start to explore the notion of commitment to law in the next section, and then move on to explain why the value of the rule of law might be a reason in favor of adopting such a commitment.

The approach I will follow is more charitable towards the ordinary individuals and legal officials who believe in something like the RPDT than an error theory. At the same time, my strategy avoids the implausible implications of a direct inference from the rule of law to the RPDT.[42]

41 Nothing I say here excludes the possibility that other facts and values (such as democratic authority, the value of cooperation, or the value of special relationships) might also constitute reasons for adopting a commitment to law.

42 I am not the first to suggest that law's practical impact might be mediated by agents. Noam Gur has made a similar argument from the perspective of agents' dispositions (*Legal Directives and Practical Reasons*). However, there are a few important differences between Gur's account and the view I will articulate. First, Gur focuses on dispositions rather than commitments. Second, on Gur's account, these dispositions are partly explained by their ability to operate as a protection against biases in decision-making. Third, Gur's model rejects the possibility of law having an exclusionary dimension. Fourth, on Gur's account, agents have a reason to adopt certain attitudes of law-abidingness only when society is reasonably just and well ordered. Finally, while for Gur, agents' dispositions follow from normative reasons, whether they generate not just motivational reasons but also normative reasons for action is an open question. In contrast, the focus of my account is the idea of a commitment to law. The role of such a commitment is not explained, unlike Gur's account of dispositions to obey the law, by the need to overcome defects or biases in practical reasoning. Under my view, as I will explain below, the effect of a commitment can be exclusionary. Moreover, commitments can be based on multiple reasons, and while agents ought to make them when the law complies with legality, they are always compatible with society being unjust. Finally, on my account, commitments can generate genuine normative reasons for action. While different in content and structure, the two approaches are different ways to flesh out similar intuitions. The argument offered here attempts to preserve the attractive features of Gur's argument while going beyond its limitations. For

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There are different degrees to which a legal system might fail to comply with the moral demands that bear upon it. Perhaps there is no way to get from the law of a systematically unjust legal system that routinely violates the rule of law to something like the RPDT.[43] But a legal system might be merely somewhat unjust. For example, a legal system's tax system might not fully realize the demands of distributive justice. It might give certain people more than their fair share and unjustly deprive others of what they are entitled to. But this system might still get us closer to justice than at least some of the other existing feasible alternatives, or it might not make things worse than leaving the results of market interaction untouched. Or, to think about a different case, a legal system's regime of criminal punishment might generally sanction genuine wrongs in a proportionate manner, through appropriate and fair procedures, but might nevertheless contain some norms that criminalize conduct that is not wrongful or might condone certain minor forms of police violence that should not be allowed.

These are precisely the situations we have been considering: cases of a legal regime that complies with the rule of law in general, even though some of its norms are unjust and the legal system is therefore somewhat deficient from the perspective of justice. In these circumstances, perhaps it would be at least permissible for individuals to adopt certain attitudes towards the law that give legal mandates a practical impact. Joseph Raz offered an early version of this idea: "Respect is itself a reason for action. Those who respect the law have reasons which others have not. These are expressive reasons. They express their respect for the law in obeying it, in respecting institutions and symbols connected with it, and in avoiding questioning it on every occasion."[44]

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a recent critique of Gur's view, see Vassiliou, "The Normativity of Law." Mark Murphy has also offered an argument from a natural law theory perspective, with a similar structure to the one offered here ("Natural Law, Consent, and Political Obligation"). Under Murphy's argument, the law specifies the requirements of the common good, and any citizen could reasonably treat those specifications as authoritative, accepting them as his or her own views about what the common good requires for the sake of practical reasoning. This would thus allow for a role for what Murphy characterizes as *consent* that is in line with the natural law tradition's emphasis on the nonvoluntaristic aspects of the duty to obey the law. Here, the differences are even more obvious than with Gur's account. First, Murphy's argument is based on a substantive evaluation of the content of the law, in connection to its realization of the common good. My argument is more content neutral. Second, he characterizes the citizen's attitude as one of consent, which I think makes the argument liable to some of the issues I identify in section 3.3 below as problems for consent views—problems that the notion of commitment avoids.

43 See Valentini, *Morality and Socially Constructed Norms*, 169.

44 Raz, *The Authority of Law*, 259.

Respect, then, might potentially vindicate the RPDT. The idea of respect is attractive on several additional levels. First, it sees individuals as the source of law's practical difference, without artificially stretching the idea of consent.[45] Second, because it does not focus on consent, the idea of respect can also explain how the relevant attitudes do not require identifying specific communicative acts at specific times. Third, respect preserves the ideas that underlie and perhaps explain the attraction of consent—particularly, the notion that we as individuals can be the authors of part of our moral world.[46]

Still, I am not sure the notion of respect is quite right. Respect might change agents' deliberation and their reasons. But an attitude of respect is compatible with a very limited practical impact and with a relatively indifferent and detached stance. Respect is merely an attitude of regard and deference. For instance, I can respect your religion (say, by not mocking it) even though I believe it is false, and I can respect any religious authority (say, by addressing a Catholic priest as "Father") even though I think the belief system that supports that alleged authority and its claims is false, and that the dictates of the alleged authority fail to give me any reasons for action. Similarly, it seems plausible to think that I can respect legal officials or even a legal system, even though I think the law is unjust and lacks any moral authority. But if that is the case, respect seems to generate a limited practical impact. Moreover, it seems to me that the notion of respect does not quite fit the attitudes of the law-abiding citizens and officials I have in mind—which seems to reflect a more active attitude, with stronger implications. Because of this, I will resort to a different notion, which nevertheless has certain resemblances to Raz's notion of respect and, more importantly, shares its underlying motivation: the idea of commitment.

2.1. Commitment

A commitment is an individual determination meant to govern the agent's future behavior.[47] Through the adoption of a commitment, agents give themselves reasons to act in certain ways in the future.[48] Our commitments thus change what we have reason to do. What this means is somewhat ambiguous, and I will disambiguate it below.

45 Raz, *The Morality of Freedom*, 97.

46 Raz, *The Morality of Freedom*, 98.

47 Rubenfeld, *Freedom and Time*, 92. See also Shpall, "Moral and Rational Commitment," 154. There are several possible conceptions about the structure and normative force of commitments. The account I offer here is just one possible (yet hopefully plausible and ecumenical) conception that attempts to capture a familiar set of normative phenomena.

48 Lieberman, *Commitment, Value, and Moral Realism*, 5; and Rubenfeld, *Freedom and Time*, 125.

A commitment is a voluntary engagement.[49] But not all commitments are equally voluntary or choice dependent.[50] In fact, in certain cases it might not be possible to single out the specific moment when a commitment was adopted. Individuals might come to be committed in a slow and incremental manner, as a consequence of social influence, acculturation, critical reflection, and so on.[51] Thus, voluntariness plays a significant role in the explanation of how commitments come about and subsist—but voluntariness does not mean that all commitments arise as the consequence of specific, identifiable voluntary choices. Commitments might in fact be based on reasons that agents come to appreciate and endorse without being fully able to articulate them at the outset.[52] A commitment might be the upshot of an incremental volitional process that slowly changes our priorities and values rather than of a discrete decision.

A commitment is, in the first instance, a personal phenomenon. *I* am committed to certain things—like relationships, projects, and institutions.[53] Unlike promises, commitments are personal also in the sense that they can be unilateral.[54] Because of this, a commitment can be made exclusively *in foro interno*.[55] Thus, a commitment—unlike, arguably, a promise—does not require uptake from any agent. When the agent fails to act consistently with the reasons generated by their purely internal commitment, no third party is wronged *simply* because the agent failed to abide by the commitment.[56] Relatedly, given and to the extent that a commitment is brought about by the agent unilaterally, it is always subject to the possibility of unilateral revocation.[57] The revocation might of course be all things considered wrong. But it seems to me it is

49 Shklar, "Obligation, Loyalty, Exile," 183–84.

50 Valentini, *Morality and Socially Constructed Norms*, 26. On different degrees of choice dependence, see Owens, *Shaping the Normative Landscape*, 3–6.

51 Chang, "Commitments, Reasons, and the Will," 79; and Valentini, *Morality and Socially Constructed Norms*, 90.

52 Ebels-Duggan, "Beyond Words," 624. To be clear, in these cases the commitment still generates new reasons for action (just like any other commitment), even though it is generated by the recognition of preexisting reasons in favor of the commitment.

53 Chang, "Commitments, Reasons, and the Will," 77; Valentini, *Morality and Socially Constructed Norms*, 25; and Williams, "A Critique of Utilitarianism," 112.

54 See generally Molina, "Promises, Commitments, and the Nature of Obligation."

55 This is in contrast to promises. See Watson, "Promises, Reasons, and Normative Powers," 158. Note that because I treat commitments as unilateral and individual determinations, I do not see them as a genus that includes species like promises. For that type of view, see Calhoun, "What Good Is Commitment?"; Gilbert, "Commitment"; and Shpall, "Moral and Rational Commitment."

56 Chang, "Commitments, Reasons, and the Will," 77.

57 Gilbert, *Joint Commitment*, 31.

never the case that revocation is wrong simply because it undoes a unilateral commitment.

This does not suggest that revocation is easy. Some commitments are very central to the agent's conception of themselves. Consider, for example, John's commitment to be a good Christian, or the Neapolitan football fan's commitment to SSC Napoli that echoes generations of fandom in their family. And even when they are not so central to the agent's conception of themselves, commitments are robust.[58] They exert a normative pull, even when the courses of action they would lead to are not optimal from the perspective of the agent's other existing reasons and preferences.[59] As a consequence, revoking a commitment is a significant and potentially difficult decision—it is not something one can simply do whenever a conflict between commitment-dependent reasons and our other reasons arises. And it is something that becomes harder the closer the commitment is to the agent's conception of themselves and their life project.

Commitments can certainly be changed, revised, and adapted over time. But not all commitments are equally susceptible to change. Some commitments, by their very specific nature, might be stable in content. For example, my commitment to be a vegetarian cannot be revised to admit certain forms of animal meat without ceasing to be a commitment to be a vegetarian. By the same token, a general commitment to law cannot be revised to admit certain forms of lawbreaking without ceasing to be a general commitment to law.

This takes me to the question about the scope of the specific commitments I am interested in here. A commitment to law is not a retail, specific commitment to a particular norm of the legal system. It is a commitment to the entire legal regime as a system of governance, and therefore a commitment that extends, in principle, to all the norms of that legal system. Thus, the type of commitment to law we are focusing on is not a decision to treat specific laws as giving us reasons—it is a general attitude towards law as such, which gives practical significance to its specific norms.[60] A commitment to law is a commitment to treat its mandates as genuine reasons for action as they arise, as a general matter.[61] This type of commitment is, of course, compatible with these reasons being overridden in some situations. And to be clear, nothing prevents an

58 Calhoun, "What Good Is Commitment?"; and Valentini, *Morality and Socially Constructed Norms*, 25–26, 89.

59 Bratman, "Time, Rationality, and Self-Governance." For a similar point regarding dispositions to comply with the law, see Gur, *Legal Directives and Practical Reasons*, 136.

60 For an interpretation of Plato's *Crito* along similar lines, see Gowder, "What the Laws Demand of Socrates."

61 There is a suggestive analogy here between commitment to law and a commitment to acting as a moral agent. See Shiffrin, "Moral Overridingness and Moral Subjectivism," 787.

agent from adopting a *partial* commitment to certain areas of law, to the norms issued by specific legal officials, or even to specific norms. These types of partial commitments, while conceptually possible, are just not the phenomenon I am interested in here.

These cursory remarks give us the bare bones of the idea of a commitment to law. They tell us that commitments are individual, voluntary determinations that are unilaterally revocable yet robust. Finally, as we have also seen, the commitments to law we are interested in are not retail.[62] All of this leaves open the most important and pressing questions regarding commitments: why they give law a practical impact, what that practical impact entails, and the connection between commitments' practical impact and the reasons that might explain why we should, or at least might, commit to the law in the first place—including, particularly, the legal system's compliance with the rule of law.

But before I get to these issues, I should note a potential concern. By attempting to vindicate the RPDT by connecting it to agents' commitments, am I not simply delaying the puzzle?[63] The initial worry was that many agents seem to believe in the truth of something like the RPDT, but the standard arguments for a duty to obey the law do not seem to successfully vindicate that belief. And my strategy is to suggest that agents' commitments might be able to come in handy for that purpose instead. But then we seem to need to vindicate the beliefs that lead agents to make these commitments (and, plausibly, these beliefs are precisely beliefs about reasons to support the law). The original problem is replicated, but at a different level: now it is a problem of vindicating not agents' beliefs about their reasons for action but rather the beliefs that lead them to adopt the commitments that generate such reasons. We still need to vindicate a belief or attitude, and all I am doing is changing the content of the belief or attitude to be vindicated.

This objection, however, ignores that there is an asymmetry between nonvoluntarist reasons and reasons generated by commitments. As I will explain, as long as they are not impermissible, commitments generate reasons for action. Once we are above the threshold of permissibility, we do not need to evaluate the reasons in favor of a commitment to ascertain its normative impact. While claims about nonvoluntarist reasons—which is how the claims involved in the RPDT are standardly treated—can be vindicated only by showing that the reasons do in fact exist, claims about commitment-based reasons can be vindicated merely by pointing to the existence of a permissible commitment. Just

62 Whether any individual agent has adopted a commitment to law is a complex question—and reasonable people would disagree about the factual conditions under which a commitment has been adopted, when it no longer obtains, and so on.

63 I thank an anonymous reviewer for prompting me to address this concern.

like in the cases of analogous phenomena like promises and—arguably—plans, one can derive reasons from the existence of a commitment directly.[64] This means that, once an agent has made a permissible commitment to law, this directly vindicates the RPDT. We do not need any awareness of the reasons for the commitment itself, and we do not need to vindicate any such reasons (even if we can point to some reasons that count in favor of a commitment, including the legal system's compliance with the rule of law). The permissible commitment is sufficient. I turn to the explanation for the practical impact of commitments in the next section.

2.2. Commitments, Agency, and Practical Impact

2.2.1. Commitments as Normative Powers?

Commitments change the reasons we have. As Ruth Chang argues, a commitment generates reasons (to have certain attitudes and to engage in certain actions) that would not exist in its absence.[65] A commitment to law, thus, gives law a genuine practical impact—even if such impact is something the law would otherwise lack—making the RPDT true for those who are committed. While there might be many other reasons why law has a genuine normative effect, a commitment generates a content-independent, sanction-independent impact—which can be understood as a reason to act consistently with law simply because it is the law. This effect is compatible with, and can reinforce, reasons, considerations, and undertakings that are also effective at giving law a practical effect (consider, for instance, oaths by judicial and other public officials).[66]

Because of this, we can think of commitment as a type of *normative power*—an ability to "reflexively will that some consideration be a reason, where that willing is that in virtue of which the consideration is a reason."[67] Our own wills would, on this view, be a source of normativity.[68]

64 And if a commitment can be permissible even if a legal regime is moderately unjust, as I will argue below, when individuals have adopted such a commitment, one can vindicate the RPDT even in the case of moderately unjust legal regimes.

65 Chang, "Commitments, Reasons, and the Will," 74. While Chang accepts that some reasons can be created by agents' commitments, she limits this to cases where other reasons run out (104).

66 Here, I depart from Chang's analysis.

67 Chang, "Do We Have Normative Powers?" 292.

68 Chang, "Voluntarist Reasons and the Sources of Normativity," 244–45. Commitments play this normative role, according to Chang, only when our nonvoluntarist reasons for action have run out. Unlike Chang, I believe commitments to law can give law a normative impact even if nonvoluntarist reasons haven not run out.

Why would commitments have this normative impact? To my mind, the explanation is connected to the value of autonomous agency. The ability to adopt certain commitments that impact our reasons for action is central to that form of agency.[69] Our life as autonomous agents comprises the embrace of goals, projects, values, and commitments that give shape to our life, making that life our own because it is, at least in part, rationally dependent on our inclinations and attitudes.[70] As Raz puts it, a person is significantly autonomous when they can shape the trajectory of their life by, among other things, adopting certain commitments that allow them to be "part creators of their own moral world."[71] More specifically, the value of autonomy explains why agents can change their reasons for action through their own attitudes (including their commitments).[72] If we see human agents as autonomous agents, then we must also see them as being able to change their reasons for action in this way: to be able to create, throughout their life and through the adoption of commitments, new values and reasons they would otherwise lack.[73] Treating ourselves and others as autonomous beings, in this way, entails seeing ourselves and others as able to make commitments, because the making of these commitments and the shaping of our practical deliberation by them are particularly important ways in which we can lead autonomous lives. On this view, the idea of agential autonomy explains why commitments can generate reasons for action.

The notion that our commitments to projects, people, ideas, and institutions make a difference to what we have reason to do is central to the idea of ourselves as autonomous agents.[74] Consider the case of a commitment that is neither impermissible nor required: a merely permissible commitment, such as my commitment to build a treehouse for my son. After I made the commitment (even if I never communicated that commitment to my son), I have a commitment-based reason to build the treehouse, and to take the appropriate steps to do so. Third parties, if they knew of my commitment, would agree with the

69 I assume here, but do not argue, that autonomy is indeed valuable. I hope (and expect) this is not a too contentious assumption.

70 Raz, *The Morality of Freedom*, 387.

71 Raz, *The Morality of Freedom*, 154.

72 Raz, *The Morality of Freedom*, 386.

73 Raz, *The Morality of Freedom*, 387.

74 I do not think this is a particularly novel or original point. For similar claims, see Frankfurt, "Freedom of the Will and the Concept of a Person," 16–17; Nozick, *The Nature of Rationality*, 13; Taylor, "What Is Human Agency?" 25–27; and Williams, "A Critique of Utilitarianism." For a recent defense of this type of view (one, however, that takes the view to be more controversial than I do), see Chang, "What Is It to Be a Rational Agent?" 95–109. See also Valentini, *Morality and Socially Constructed Norms*, 90.

judgment that I have such reason. Note that the force of the example does not turn on the fact that it relates to another agent (my son). My commitment to pursue an academic career gives me reasons to do certain things that I would lack if I had adopted a commitment to become a corporate lawyer or a folk musician. Many of our permissible life projects, relationships, and personal activities have this type of structure.

This argument, importantly, does not require making any general contentious assumptions about the grounds of reasons for action or about the structure of practical reason. I am not claiming that all reasons for action are grounded in agents' dispositions, including their commitments. The idea that all reasons are explained by psychological states like desire is sometimes called the "Humean" view.[75] My argument so far requires no such view, and is perfectly compatible with the possibility of some reasons being independent from agents' attitudes, desires, and commitments, and applying to everyone irrespective of their specific attitudes, desires, and commitments.[76] All I am arguing is that at least *some* reasons are explained by one particular aspect of the motivational profile of agents (namely, their commitments), and might be specific to them.[77] And the underlying reason why that is the case is in fact impeccably agent neutral and nonpsychological (i.e., applicable to all agents irrespective of their attitudes, desires, and commitments, and based on the general value of autonomy).[78]

One final point is relevant here. There is a certain resemblance between this type of argument in favor of the normative impact of commitments and Seana Shiffrin's transcendental argument in favor of nonconventional promissory powers.[79] But while I think this type of argumentative strategy makes sense for vindicating the normative impact of unilateral undertakings for individual agents, I am more skeptical about its success for vindicating powers that generate correlative rights and obligations *between* agents, such as promise and consent.[80] In this latter type of case (although I do not aim to resolve this

75 See Schroeder, "The Humean Theory of Reasons."

76 See Schroeder, "The Humean Theory of Reasons," 204–5.

77 The idea that at least *some* reasons depend on features of persons' psychology and motivations is "largely uncontroversial" (Schroeder, *Slaves of the Passions*, 1).

78 In this sense, the explanation follows a similar structure to what Schroeder calls the "standard model" (which he rejects) for grounding reasons based on desires on general reasons that are independent from the motivations of agents. See Schroeder, "The Humean Theory of Reasons," 209–16, and *Slaves of the Passions*, 41–60.

79 See Shiffrin, "Promising, Intimate Relationships, and Conventionalism."

80 For an account of commitments as undertakings that generate directed obligations, see Molina, "Promises, Commitments, and the Nature of Obligation."

issue here), I believe it is at least plausible to think that such powers cannot exist in the absence of social practices and conventions that could make the relevant bilateral undertakings effective.[81] As we have seen, a commitment (in my sense) can be *in foro interno*, and does not require uptake, communication, or any interpersonal transaction or engagement—unlike promises and consent. It might be hard to see how a value like autonomy (or even all-things-considered value, as in Raz's argument) could explain the existence of powers whose efficacy at least arguably seems to turn on social practices and patterns of social recognition.[82] It is significantly easier, to my mind, to see how considerations about value might explain why we are able to voluntarily impact *our* reasons without any interaction with third parties.

With all of this, we can go back to the idea of commitments as normative powers. The idea of *normative powers* is itself ambiguous.[83] When by a *normative power* we simply mean to suggest the idea of a capacity to create reasons for action, then—again—commitments are indeed a normative power, explained, as we have seen, by the idea of agential autonomy. The idea of *normative powers* is a plausible model for thinking about the type of normative impact that the commitments of autonomous agents have on their own reasons for action.[84] But commitments are different, in important respects, from other normative phenomena that are usually included under the label of normative powers, such as promising and consent. By thinking of commitments as normative powers, we are not assuming that agents must have innate powers to generate directed obligations, and we do not need to take any position on questions about the grounds of promise and consent.

81 See Lewinsohn, "The 'Natural Unintelligibility' of Normative Powers"; and Murphy, "The Artificial Morality of Private Law." For further exploration of the conditions of social efficacy for normative powers, see Bruno, "Value-Based Accounts of Normative Powers and the Wishful Thinking Objection."

82 See Raz, "Is There a Reason to Keep Promises?" and "Normative Powers (Revised)."

83 See Raz, "Normative Powers (Revised)."

84 It is not in the nature of things that we *must* think of commitments or of other related phenomena in terms of the idea of normative powers—the category is not forced on us by the nature of normativity or practical deliberation. The use of the idea of normative powers for explaining moral phenomena, to my knowledge, started with Joseph Raz's reliance on the older idea of legal powers. See Raz, "Voluntary Obligations and Normative Powers." I am not the first to note this historical point. See, e.g., Lewinsohn, "The 'Natural Unintelligibility' of Normative Powers"; and Murphy, "The Artificial Morality of Private Law," 470.

2.2.2. *The Practical Impact of Commitments*

Still, presumably some commitments are not permissible. Of course, from a first-person perspective, the fact that I have adopted a commitment has a clear impact on the reasons I take myself to have. But from the perspective of the vindication of the RPDT, what should matter is not whether agents take themselves to have a reason to do as the law requires, but whether they *really* might have such reasons from a third-person perspective—or, framed differently, whether they *ought* to have such reasons.[85] The question concerns what philosophers sometimes call "normative reasons."[86]

Commitments can arise out of diverse reasons.[87] Some of them might be grounded in imperative reasons (i.e., commitments we ought to make), and they would, in my view, have a clear practical impact. They would generate genuine normative reasons and change what agents ought to do. The case of permissible commitments might seem a bit more dubious, but I do not think it is. Intuitively, if it is permissible for an agent to adopt certain attitudes, to engage in certain projects, and to assume certain commitments, then the agent's reasons can genuinely change because of them. For example, my permissible commitment to become a better drummer gives me reasons to do certain things that I would otherwise lack: to practice at least three times a week, to try to learn new techniques, and so on. It is of course possible that the genuine practical difference generated by permissible commitments is weaker than that generated by commitments explained by imperative reasons. Nothing I say here precludes that possibility.

The case of impermissible commitments is more difficult. It is certainly plausible to think that these impermissible commitments do not have a genuine impact on what agents ought to do. In this respect, impermissible commitments might be similar to evil promises: both might fail to generate any reasons.[88] Others might be tempted by a less stringent position, according to which, for instance, a mafioso who makes a commitment to the mafia would indeed have reasons to express respect to the head of the mafia, to engage in

85 These are two different ways of framing the same substantive point. The first adopts an externalist position about reasons; the second adopts internalism. On internalism and externalism, see Finlay, "The Reasons that Matter"; Manne, "Internalism About Reasons"; Markovits, "Why Be an Internalist About Reasons?"; and Williams, "Internal Reasons and the Obscurity of Blame" and "Internal and External Reasons."

86 Enoch, "Reason-Giving and the Law," 15; and Schroeder, *Slaves of the Passions*, 11–12.

87 Valentini, *Morality and Socially Constructed Norms*, 91.

88 Watson, "Promises, Reasons, and Normative Powers," 167.

certain rituals, as well as to do hideous things, such as killing and hurting others.[89] Other intermediate positions are plausible too.[90]

We can nevertheless leave these complex issues aside here, because impermissible commitments are a distraction from our core concern: the case of commitments grounded in the fact that the legal system, while moderately unjust, complies with the rule of law. These commitments seem to be permissible because while unjust, the legal system does realize at least one important value. (In fact, as I will argue in the next section, these commitments might be imperative.) Admittedly, at some point, the degree of injustice might be such that commitment is impermissible even though the legal system complies with the rule of law (although there is an important empirical question about how compatible radical injustice and the rule of law might be as a matter of fact).[91]

There are different plausible positions regarding the threshold questions of what makes a legal system so oppressive that a commitment to it is impermissible, and of what makes a legal system sufficiently conducive to justice (or, perhaps, sufficiently necessary to secure justice) that a commitment to it is mandatory. The edges are bound to be porous and vague. It is also quite difficult to give more concrete content to the idea of moderately unjust legal systems that comply with the rule of law without adopting a specific conception of justice. But to give the idea more concreteness, several (though certainly not all) of the countries that the World Bank today lists as "high-income economies"—such as Australia, Canada, the United States, France, the United Kingdom, Portugal, Spain, Italy, Germany, New Zealand, Chile, and Uruguay—are both broadly in compliance with the rule of law and not fully just (under at least some familiar and plausible conceptions of justice).[92] All of these legal

89 I take the example from Cohen, "Reason, Humanity, and the Moral Law," 183. See also Williams, "Internal and External Reasons." Of course, for those who would adopt this less stringent position, the existence of this commitment-based reason does not mean that the mafioso has an all-things-considered reason to kill or hurt the innocent. See Velleman, "Willing the Law."

90 For instance, Ruth Chang argues that there are limits on the role played by commitments in practical reasoning ("Voluntarist Reasons and the Sources of Normativity," 269). According to her, the claim that all practical reasons must be connected to the agents' commitments or will in some way does seem to lead to the claim that we have the ability to create reasons that justify doing what we are not justified in doing, as in the mafioso example. According to Chang, because of this—and as I noted above—there is a hierarchical priority of our nonvoluntarist or commitment-independent reasons.

91 See Fuller, "Positivism and Fidelity to Law," 650.

92 See the World Bank webpage "World Bank Country and Lending Groups," accessed November 15, 2024, https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups.

systems have public, general, predictable, and relatively consistently enforced legal standards. At the same time, to a greater or lesser extent, in these countries, arguably morally arbitrary factors, such as individuals' genetic endowments, the socioeconomic class of their parents, sheer brute luck, and the effects of social and racial discrimination impact the distribution of goods and resources. Arguably, many of these countries impose unjustified restrictions on asylum and immigration more generally. These societies are thus not perfectly just, and many of them are in fact at least somewhat unjust from the perspective of at least some plausible conceptions of justice. Nevertheless, many of these countries have (imperfect) democratic arrangements like open elections, freedom of association, and freedom of speech, attempt to uphold basic human rights, do not adopt permanent policies of formal and deliberate racial or gender discrimination, and achieve some degree of economic redistribution. Thus, throughout the rest of the paper, I will focus on these moderately unjust legal systems that nevertheless are not radically unjust and comply with the rule of law. I take it that most wealthy liberal democracies are within this set. For such regimes, individual commitments to law are permissible even though they refer to legal regimes that are, to some degree, unjust.

2.3. Reasons for Commitment and the Rule of Law

As I argued above, the rule of law is morally valuable, given the particular mode in which it allows societies and those in charge of them to achieve their goals. At the same time, as we have seen, it is implausible to think that this value is sufficient to make law morally binding.

But compliance with the rule of law might still be normatively significant. It might give agents a normative reason for (a reason that objectively favors) adopting a commitment to law. The value of legality would then explain why agents ought to adopt a commitment to law and might be subject to legitimate criticism if they do not. Compliance with the rule of law gives agents these normative reasons because of the moral value of the rule of law, and particularly its connection with human dignity (as I argued in section 1.1). Respect for human dignity through the rule of law is not just one more source of value that might or might not lead individuals—depending on their own inclinations, desires, and attitudes—to adopt merely permissible commitments. It is instead a reason why they ought to be committed and that explains why commitments to law are not merely permissible. The value of the rule of law is such that it gives all agents a reason to adopt a commitment to law.

This possibility, however, raises an immediate question. If the rule of law cannot generate genuine reasons for action directly, how could it generate normative reasons for adopting a commitment? The answer must start with

an examination of the conditions under which the value of the rule of law can be realized. The rule of law, while valuable, is a fragile achievement—because law itself is fragile. The legal system is effective only when it is able to secure stable expectations over time.[93] More strongly, a legal system exists as a system of social governance only if it is efficacious.[94] If the legal system were to progressively "lose control over its subject set," as Adams puts it, at some point it would no longer be reasonable to say that its purported subjects live under a legal regime.[95] At the same time, if a legal regime that complies with the rule of law ceases to be efficacious, then the moral goods produced by the rule of law will no longer obtain. The value of legality can be realized only if the relevant legal regime itself has a minimal degree of efficacy.

In practice, efficacy requires either voluntary compliance or the imposition of sanctions against (at least a significant proportion of cases of) noncompliance.[96] The efficacy of law—secured through voluntary compliance or through the imposition of sanctions—matters because legal norms are expectation-generative devices.[97] This is particularly true for duty-imposing norms. When the law says that *A* is under a duty to ϕ, it is also purporting to generate and/or stabilize the expectation that *A* will ϕ. Now of course the fact that law generates a certain expectation does not entail that those expectations will be upheld by those whose behavior falls under the legal norm. For instance, the law might say that promisors ought to perform their enforceable contracts or that we all have a duty not to kill others. But some promisors might breach their contracts, and some people might kill others. In these latter cases of disappointed expectations, the legal system can continue to secure them (it can continue to say, as it were, "everyone can expect those in *A*'s position to ϕ") only by imposing, at least for a non-negligible proportion of cases, a sanction that stabilizes the expectation.[98] In situations of noncompliance, legal enforcement is thus a means for stabilizing and reaffirming the expectations that legal norms invite everyone who participates in the social world to form.[99] It is a way, in other words, of securing the efficacy of the legal system.[100]

93 Luhmann, *Law as a Social System*, 143.

94 Raz, *The Authority of Law*, 104. See also Adams, "The Efficacy Condition," 228.

95 Adams, "The Efficacy Condition," 229–30.

96 Kelsen, *Pure Theory of Law*, 11. For discussion, see Adams, "The Efficacy Condition," 234–37.

97 Luhmann, *Law as a Social System*, 146.

98 Luhmann, *Law as a Social System*, 149.

99 Luhmann, *Law as a Social System*, 148.

100 For a recent exploration of the social benefits of belief in political obligation, see Frye, "Is Belief in Political Obligation Ideological?"

The issue is that, at the wholesale level, enforcement without any voluntary conformity will not do the trick. The legal regime can rely on coercive enforcement only to a limited extent.[101] While a legal regime where there is no obedience but only coercive enforcement is conceptually possible, and highly punitive legal regimes that extensively rely on coercion exist, relying *exclusively* on coercive enforcement to secure compliance is not a pragmatically feasible strategy over the long run.[102] Coercive enforcement is costly.[103] Widespread voluntary compliance, by contrast, diminishes the need to resort to coercive enforcement mechanisms. In this way, widespread compliance contributes to sustain the rule of law.[104]

This is not enough to get us to the RPDT. The reason is straightforward: while widespread noncompliance might erode the efficacy of the legal regime, single instances of noncompliance, by themselves, do not.[105] Any specific breach of legal duty will typically be insufficient to undermine the law's authority.[106] The causal irrelevance of singular breaches, moreover, increases the larger the society is.[107] What threatens the legal regime is not a single breach but a situation of widespread noncompliance.[108] Thus, the desirability of a legal system that complies with the rule of law does not immediately entail that its prescriptions are genuinely binding.[109]

However, the value of the rule of law does give us a reason to adopt a commitment to law. The fact that things would go better if everyone voluntarily complied with legal norms does not mean that agents have a reason to comply with those norms. The claim cannot be that law makes a practical difference because it would be good if it made it. But the fact that it would be good if law

101 Some theorists would go further and claim that the (socially) normative character of legal practices can be threated by excessive reliance on coercion. See Thomas, "Coercion in Social Accounts of Law.

102 See Adams, "The Efficacy Condition," 238–39.

103 For a similar claim about property law, see Merrill and Smith, "The Morality of Property," 1853.

104 Gur, *Legal Directives and Practical Reasons*, 173–74.

105 See Kagan, "Do I Make a Difference?"; and Nefsky, "Fairness, Participation, and the Real Problem of Collective Harm."

106 See Raz, "The Obligation to Obey," 149.

107 Ullmann-Margalit, *The Emergence of Norms*, 28.

108 Adams, "The Efficacy Condition," 232. This is why, in my view, "Samaritan" or fairness arguments for the duty to obey tend to fail. There is no reason to think that, merely because political order is valuable and it requires voluntary collective obedience, each individual agent has a duty to obey its law. For an example of this type of argument, see Wellman, "Political Obligation and the Particularity Requirement."

109 Murphy, "The Artificial Morality of Private Law," 458n15, 475.

made a practical difference does suggest that agents should adopt a commitment to law: a commitment to law is precisely a way, as I have argued, in which the law can effectively make a practical difference and secure the voluntary compliance of an individual over a long term. A commitment ensures the law's practical difference until revoked. Absent revocation, a commitment alters an agent's practical engagement with the law in the long term, potentially for their whole lifetime. The impact of a commitment is, from the perspective of law's efficacy, significantly greater than the impact of a single act of compliance. Believing that "it would be good if *p*" makes *p* true is a form of wishful thinking (that is why the value of the rule of law cannot directly ground a general reason to act in conformity to law). But if the truth conditions for *p*, at least when it comes to *A*'s case, are within *A*'s control, then "it would be good if *p*" does give *A* a reason to ensure that *p*. And this is precisely what agents can do, regarding the RPDT, by adopting a commitment to law. While one cannot get from the benefits of widespread compliance to reasons to comply in particular instances, the step from the benefits of widespread compliance to reasons to commit to the law as a general matter—and therefore to treat its standards of conduct as reasons for action over the long run—is quite natural. By committing to law, I change my reasons for action in a way that persists over time and ensures the normative impact of legal standards over my practical deliberation in general.

Now another worry here is the following. I have argued that agents ought to adopt a commitment to law. But that seems to suggest they ought to commit to seeing law as giving them reasons for action in a way that I argued above would be implausible, when I argued that compliance with the rule of law cannot directly ground the RPDT. This leaves us with two options: either it is actually plausible that law gives us reasons for action (in which case, there seems to be no need for a commitment), or it is implausible (in which case, it would seem that agents ought to adopt an implausible belief in order to commit to law).[110]

The response to this objection is that the same fact can be efficacious for generating certain types of reasons but not others. More specifically, a fact can generate reasons for commitment even though it does not generate reasons for action. Consider again the case of our Neapolitan football fan. Let us call him Giovanni. The fact that Giovanni's father and grandfather were committed followers of SSC Napoli does not, without more, give Giovanni a reason to go to Stadio Diego Armando Maradona every time the team plays there. But the same fact might give Giovanni a reason to adopt a commitment to SSC Napoli—a commitment that would indeed generate new reasons for Giovanni to go the stadium when the team plays. Similarly for law: compliance with the rule

110 I thank an anonymous reviewer for raising this objection.

of law might not be able to generate reasons for action directly, even though it might generate reasons for commitment given that commitments can ground practical impact (and lead to voluntary compliance) over the long run for a specific agent.

So far, my concern has been with the rule of law as a *normative* reason. Now let us assume the argument fails—in other words, that there is no way to get from the value of the rule of law to a normative reason for adopting a commitment to law. Here, we can transition to a different role for compliance with the rule of law: acting as an *explanatory* reason for why agents might, as a matter of fact, adopt a commitment to law.[111] In this second role, even if the rule of law were not a normative reason why agents ought to adopt a commitment to law, it could provide the explanation for why many agents, as a matter of fact, might adopt such a commitment. It might act as a fact that *motivates* agents to adopt a commitment to law. The explanatory power of the rule of law will be significant particularly in circumstances (like ours) of substantive moral disagreement about the content of the law. This means that even if the rule of law were not—contrary to my argument—a reason in favor of agents adopting a commitment, it might still be an explanatory reason for why they in fact adopt such commitment.[112]

If I am right about this second idea, two upshots follow. First, whether law makes a genuine practical difference is partly a contingent question that depends, among other considerations, on the existence and nature of the commitments of each of the individuals in any given population. This, incidentally, opens the space for a central connection between empirical questions about descriptive, positive or sociological legitimacy, the rule of law, and normative questions about agents' reasons for action.[113] Second, the stability

111 Gowder, *The Rule of Law in the Real World*, 6.

112 One might object here that this would not fully vindicate agents' belief in the RPDT. I seem to be suggesting that agents may be motivated to adopt a commitment to law on the basis of a fact that would not actually be a normative reason in favor of a commitment. This would seem to suggest that the reason to comply with the law is grounded in a commitment that itself lacks a genuine normative reason supporting it. Here, however, we need to go back to the previous observation: permissible commitments are sufficient to generate reasons for action. Once we know that a permissible commitment exists (just like when we know that a permissible promise exists), the normative impact follows. We do not need to inquire into the grounds for a commitment (once we are above the threshold for permissibility) to recognize its normative impact.

113 There is a large social scientific literature that explores the connection between the disposition of individuals to comply with the law and myriad factors, including the perceived compliance of government authorities with the rule of law and procedural justice but also substantive alignment with individuals' moral judgments. See, e.g., Gur and Jackson, "Procedure–Content Interaction in Attitudes to Law and in the Value of the Rule of Law";

of governance through law requires enough people to adopt these commitments.[114] This means that—in conditions of political pluralism and moral disagreement—a stable and legitimate legal regime ought to comply with the rule of law, because this is a reason why agents who otherwise disagree about justice, fairness, and political morality should, or at least might, adopt commitments to law.[115] In this way, compliance with the rule of law can make a practical difference: it gives agents a reason why they should, or at least might, be committed to the law. But this difference translates into a change in agents' content-independent, sanction-independent reasons only as a consequence of their commitments.

2.4. Commitments, Joint Commitments, and Moral Reasons

The notion of a commitment to law that I have described so far involves a purely unilateral undertaking. At the same time, governance through law is not a unilateral activity—making, applying, interpreting, and following the law are all activities that are intelligible only in the context of, or against the backdrop of, a collective social practice. How does this very atomistic conception of a commitment as a unilateral, even purely internal, phenomenon fit with the collective dimension of law?

One possible answer would see unilateral commitments as the basic notion that figures in a more complete explanation of law's practical impact at a collective level. A successful and functional polity, from the perspective of its law's ability to make a difference to what citizens and officials ought to do, might be characterized by multiple individual commitments. It is plausible to think that a political community where the law is such that most, if not all citizens and officials, see the project of legal governance as one they are a part of and committed to, would be morally valuable. In these circumstances, these citizens could legitimately say that law truly counts as "our law," and that it makes a

Jackson et al., "Why Do People Comply with the Law?"; Levi, Tyler, and Sacks, "The Reasons for Compliance with Law"; and Tyler, "Procedural Justice, Legitimacy, and the Effective Rule of Law." My argument here does not directly address the questions explored by this literature, but it opens up, by way of theoretical conjecture, the possibility of new empirical questions about the connection between compliance with the rule of law, agent's attitudes and dispositions, and their behavior.

114 See Gowder, "What the Laws Demand of Socrates," 361, and *The Rule of Law in the Real World*, 5, 52, 144.

115 On the notion that commitments are based on a positive evaluation of the system, institution, or belief one commits to, see Trigg, *Reason and Commitment*, 44.

difference to what they ought to do, for the right reasons. Thus, in this imagined community, law would be such that agents are *jointly* committed to law.[116]

I am not sure whether this imagined society would be ideal. Some dissent and even apathy are part of a healthy democratic polity, too. In any case, the notion of commitment as a unilateral and individual phenomenon is, to my mind, the basic building block of the larger and more ambitious idea of joint commitments. Thus, in the rest of this paper, I will continue to focus on unilateral commitments.

But would these unilateral commitments generate *moral* reasons? The answer depends on one's conception of moral reasons. If we adopted—somewhat controversially—the substantive view that moral reasons are necessarily relational (in the sense that moral reasons necessarily involve schemes of relationships and accountability between agents), then a purely unilateral commitment, which by definition does not require uptake by third parties, would not be able to directly ground *moral* reasons under this conception.[117] This is certainly compatible with there being moral (i.e., relational) reasons that coexist with unilateral commitments. For instance, a judge might both be committed to the law and have made an oath or a promise to uphold it.[118] It is also possible that commitments might have downstream relational effects: a unilateral commitment might lead us to behave in ways that lead others to have certain justified expectations about our future behavior.[119] But from the perspective of this relational conception of moral reasons, only joint commitments would be able to generate genuine moral demands and reasons directly. From this perspective, only the parties who jointly commit might be accountable to each other, have the standing to demand conformity and perhaps even to react in certain ways to nonconformity, etc.[120]

But the relational conception of moral reasons is only one possible substantive view about them. Under a different view, not all moral reasons need to be relational. What we ought to do and how we ought to live would be moral

116 This picture, I think, is quite consistent with Toh's model of committed internal legal statements—particularly in cases of what Dworkin called "theoretical disagreements"—as suffused with the purpose of achieving joint acceptances of norms. See generally Toh, "Legal Judgments as Plural Acceptance of Norms."

117 See Chang, "Commitments, Reasons, and the Will," 77. For an example of a relational conception of moral reasons, see Darwall, *The Second Person Standpoint*.

118 In this situation, the coexistence of a commitment and an oath does not render either redundant. Internal commitments might have a value and weight that give oaths special significance and value, as argued by Chang, "Commitments, Reasons, and the Will," 78.

119 Chang, "Commitments, Reasons, and the Will," 77. See also 103.

120 Gilbert, "Commitment," 6.

questions, answered by moral considerations, even though the domain of such questions and answers is larger than the domain of relational demands. From this perspective, we could be morally required to do certain things without owing those actions to anyone. Within this different picture of morality, then, even a unilateral commitment could lead to things we morally ought to do.[121] Consider, for example, a view that characterizes the moral life by reference to the good life, and therefore sees moral reasons as reasons of personal virtue.[122] Under such a view, the virtuous agent might be required to make commitments to legal institutions that comply with the rule of law and abide by them, and the reasons generated by such unilateral commitments would be moral reasons.[123]

The central point here is that commitments have a genuine practical impact. Whether that impact is *moral* will depend on one's substantive understanding of morality and its foundations. I remain neutral in this paper about these issues. I also remain neutral about the importance of whether or not the label *moral* attaches to our genuine reasons for action.

2.5. *Commitments, in the Opposite Direction*

Before moving on, I should note a different possibility, recently suggested by Laura Valentini: perhaps other agents' commitments directly ground the RPDT. On this view, laws could be treated as a species of socially constructed norms that reflect a society's public commitments. Perhaps, under certain conditions, we ought to respect other agents' commitments because we ought to respect their agency. This is what Valentini calls the *agency respect view*.[124] The normative impact of laws would be grounded in our duties or reasons to respect people's agency and therefore their commitments (provided those commitments are genuine and morally permissible, and respect to them does not impose an excessive cost).[125]

In the particular case of law, "agency respect for those who are committed to the rule of law—i.e., for those who are committed to the bindingness of law—grounds an obligation to obey it."[126] As this suggests, there is a superficial similarity between my argument and Valentini's. But the arguments have a very

121 Gilbert, *Joint Commitment*, 391–94.

122 See Aristotle, *Nicomachean Ethics*; and Nagel, *The View from Nowhere*, 195.

123 Under this type of view, it seems to me, the distinction between moral and prudential reasons might end up collapsing. Whatever would be rational for the virtuous agent to do is also what would be morally right for them to do. See Annas, "Prudence and Morality in Ancient and Modern Ethics."

124 Valentini, *Morality and Socially Constructed Norms*, 10.

125 Valentini, *Morality and Socially Constructed Norms*, 82, 90, 168.

126 Valentini, *Morality and Socially Constructed Norms*, 150.

different structure: while my argument claims that the practical impact of law can be grounded in the commitments of law's addressees, her view is that the practical impact of law is generated by a duty to respect the commitments of those who are committed to law.[127] We have an obligation (within certain constraints), grounded in respect for agency, to obey the prescriptions of socially constructed norms—and legal norms are a specific type of those norms.[128] In other words, while on my view, commitments generate reasons for action for the committing agent, on Valentini's account, other agents' commitments trigger a duty to respect them.

I do not think Valentini's argument can vindicate a general duty to obey the law in our contemporary circumstances (a conclusion that she perhaps would be happy to accept), where most citizens are at worst alienated from the mechanisms of law production and at best happily (and perhaps rationally) uninterested in them (even if they might be committed to the law as a whole). My sense is that many legal norms simply do not reflect, in the robust sense that would be required for the agency respect view to kick in, the commitments of a majority of our fellow citizens.

My concern here is that in contemporary legal systems (even democratic ones), the number and complexity of laws is such that it is not plausible to say that each particular legal norm of any given legal system truly reflects the commitments of the population. Perhaps we should respect people's agency. But I do not see how we can credibly claim that the norms of most legal systems are apt, in their totality, to reflect the actual commitments of citizens. The worry is not that a commitment to particular norms is downstream from, or an effect of, a larger commitment to law.[129] The worry, rather, is that the sheer number of statutes, regulations, and precedents in contemporary legal systems makes it hard to see why respect for agents would generate duties to obey the norms contained in such materials.

Valentini is of course aware of the fact that, in contemporary legal systems, most citizens ignore of much of the content of the law.[130] In her view, plausibly,

127 Another important difference is that my account attempts to vindicate the RPDT as a relatively content-independent claim, whereas Valentini offers her argument to vindicate a duty to obey the law only when doing so "does not excessively burden one's agency" (such as where legal requirements contradict the agent's "deepest religious or ethical convictions"). Valentini, *Morality and Socially Constructed Norms*, 169. This does not make her argument "content dependent," she argues, but rather content sensitive. The explanation for the duty to obey is not determined by the law's content (170).

128 Valentini, *Morality and Socially Constructed Norms*, 151.

129 See Valentini, *Morality and Socially Constructed Norms*, 96.

130 Valentini, *Morality and Socially Constructed Norms*, 43–46.

a commitment might be indirect and therefore not rely on any concrete and specific knowledge about the content of the law. Such indirect commitment, instead, might simply be a commitment that "everything that qualifies as law" in a particular legal system "should function as a standard of behavior."[131]

This is a plausible idea. But while we might have reason to respect some agents' commitments, it is hard to see how this reason communicates to norms those agents are not aware of. I agree with Valentini that because of agents' commitments, the normative status of certain behaviors might depend on the content of socially constructed norms, including legal norms.[132] But to my mind, the commitments that generate this impact are those of the addressee of the norm rather than those of citizens in general. There is an important asymmetry between the normative impact of commitments for the agent and for third parties. While my commitment to the legal system might explain why I have a reason to act in conformity with its prescriptions, it is hard to see why the commitments of other agents to the legal system or the rule of law impose on me duties to act in conformity to norms *the very agents whose agency demands respect are unaware of and uninterested i*n. The asymmetry, then, is an asymmetry between what I can legitimately impose *on myself* through my commitments, and what my commitments can impose *on others*. In the first case, it is plausible that a commitment to the legal regime gives normative impact to its particular prescriptions for the committing agent, even if the agent is not committed to each of those prescriptions in particular (just like I can legitimately obligate myself to perform a contract of adhesion even though I have not read the fine print). But there is something strange about the notion that an agent's commitment to the legal regime, in similar conditions of lack of direct commitment to particular norms, could make those norms binding on third parties.

3. Three Objections

In this section, I address three potential objections to the argument so far.

3.1. No General Reason?

The first potential objection is that my argument cannot ground the RPDT as a general matter, even within a specific jurisdiction. Given that commitments are personal and voluntary, many individuals might simply not make them. Within any legal system, law—even if it complies with the rule of law—will not be able to generate reasons for action for every member of society.

131 Valentini, *Morality and Socially Constructed Norms*, 45.

132 Valentini, *Morality and Socially Constructed Norms*, 98.

The objection is in fact entirely correct. But I want to suggest that this is a strength of the account.[133] To explain why, let me—very roughly—divide the population into well-off citizens, government officials, and worse-off citizens. Assume, moreover, that the legal regime complies with the rule of law but is also moderately unjust, and that its injustice particularly affects the third group.[134]

The first two groups have a significant normative reason to adopt a commitment to the law (assuming the injustice of the regime is indeed moderate): the law's compliance with the virtue of legality. There are also additional explanatory reasons that might explain why members of these groups might adopt the relevant commitment. Well-off citizens in this society are benefited by law. It also seems likely that they will tend to perceive the law as just. In other words, compliance with the rule of law, self-interest, and a genuine perception about law's justice might all contribute to explain their commitments to the legal system. Government officials, particularly but not exclusively at the highest levels, are also benefited by legal institutions. The legally constructed government structure is a source of their income and a channel for their professional and political ambitions. For many officials—for instance, career politicians and judges—their jobs or positions might be sources of pride, meaning, identity, etc.[135] Thus, there are many potential explanations—compliance with the rule of law, self-interest, a sense of personal and professional identity, etc.—for why these officials might assume a commitment to the legal system.

Finally, and in contrast, citizens who are unjustly worse-off in our imagined society will perhaps experience the legal system as alien, threatening, or at least distant.[136] They might not benefit in any significant way from the legal protection of capital. They are, as I stipulated, the victims of injustice. For these citizens, the range of explanatory reasons for a commitment to the legal system is significantly smaller than for the two previous classes of agents. This seems to suggest that as an empirical fact, there will be less commitments to law within this segment of the population. The main normative reason these agents will have to adopt a commitment to law will be the legal regime's compliance with

133 In this respect, my account is compatible with work on pluralism about political obligation, and particularly with the work of those who think there can be different grounds for the practical impact of law, which might apply differently to different agents. See Simmons, *Moral Principles and Political Obligations*, 36–37; Vasanthakumar, "Pluralism in Political Obligation," 320; and Wolff, "Pluralistic Models of Political Obligation," 17–19.

134 Again, if the situation were such that the society is not moderately unjust but systemically and severely unjust, I would accept that there would be no reason to commit to the law. More strongly, perhaps in this situation the victims of systemic injustice would have reason to commit to change, resist, and perhaps break the law. See Sinha, "Virtuous Law-Breaking."

135 Culver, "Legal Obligation and Aesthetic Ideals," 205–6.

136 See Hertogh, *Nobody's Law*.

the thin demands of the rule of law. This reason might not be sufficient, as an empirical matter, to motivate them to make such a commitment.

The view of commitment as a ground of law's practical difference explains why there might be different degrees to which law makes such a difference across a large population. This observation should lead us to insist on at least one more reason to be concerned not just about the rule of law but also about law's justice: effective governance through law requires the commitments of the majority of the population to the legal system.[137] The observation can also lead us, as I noted above, to see the account of unilateral commitment I have provided as the first step towards a more ambitious ideal of joint (though perhaps not universal) commitment. Under that ideal, the law ought to be such that it could ground the commitment of most citizens. Compliance with the value of legality gives agents a reason to be committed to law—and if the value of legality is coupled with other legitimate motivations for large segments of the population to adopt such a commitment, then this can lead to joint commitments that make a stable legal regime possible and the source of genuine reasons.

3.2. The Peremptoriness Objection

A second potential problem with my argument is focused not on commitment but rather on my concern with law's practical difference—as expressed in the RPDT—instead of the more traditional concern with the duty to obey. According to this objection, law does not just aim to have an unspecified impact on agents' deliberation. The law aims to exclude or preempt deliberation on the merits of the behavior, and legal obligations contain a practical verdict: the mandated behavior ought to be performed (or the prohibited behavior avoided).[138] The law aims to "settle the matter."[139] The idea can be framed in Razian terms: a legal directive is a reason for not acting on the basis of (at least some) reasons that conflict with the directive.[140] Legal obligations have a built-in exclusionary force that protects them against conflicting reasons.[141]

If that is the case, the objection goes, a commitment as a ground for law's practical difference—but not necessarily as a ground for peremptory obligations—is inconsistent with the structure of legal obligation and the claims that law makes. What we need to explain is not whether law's prescriptions can have

137 Gowder, *The Rule of Law in the Real World*, 155.

138 Essert, "Legal Obligation and Reasons," 69–70.

139 Essert, "Legal Obligation and Reasons," 72.

140 Raz, "The Problem of Authority," 1022.

141 Gardner and Macklem, "Reasons," 466.

a practical impact independently of their content and the sanctions associated to their breach, but rather whether and when they generate genuine *obligations*.

My response to this objection is twofold. First, the view that law necessarily claims to preempt deliberation is not obviously true. Second, assuming *arguendo* that law does make this claim, my argument can explain how that claim might empirically succeed in certain cases and not in others, and yet in the latter it might still have a practical effect.

The first part of my response rests on the answer to a fairly basic question: What do legal authorities aim to do when they enact a duty-imposing legal norm? The most plausible and natural answer is that they attempt to tell the agents subject to the norm what to do.[142] From a legal point of view, it is strictly irrelevant whether the explanation of the agent's lawful behavior resides in self-interest, complacency, altruism, fear, compliance with moral norms that the law tracks, or a cooperative or public-minded spirit.[143] As long as the behavior externally coincides with what is legally mandated, that is sufficient. On this view, law's claim is a claim to direct and control behavior, not (or at least not necessarily) practical deliberation.[144] Law is interested in external conformity to its prescriptions. Whether the prescriptions are the explanatory reason for conforming behavior is legally irrelevant.[145]

This does not deny that law might sometimes (and perhaps usually) in fact preempt our deliberation. Agents' commitments might be such that the law ends up preempting deliberation. But when this happens it is not because of the nature of law's claims or the structure of legal obligation, but rather because of what the commitments of the relevant agents happen to be.

Let me explain. Agents' commitments might differ *in intensity*. They might be such that they give law's mandates only a *pro tanto*, defeasible weight. They might also be stronger and treat those mandates as particularly weighty reasons for action. In both of these cases, the agent's commitment leads to legal norms generating reasons—but not to the exclusion of other reasons. Moreover, it seems plausible to believe that commitments to law, as a general matter, might be stronger than other commitments: as a class, commitments to law might, on average, generate reasons that are significantly weightier than those generated by other mandatory or permissible commitments.

142 Ehrenberg, "Law's Authority Is Not a Claim to Preemption," 51–52.

143 Schauer, *The Force of Law*, 51.

144 Ehrenberg, "Law's Authority Is Not a Claim to Preemption," 54.

145 In other words, the law might be interested in conformity rather than compliance. On this distinction, see Raz, Practical Reason and Norms, 178–79; and Sevel, "Obeying the Law," 197. See also Scott Hershovitz, "The Authority of Law," 67. For a similar view to the one I adopt here, see Valentini, *Morality and Socially Constructed Norms*, 153.

However, agents' commitments might also differ *in structure*. An agent's commitment might not just give law's mandates weight. It might also have a second-order dimension that treats those mandates as exclusionary reasons. Certain agents—to my mind, the most obvious example being some public officials—might assume this type of "second-order commitment" (as opposed to a first-order commitment that only generates first-order reasons) that effectively preempts deliberation about the legally prescribed courses of action.[146] Nothing in my argument precludes this possibility. In the case of second-order commitments, agents let the law *control* their deliberation. In cases of first-order commitment, agents merely let the law *influence* their deliberation.[147] This is sufficient for the RPDT.

This means that law can sometimes be exclusionary for specific agents. It can guide practical deliberation by manipulating and excluding reasons and by preempting further deliberation. But this need not be the only way in which law makes a practical difference. The distinction between first-order and second-order commitments shows that law can, in fact, make a practical difference without acting as an exclusionary reason. Which situation—merely first-order practical impact or also second-order practical impact—is more common becomes, then, an empirical question. And perhaps the defender of peremptoriness might at this point want to argue that the law works as a source of exclusionary reasons for most of the population. That is a possible claim to make, but whether it is right again turns on sociological facts. More importantly, such an argument is no longer a claim about the nature or structure of legal obligations across the board, and is compatible with the practical impact of legal sources being partly determined by individual commitments.

3.3. *A Different Name for Consent?*

According to consent theories, states act permissibly when their exercises of coercion can be connected to the consent of the individuals who are subject to them.[148] Publicly available laws are, on this picture, the subject matter of consent: when an individual has consented to state power, they have consented to the state acting in certain ways specified by law.

A potential critic might think that the account I have offered is a specific account of what it is to consent to state power: to consent to state power is to adopt a commitment to its law (which sets out how the state is to exercise

146 As Raz notes, "one may regard oneself bound to disregard conflicting reasons because one has committed oneself to do so." Raz, "Reasons for Action, Decisions and Norms," 141.

147 I take the distinction between control and influence from Bratman, *Intention, Plans, and Practical Reason*, 16.

148 See Dagger and Lefkowitz, "Political Obligation."

its power and in what circumstances). At best, my argument is only a subtle precisification of what counts as consent. At worst, it just gives consent a different name.[149]

In my view, this potential objection captures something important: commitment and consent have certain common characteristics. For example, one could believe that consent is something like a specific, individuated, and communicated commitment (recall here that a commitment need not have such traits, because it might come about incrementally and might be *in foro interno*). More importantly, both commitment and consent as grounds of law's normative impact are consistent with a broadly liberal commitment to individual agency. However, in principle, it seems plausible to think that consent requires communication or at least common knowledge.[150] Moreover, this communicative act—or this act by which common knowledge is generated, or even the act by which a person consents without communicating anything—needs to be a single act that we can identify, and from which the ensuing normative consequences follow. This, precisely, has been the traditional problem for consent theories of political obligation: it is extremely difficult to identify a single act that might communicate or make apparent a citizen's consent to the law of the state, even implicitly.[151]

Commitment is, in this regard, different from consent—so different that we can be committed to a state's law without having ever consented to its authority. A commitment does not necessarily derive from a single identifiable act. And a commitment need not be communicated or made apparent to be normatively effective. Again, as we have seen, a commitment can be the growing, evolving, and ongoing adoption of a personal attitude *in foro interno*. This idea can perhaps be associated metaphorically to the notions of consent, promise, and contract.[152] This should be unsurprising because there are, as I have noted, some resemblances and connections between these communicative acts and a commitment, and the latter is the basic building block of a joint commitment (which is structurally similar to—and perhaps part of the same family as—the notions of agreement, consent, and contract). These resemblances and connections should not, however, lead us to treat commitments as a spe-

149 The fact that some writers on political obligation sometimes connect the ideas of consent and commitment gives some additional plausibility to the concern. See Simmons, *Moral Principles and Political Obligations*, 58, 69, 77.

150 See Dougherty, "Yes Means Yes"; and Gerver, "Inferring Consent Without Communication," 30–32.

151 See Smith, "Is There a Prima Facie Obligation to Obey the Law?" 960–61.

152 See Dyzenhaus, *The Long Arc of Legality*, 183–84; Gough, *The Social Contract*, 248; and Simmons, "Associative Political Obligations," 255n25.

cies of consent—particularly given the multiple problems consent theories are subject to. Instead, they should lead us to embrace commitment as the notion that the ideas of consent and contract can capture only metaphorically. The more general category of commitment does the work that consent theorists of political obligation want it to do without requiring us to resolve problems of communication and individuation.

This leads me to a significant difference between consent and commitment. Such difference points to a very distinct view of legal authority, with potentially important implications both for jurisprudence and political philosophy—and hence I can only mention it, without fully elaborating the idea here. The notion of consent is closely tied to a picture under which exercises of legal authority are not complete, fully successful, or legitimate as exercises of legal authority without consent of the governed. The enactment of law, on this picture, is an exercise of a power that can be fully apt as a binding, legitimate exercise of authority only if there is consent.[153] On the somewhat deflationary picture offered here, instead, the exercise of legal authority is just the issuance of a behavioral prescription. A commitment is not, on this picture, a legitimacy or success condition on the exercise of normative power, but instead a determination that generates new, noninstrumental reasons for compliance with legal directives. On this view, commitment is an active volitional engagement, not just in the sense that it is an exercise of agency (in this regard, consent is similar). More importantly, it is an active engagement because it does not merely change the normative situation of actions performed by others—in our case, the state or its personnel—but instead directly changes what the committing agent has reason to do. Commitment is not merely a condition on the justification, permissibility, or legitimacy of someone else's action. It is a source of reasons for action for the committing agent.[154]

4. Conclusion

The argument I have offered in this paper accepts that skeptics might be right—and therefore that law might be, in and of itself, normatively inert. Still, the law's behavioral prescriptions can genuinely impact what agents ought to do, independently of the law's content and the associated sanctions, if agents adopt a commitment to law. When agents do in fact adopt such a commitment, they

153 See generally Waldron's thoughts about acquired political obligation in "Special Ties and Natural Duties."

154 In this way, commitments as the grounds for the RPDT can contribute to respond to concerns about how duties to obey the law might threaten the moral self. See Smith, "Political Obligation and the Self."

make RPDT true for themselves. As I have argued, the legal regime's compliance with the rule of law gives agents a reason why they ought to or at least might adopt the relevant commitments. And in the circumstances of politics, the rule of law is a central way in which legal systems can give agents who otherwise disagree about justice, morality, and fairness, reasons to make commitments to law.[155]

In this way, the argument of this paper has shown that (i) compliance with the rule of law is normatively significant because it gives agents a reason to assume a commitment to the relevant legal system; and (ii) whether law makes a genuine normative difference, independently of its content and the sanctions it threatens for noncompliance, can turn on whether the relevant agents have in fact assumed a commitment to the legal system.[156]

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155 On the circumstances of politics, see Waldron, *Law and Disagreement*, 102.

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