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OBEYING THE LAW

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ABSTRACT
What is it to obey the law? What is it to disobey? Philosophers have paid little attention to these questions. Yet the concepts of obedience and disobedience have long grounded many perennial debates in moral, legal, and political philosophy. In this essay, I develop systematic accounts of each concept. The Standard View of obedience—that to obey the law is to act for a certain sort of reason provided by the law—has long been taken for granted. I argue against this and other views of obedience, and develop an account of the knowledge and intention required in acts of obedience. I then develop a symmetrical account of the disobedience involved in acts of civil disobedience. The purpose of the essay is to develop a more systematic understanding of these concepts, in order to identify more precisely what is at stake in debates of political obligation, civil disobedience, and the authority of law.

What is it to obey the law? What is it to disobey? Remarkably little attention has been paid to these questions. The inattention is remarkable because the concepts of obedience and disobedience have long been central to several perennial debates in moral, legal, and political philosophy, and yet participants in those debates have either given unreflective, cursory accounts or said nothing substantive about them at all. Examples of the inattention are not hard to find. It has been debated whether we have a duty or obligation to *obey* the law for nearly as long as there has been law. But the vast majority of theorists of political obligation have been far more interested in the normative features of that alleged duty—its grounds; whether it is universal, overriding, absolute, pro tanto, and so on—than with its content, that is, with what sort of thing a person must do, or what sort of thing must happen, in order for that person to obey the law and thereby discharge the duty, whatever it is.[1] To take another example, over the past fifty years, legal

1. The inattention started early. In the founding text of the political obligation literature, Plato's *Crito*, Socrates has the Laws of Athens require that he either "persuade or obey" the laws (51a–52e), but no characterization of either alternative is given. The matter is further complicated by the fact that the terms "persuade" and "obey" in Plato's Greek have a common verbal root (*peithein*), such that the active voice is used to express the former idea, and the passive voice the latter. Socrates also speaks of doing what the law commands (*poeteon ha an keleuei*, at 51b) but relies on his audience's intuitive understanding of what that phrase is to mean. For

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and political philosophers have been increasingly interested in the nature and practice of civil *disobedience*, resulting in an enormous, complex literature. However, those philosophers have been more interested in giving an account of the "civility" of an act of the relevant sort—for example, that it is done publicly and conscientiously for a political purpose, and so on—rather than in explaining what the relevant sort of act is, i.e., what constitutes disobedience. Indeed, nearly all writers on civil disobedience, from John Rawls's seminal discussion in the 1970s to the present, routinely use such terms as "breaches" or "violations" of law to refer to the relevant phenomena, and leave it at that.[2] Finally, it has long been a consensus among legal philosophers that it is of the nature of law to claim authority over its citizens, and in turn that it is of the nature of authority to demand *obedience* from those subject to it.[3] But while only theorists of authority have made substantive philosophical claims about what obedience to law requires in general (though they have been notably silent about disobedience), their supporting arguments are difficult to discern. In any event, those claims about obedience, which I will collectively call the Standard View, have been subject to precious little critical assessment.[4]

discussion, *see* RICHARD KRAUT, SOCRATES AND THE STATE (1984), at 54–114. Modern contributions to the literature fare no better, even when a writer's very stated purpose is to identify the problem. *See, e.g.*, Jonathan Wolff, *What Is the Problem of Political Obligation?*, 91 PROC. ARISTOTELIAN SOC. 153 (1991), in which obedience is taken as the central concern but no attention is ever given to saying what it is. More recently, William Edmundson, in a survey of the duty-to-obey literature, spends several pages characterizing the duty under discussion, but then stipulates, in a single sentence, what obedience to law is taken to be. He calls this stipulation an "idiomatic point," though, as I argue below, it involves substantial theoretical commitments that have rarely been questioned. *See* Edmundson, *State of the Art: The Duty to Obey the Law*, 10 LEGAL THEORY 215, 217 (2004). David Lefkowitz, in his survey of the same literature, makes the same stipulation, but oddly as an explanation of the *duty*, not as an account of obedience itself. *See* Lefkowitz, *The Duty to Obey the Law*, 1 PHIL. COMPASS 571, 572–573 (2006).

2. *See* JOHN RAWLS, A THEORY OF JUSTICE (2d ed. 1999), where his stated aim is to give an account of action "contrary to law," *Id.* at 320, acts that are "violations" of the law, *Id.* at 323. Rawls provides no further explanation of the relevant sort of action. The most recent substantive contribution to the civil disobedience literature similarly contains no account at all of what "disobedience" is supposed to be and frames the discussion vaguely in terms of "offending." *See* KIMBERLEY BROWNLEE, CONSCIENCE AND CONVICTION: THE CASE FOR CIVIL DISOBEDIENCE (2012), at 155–156.

3. Beginning in the seventeenth century, legal philosophers drew these connections because they conceived of law on the model of sovereign command. *See* Gerald J. Postema, *Law as Command: The Model of Command in Modern Jurisprudence*, 11 PHIL. ISSUES 470 (2001). While the command model of law has been mostly jettisoned, the conceptual connection between authority and the demand for obedience continues to be the orthodoxy. The *locus classicus* of the modern view is Joseph Raz, *Authority, Law, and Morality*, *in* ETHICS IN THE PUBLIC DOMAIN 212–216 (1994). Recent restatements and endorsements of the view can be found in Daniel Viehoff, *Democratic Equality and Political Authority*, 42 PHIL. & PUB. AFF. 337, 340 (2014), and Stephen Perry, *Political Authority and Political Obligation*, *in* 2 OXFORD STUDIES IN PHILOSOPHY OF LAW 1 (2013).

4. *See* Scott Hershovitz, *The Authority of Law*, *in* THE ROUTLEDGE COMPANION TO PHILOSOPHY OF LAW 65–75 (A. Marmor ed., 2012), for the only critical engagement with the Standard View. Some recent work in legal philosophy purports to clarify what obeying the law is, if only to contrast it with other possible responses to law, but in each case the explanandum turns out to be something else. For example, William Edmundson contrasts obeying the law with

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It might be thought that this inattention is just as it should be, and that systematic accounts of obeying and disobeying the law are in fact not required to answer such questions. Philosophers have known well enough what obedience and disobedience are, and any attempt to say anything more precise would obscure that which was sufficiently clear all along, and would thus stifle, rather than facilitate, discussion. But a moment's reflection reveals that systematic accounts of these responses to law are of central importance in these debates. Consider, for example, the only two accounts of obeying the law advanced in recent times. Some have claimed that to obey the law is to act for the reason that the law requires that one so act; others have argued that it is merely to do what the law says, regardless of the reasons for which one acts. These views will be discussed and made more precise in a moment, but the present point is that they assume very different pictures about what law requires of persons, how law engages their capacities as rational agents, and the normative significance of such engagement. In particular, what distinguishes these accounts is their different views about the reason for which a person must act in order to obey the law. And there is of course a tradition, as old as moral philosophy itself, that holds that the reasons for which a person acts are of great importance, for example, in judging whether an action is right or permissible, whether the person acted from good character, and so on. Determining, then, whether the law must figure in a person's practical reasoning at all (and if so, how), or whether a person needs to have any knowledge of the law at all in order to obey it, will bear directly on assessing the gravity (or levity) of a duty to obey the law, its relation to and priority among other moral duties, as well as the moral significance of acts of disobedience, civil or otherwise.

Given, then, the central importance of obeying and disobeying the law in these perennial debates, their enduring role in legal and political argument, and the persistent reticence of moral, legal, and political philosophers to explain them, a more explicit and defensible account of each of them is long overdue. I will begin, in Section I, by considering the Standard View of obeying the law that has long been taken for granted by theorists of political authority, roughly that for a person to obey the law is to act for a certain sort of reason provided by the law, as well as an

"law-abidance," though he never explains either concept; he says that abiding by the law is in part to "comply" with it, but the notion of compliance is left unexplained. With regard to obedience to law, he oscillates between what I call (below) the reason conformity and reason compliance views. *See* William Edmundson, *The Virtue of Law-Abidance*, 4 Philosophers' Imprint 1, 2–3 (2006). Another example is Fred Schauer, who suggests, in his most recent book, that he is addressing such questions as "What exactly does it mean to follow or obey the law?" and "Is every act that is in compliance with the law also an act of obedience to the law?," The Force of Law (2015), at 6, questions that are in fact the main focus of the present essay. However, he ultimately adopts, without argument, *Id.* at 194 n.18, the "conventional" view of obeying the law, which is precisely the Standard View I criticize below. Finally, Margaret Gilbert acknowledges that the Standard View is inadequate, but does not suggest what account should replace it. *See* her A Theory of Political Obligation (2006), at 210–211.

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opposing view, according to which obedience requires doing what the law requires, though not necessarily for the reason that the law requires it. I argue that both views are inadequate because both attempt to explain obedience exclusively in terms of the concepts of a reason for action, and acting for a reason, which has been the preference among legal and political philosophers for too long.

In Section II, I expand the possibilities for understanding obeying the law by moving beyond the general idea of acting for a reason, focusing instead on the content of the intention and knowledge with which an obedient subject must act. This highlights a different and less often discussed aspect of law's normativity: that the law, quite independently of creating reasons, often *creates actions* for us to perform: it identifies and in some cases conceptualizes, in terms far removed from that of ordinary action concepts, actions that it requires, forbids, or permits of its subjects. This characteristic feature of the law provides the clue as to what obedience requires. I will argue that the law identifies actions that we are to understand ourselves to perform when we perform them, such that that understanding moves us to action, if what we do is to count as obeying the law. In order to obey the law a person must act with some recognition that she is in fact doing an action that the law requires. In a phrase, obedience requires *knowingly doing the right thing*. The "right thing" is not the morally right, best, or justified thing, but doing the action that is required by the law and not another. What this knowledge, recognition, or understanding involves may vary across cases, but I will develop a default view against which exceptional cases can be contrasted.

In Section III, I consider the even more neglected idea of disobeying the law, in light of the discussion of Sections I–II. I confront the threshold question of the relationship between obedience and disobedience, in particular whether, as their names suggest, one is simply the negation of the other: whether disobedience should be understood as merely a failure to obey. The matter turns out to be not as simple as that, and I introduce a two-part account of disobedience, arguing for both a default sense and a more specialized sense involved in acts of civil disobedience. Both accounts, however, are compatible with the view of obedience developed in the earlier sections. Disobedience in the default sense (for example the sense implicit in much of the criminal law) typically involves an agent intending, and performing, an action that fails to correspond to an action permissible by law or (what often comes to the same thing) intending and performing an action that corresponds to one forbidden by it. Acts of civil disobedience are of this sort as well, but can be symmetrically contrasted with acts of obedience in that they consist additionally in *knowingly failing to do the right thing*: that is, in performing an action that one recognizes is at variance with one the law requires. This account of disobedience fits well not only with the role it plays in theories of civil disobedience, but also with how practitioners

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of civil disobedience have often characterized what is required to successfully engage in the practice.

My discussion of each concept is not meant to be conclusive, and leaves open the possibility that obedience and disobedience to law, at least as discussed in the various philosophical literatures, may not form an elegant set of opposing ideas; rather, each may in the end refer to distinct but related phenomena. However, I have the relatively modest aim of taking a first step in having a more philosophically substantive discussion about these concepts that figure in many foundational questions of legal and political philosophy. The broader purpose is to come to a more systematic understanding of obeying and disobeying the law, so that we can then identify more precisely what is at stake in debates about, e.g., what practical authorities demand of us, whether there is a duty to obey the law, and whether civilly disobeying it is ever justified.[5]

I. OBEYING THE LAW: THE STANDARD VIEW

Before setting out the only extant philosophical account of obeying the law, an old caveat should be brought once again to the fore. It should be kept in mind that the Standard View, and all other accounts of obedience and disobedience discussed in this paper, are meant to explain a characteristic response to only one (albeit ubiquitous) domain or kind of law, and so not as accounts of the necessary or appropriate response to all law. The domain of law in respect of which the notions of "obedience" and "disobedience" are appropriate has generally been restricted to the "penal" law, though distinguishing penal from non-penal law is not straightforward. The penal law certainly includes most parts of the criminal law, but also

5. It might be thought that while obeying the law has been given scant attention by philosophers, another, closely related topic has generated a voluminous literature that is of obvious relevance here. Inspired by certain remarks of Wittgenstein, many philosophers of the last thirty years have debated what it is to "follow a rule." *See, e.g.*, SAUL KRIPKE, WITTGENSTEIN ON RULES AND PRIVATE LANGUAGE (1982); P.A. Boghossian, *The Rule-Following Considerations*, 98 MIND 507 (1989); Philip Pettit, *The Reality of Rule-Following*, 99 MIND 1 (1990); Crispin Wright, *Rule-Following Without Reasons: Wittgenstein's Quietism and the Constitutive Question*, 20 RATIO 481 (2007). Indeed, some of the views considered here bear an affinity to some found in that literature. The debate over the nature of rule-following, however, is largely irrelevant to a discussion of obeying and disobeying the law, because the notion of a "rule" in that debate has little in common with the concept of a law as traditionally used by both philosophers and lawyers. For example, it is widely accepted that a "rule" can have "infinitary contents," Paul Boghossian, *Blind Rule-Following*, *in* MIND, MEANING, AND KNOWLEDGE 32 (Annalisa Coliva ed., 2012), that is, it can be stated in innumerable acceptable ways. Laws, however, exist at least in part because they have been intentionally laid down or posited, and so often have a canonical formulation, which delimits the range of reasonable interpretations that can be given of them. It is also widely agreed in that debate that some kind of "commitment" or "acceptance" of the rule is necessary in order to follow it. But as we will see, obeying the law requires nothing of the sort, and indeed requires that such commitment is *not* necessary: it must be possible, for example, for one to obey an unjust law. The very idea of civil disobedience, in fact, assumes this. And there are other sorts of cases; for example, it must be possible for a foreigner to obey the laws of a state to which she owes no allegiance.

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encompasses any other legal norm that explicitly requires or forbids a kind of action, and to which a sanction for disobedience attaches. So, for example, many mundane traffic laws, or laws in tax codes that impose fines for non-fulfillment of tax obligations, may be considered "penal" for present purposes. There are surely many marginal cases, but the caveat is that any explanation of obedience and disobedience will have extensive application to large domains of law in modern legal systems, though it will not extend to all law, for example to that which Hart called "power-conferring" rules like those governing the making of wills and other contracts.[6]

That caveat aside, the long-standing philosophical account about what obeying the law requires (the Standard View) arises out of a broader philosophical view about what practical authority is about, which in turn rests on a view, common among philosophers,[7] about what *we're* about, the sorts of creatures we are as agents. The line of thought proceeds like this: we are creatures who have rationality or reason—the capacity to recognize certain features of the world as significant, worthy of our notice, and relevant to deciding what to do and believe. Those features are themselves said to be *reasons*, considerations that count in favor or against doing or adopting some token action or attitude. This capacity *to recognize and respond to reasons* is said to be essential to us as persons, as agents who can respond and affect the world in distinctive ways. Practical authorities such as the law are said to enter the picture by making demands on us, say, to pay our taxes or refrain from committing murder. These demands are made on the presumption that we are persons in this sense, and so are intended to engage our capacities by serving as reasons for action, alongside, and on some accounts, in place of, all the other reasons that we had before the authority came on the scene. The theories about how this is supposed to work are varied and complex, but one influential theory, Joseph Raz's "service conception" of authority,[8] says that it is in the nature of authority for authorities to assess the reasons that apply to us *for* us, that is, on our behalf, and issue demands on the basis of those assessments. It is then part of the justification of our obedience to authority that authoritative directives reflect the reasons that we have anyway. Authorities are thus said to be a "service" or benefit to their subjects in the sense of helping the subjects do many of the things they have independent reason to do.

6. Richard Wasserstrom made the point long ago in *The Obligation to Obey the Law*, 10 UCLA L. REV. 780, 785 (1962–1963).

7. *See* T.M. SCANLON, BEING REALISTIC ABOUT REASONS (2014), DEREK PARFIT, 1 ON WHAT MATTERS (2011), JOSEPH RAZ, ENGAGING REASON (1999), and JONATHAN DANCY, ETHICS WITHOUT PRINCIPLES (2004), among others.

8. JOSEPH RAZ, THE MORALITY OF FREEDOM (1986), at 23–109; JOSEPH RAZ, BETWEEN AUTHORITY AND INTERPRETATION (2009), at 126–165. *See also* David Enoch, *Reason-Giving and the Law*, *in* 1 OXFORD STUDIES IN PHILOSOPHY OF LAW 1–38 (Leslie Green and Brian Leiter eds., 2011).

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On this kind of theory of practical authority, and the authority of law, in which the concepts of a reason and acting for a reason take center stage, what does obedience require?

To state the view precisely, it is helpful to introduce a distinction between complying with a reason and merely conforming to it.[9] To comply with a reason is to act for that reason; to conform to a reason is simply to do the action for which the reason is a reason, but not to act for that reason. For example, I may have several reasons to have a glass of wine at the party: the wine has a pleasant flavor, it will relax me, it will enhance my sociability, it may have certain beneficial effects on my health, and so on. Suppose then that I drink the wine, and do so for the reason *that it's pleasant* but not for the others. In drinking, I have complied with the reason that it's pleasant because I have acted for that reason. If you asked me why I drank it, I would say: because it's pleasant. Moreover, the fact that the wine has a pleasant flavor in some sense explains why I did what I did. But with regard to those other reasons to drink the wine—that it relaxes me, that it is healthy, and so on—it can only be said that I have *conformed* to them; it is the case only that I've done the action for which those reasons are reasons: I drank wine. It is to that extent that I have "satisfied" those reasons and, as it were, done all that they ask of me.

Now back to obeying the law. With the compliance-conformity distinction before us, the Standard View starts with the idea that law provides reasons for action to its subjects, and claims that obedience requires compliance, and not merely conformity, with those reasons. That is, a person obeys the law only when she does what the law requires for the reason that the law so requires. "Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what he tells you to do *because he tells you to do it*."[10] The "because" here is not, or is not merely, causal; it is normative, and so refers to the reason for which a subject must act if she is to obey. For analytical purposes, the Standard View can be called the reason compliance view:

> **Reason Compliance** [**RC**]: If it is a fact, F, that a law, L, requires A to φ, then A obeys L by φing for the reason that F.[11]

9. *See* Joseph Raz, Practical Reason and Norms (2d ed. 1990), at 178–180; John Gardner & Timothy Macklem, *Reasons*, *in* The Oxford Handbook of Jurisprudence & Philosophy of Law 462–463 (Jules Coleman and Scott Shapiro eds., 2002). Gardner and Macklem draw a similar distinction between "deliberately" and "accidentally" doing what reasons recommend. The distinction is less precise, however, since one can "deliberately" conform, or fail to conform, to a reason, ideas that will be of use below.

10. R.P. Wolff, In Defense of Anarchism (3d ed. 1998), at 9. While Wolff appears to be the modern source of the Standard View, its influence has come by way of the work of Joseph Raz, who explicitly accepts Wolff's view of obeying the law as "essentially sound." *See* Raz, The Authority of Law (1979), at 11, and his introduction to the collection of essays in Authority (Joseph Raz ed., 1990), at 1–19. *See also* Donald Regan, *Reasons, Authority, and the Meaning of 'Obey': Further Thoughts on Raz and Obedience to Law*, 3 Can. J. L. & Juris. 3 (1990).

11. I assume that the object of obedience is a particular law. One may object that this runs afoul of the orthodoxy in the theory of authority that authorities are persons, and therefore

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Those who accept RC assume that obeying the law requires explicit and rather precise knowledge of the content of the law. The assumption seems plausible for the more general reason that in order for a person to act for a reason, that person must have knowledge of, or at least be aware of, that reason.[12] So just as I can't drink the wine *because it's pleasant* unless I have knowledge of its pleasant flavor, similarly I can't pay my taxes *because the law says so*, unless I know that the law says so, and what exactly it says.[13]

RC has considerable intuitive appeal, especially across a wide range of cases involving one person obeying the orders of another. While it is apparently widely held as an account of obeying the law, it has been more often assumed than argued for. Perhaps for that reason it has only very recently been criticized as not fully taking account of our experience of living and acting under the law. It has been suggested that reflection on various examples shows that RC is false and rather that obeying the law requires only *conformity*, and not compliance, with the reasons for action the law provides.[14] This opposing view is that for many of the actions required, permitted, or prohibited by law, we usually already have many reasons to do them or not to do them, independently of the law; and that in those cases, acting on those other (non-legal) reasons is sufficient for obedience, so long as we simply do what the law requires. We may formulate the weaker, reason conformity view more precisely this way:

> **Reason Conformity** [**RF**]: If it is a fact, F, that a law, L, requires A to φ, and given the existence of another (normative, non-legal) reason, G, to φ, then A obeys L by merely conforming to reason F, that is, by φing for the reason that G.[15]

Cases in which the law requires something for which there is already clear and compelling moral reason have been adduced to show why RC is

only persons can be obeyed. I wish to remain agnostic about the proper object of obedience, and RC can harmlessly be reformulated given one's position on that issue.

12. *Cf.* JOSEPH RAZ, THE AUTHORITY OF LAW (2d ed. 2009), at 214: "Therefore if the law is to be obeyed it must be capable of guiding the behavior of its subjects. It must be such that they can find out what it is and act on it." In the meantime, whether acting on a reason requires an agent to know that reason has become a contentious issue among moral philosophers. *See* JOHN HYMAN, ACTION, KNOWLEDGE & WILL (2015), at 133–158.

13. It is an open question, and one I set aside here, as to whether knowledge, merely a reasonably justified belief, or some other epistemic standard is required. Raz and others speak loosely of having "knowledge" of the law, and writers in legal philosophy have not yet sought to make the epistemic standard more precise. It ought to be made more precise, but doing so will not matter for present purposes.

14. For example, Scott Hershovitz suggests we should "identify obedience with conformity – with simply doing as the law requires whatever one's reasons." *Hershovitz*, *supra* note 4, at 67. *See* note 18, *infra*, for discussion of others who have endorsed the reason conformity view.

15. The view Hershovitz argues for may be even weaker than this, since conformity may not require acting for a reason at all. For example, if while driving I depress the car brake purely out of anger as I approach an intersection at which the traffic light has just turned red, then it would seem that I have conformed to the relevant traffic law without acting for any reason. An argument for the existence of such merely expressive actions can be found in Rosalind Hursthouse, *Arational Actions*, 88 J. PHIL. 57 (1991).

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mistaken and RF is correct. For example, we would find a person peculiar if her only, or even primary, reason for refraining from murder was *that the law said so*. There are plenty of other good reasons not to commit murder that we would expect to be acted on by law-abiding citizens, quite apart from the reason that the law forbids it. And further, it seems, the law is indifferent as to which of these reasons we choose to act on. "The law certainly does not regard your behavior as defective if you refrain from murdering for the reason that murder is wrong. No prosecutor will investigate. No charges will be brought. No judge will take you to task for failing to pay proper heed to the law."[16] There are also examples that show that most of the time it is not plausible to suppose that a demand for compliance is even implied by a given legal requirement. Consider a law requiring citizens to pay tax in proportion to one's income. Again, there are likely innumerable reasons to pay taxes that depend on the various worthwhile ends that the state (let's assume) will pursue with the resulting revenue: enhance national security, relieve suffering of the worst off in society, contribute to the education of the young, and so on. And it seems, again, that the law is, as it were, indifferent as to *why* citizens pay the tax they are obligated to pay. All the law requires is *that taxes be paid*, not that they be paid *because the law requires it*. The law doesn't care whether you pay your taxes for the good of mankind, in order to escape prison, or just to get your accountant to stop reminding you to pay them: all that it asks is that you act so as to conform to the requirement that you pay, which of course only requires *that you pay*, regardless of the reasons for which you end up paying.[17] To be sure, there may be cases in which the law requires compliance: imagine a judge issuing an injunction against a recalcitrant defendant to stop engaging in conduct that amounts to a public nuisance, and requiring that the defendant abstain from the conduct *because* she (the judge) required him to stop. Or again, imagine a police officer giving an order to a citizen to move along at the scene of a riot. But, the defender of RF maintains, surely these are marginal and rare cases: the law typically only requires conformity with its directives, and simply does not care why those persons subject to it do the things they are legally required to do.

Suppose we accept these counterexamples to the Standard View as persuasive and therefore as prima facie reasons to reject RC. What then of the revisionary view, RF? Does obeying the law generally require only that we do what the law says, without regard to the reasons for which we act?

16. Hershovitz, *supra* note 4, at 67. *See also* Perry, *supra* note 3, at 10–11, for this and similar counterexamples to the Standard View.

17. What the law requires in the tax example may even be weaker than this; it arguably doesn't even require that *you* pay your taxes. That is, your tax obligations can be fulfilled by, say, *my* paying your taxes without you running afoul of what the law requires of *you*. Other examples, like a judicial order in the form of an injunction (e.g., a restraining order regarding domestic violence), may require that only an action by the addressee will suffice. Raz once called these "action" (as opposed to "outcome") reasons. *See* Raz, The Morality of Freedom, *supra* note 8, at 145–146.

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The view is not without its adherents. For example, RF seems to have been the going view of obeying the law in the positivist tradition up to and including Hart,[18] though that was a break from even earlier acceptance of the reason compliance view of obedience.[19]

In fact, obedience as mere conformity to the reasons the law provides is deeply implausible. If all that is required to obey the law is conformity to its directives—that is, merely doing the actions required, regardless of the reasons for which one does them—then obedience would become a ubiquitous and for that reason far less interesting phenomenon than has been supposed. For on the mere conformity view, there may be little connection between the issuance of a legal rule or order on the one hand, and an action that amounts to obeying it on the other. Indeed, if mere conformity is all that is required, there need not be any connection—normative, causal, or otherwise—between law and citizen *at all*. For that reason, the view has bizarre implications. It would open up the possibility that a person could obey the law while being completely oblivious to the fact that she is doing so, indeed, while completely unaware of the fact that there is a system of legal rules that applies to her conduct. A person could, moreover, even be said to obey the law if she did so on accident, for example, if she intended to do something either prohibited by law or to which the law is indifferent, but by mistake were unsuccessful because of incompetence or weakness of will, and "obeyed" the law anyway. Or a person could even obey the law while in a sense acting, but not intending anything at all, e.g., when sleepwalking.

The consequences of a mere conformity view like RF are even more bizarre than that. Recall the children's book *The Little Prince*, in which a confused but confident king claims he receives perfect obedience from all his subjects, and indeed he guarantees that this be so. When the prince

18. John Austin famously makes the concept of obedience central to his account of sovereignty, i.e., as a person or persons habitually obeyed by the political community and who obey no one, which in turn forms an essential part of his theory of law. He explicitly endorses the reason conformity view of obedience in THE PROVINCE OF JURISPRUDENCE DETERMINED (Wilfrid E. Rumble ed., 1995), at 248–249, where he claims that while acts of obedience must be "voluntary or free," they can be done from "motives of some description or another." H.L.A. Hart follows Austin in THE CONCEPT OF LAW (Joseph Raz and Penelope A. Bulloch eds., 3d ed. 2012), where he claims that citizens may obey the law for "a variety of different reasons," *Id.* at 114, and "from any motive whatever," *Id.* at 116. Himma argues that Hart "overstates" the extent to which obedience is necessary for the existence of a legal system, but the criticism relies on incorrectly attributing to Hart the reason compliance (RC) view of obedience. *See* Kenneth Einar Himma, *A Comprehensive Hartian Theory of Legal Obligation: Social Pressure, Coercive Enforcement, and the Legal Obligations of Citizens*, *in* PHILOSOPHICAL FOUNDATIONS OF THE NATURE OF LAW (Wil Waluchow & Stefan Sciaraffa eds., 2013), at 175–176. Hart, much later and under the influence of Raz, did endorse something like the reason compliance view in ESSAYS ON BENTHAM (1982).

19. Austin likely misunderstood Bentham's view of obedience, which is more subtle than the conformity view as represented in RF, and is at least in some aspects a reason compliance view. *See* GERALD POSTEMA, BENTHAM AND THE COMMON LAW TRADITION (1986), at 233–237, for discussion of various interpretations of Bentham on this issue. Prior to Bentham, many philosophers in the early modern period took the reason compliance view of obedience for granted.

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approaches the king on a planet of which he is the only resident, the exchange goes like this:

> "May I sit down?" came now a timid inquiry from the little prince.
> "I order you to do so," the king answered. . .
> "Sire," [the little prince] said to him, " I beg that you will excuse my asking you a question—"
> "I order you to ask me a question," the king hastened to assure him.
> "Sire— over what do you rule?"
> "Over everything," said the king, with magnificent simplicity. . .
> The king made a gesture, which took in his planet, the other planets, and all the stars. . .
> "Over all that," the king answered.
> For his rule was not only absolute: it was also universal.
> "And the stars obey you?"
> "Certainly they do," the king said. "They obey instantly. I do not permit insubordination."
> Such power was a thing for the little prince to marvel at. If he had been master of such complete authority, he would have been able to watch the sunset . . . two hundred times, without ever having to move his chair.
> "I should like to see a sunset. . . do me that kindness. . . Order the sun to set. . ."
> "You shall have your sunset. I shall command it. But, according to my science of government, I shall wait until conditions are favorable."
> "When will that be?" inquired the little prince. . .before saying anything else [the king] consulted a bulky almanac. "Hum! Hum! That will be about— about— that will be this evening about twenty minutes to eight. And you will see how well I am obeyed."[20]

There are many lessons in this amusing exchange, but for present purposes the point is that, according to RF, the king *does* enjoy the obedience of his subjects. For his subjects clearly do conform to his requirements—they do what he tells them to do, and on the theory of obedience as reason conformity, that is all that is required. Now this is obviously absurd—indeed, that it is absurd is part of the charm of the story. But the charm of the story doesn't contribute to the truth of the theory. One way our king has gone wrong is that he misunderstands what it is to require or command something of someone. He merely describes what happens, what someone has done, and then "commands" that it be so. But commands, and the norms they create, are not like that. Commands are not descriptions: they do not "fit" what happens, but rather what happens must in some sense fit them. As philosophers have sometimes put it, descriptions and things like commands that express an intention or desire have different "directions

20. Antoine de Saint-Exupery, The Little Prince (T V F Cuffe trans., 1943), at 35–36. The exchange is no doubt an elaboration of that aphorism from French revolutionary politics, "There go my people. I must find out where they are going, so I can lead them."

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of fit."[21] Mark Murphy has put the point in regards to commanding this way:

> *commanding that p* is an attempt to do something with language, to realize some state of affairs by the performance of a speech-act. It is, in particular, a *directive* act: the aim internal to a commanding act is that of having the addressee or addressees carry out the action represented in the proposition that is the object of the command.[22]

Acts of obedience must "fit" the commands of authority by being those actions that are among those required; it is not enough for obedient actions merely to correspond to or "match" those that the law requires. And when a subject fails to obey, the mistake must be in the act and not, as Anscombe said,[23] in the command. The notion of reason conformity in RF is inadequate to account for this, as demonstrated by our confused king. A philosophical explanation of obeying the law requires an answer as to *how* a subject's attitudes and actions must "fit" the requirement of a given law. We will return to this problem in the next section.

A simple way to modify RF to avoid these problems is to add that there must be a unidirectional causal connection underlying the conformity between law and act: in order to count as obedience, the law must *cause* the obedient act. And yet, so modified, the view would still allow for objectionable cases. Suppose A is an expert on what the law requires of her, and conscientiously obeys those requirements; suppose B, subject to the same laws, is woefully uninformed about them, but for reasons completely unrelated to law (e.g., out of respect or admiration for A), is in the habit of patterning his conduct on A's. On the suggested revision of RF, B obeys the law just as A does. (And we could imagine C patterning her conduct on B's, and so on, extending a causal chain of agents and actions far removed from the law itself.) One reason to think that A obeys the law but the others do not—and another, related way our king (and the mere conformity view of RF) has gone wrong—is in failing to see that in obeying the law, there must be some *acknowledgement* of the authority by the obedient subject.[24] The reason conformity view (RF) requires only a mere correspondence between what the law requires and what is done, such that the correspondence, even one caused in the right way, may arise for any reason, or for no reason

21. *See* Kim Frost, *On the Very Idea of Direction of Fit*, 123 PHIL. REV. 429 (2014), in particular his recasting, *id.* at 473, of Anscombe's original idea as there being different manifestations of practical thought with their own standards of correctness.

22. MARK MURPHY, AN ESSAY ON DIVINE AUTHORITY (2002), at 24.

23. G.E.M. ANSCOMBE, INTENTION (2d ed. 2000), at 56–57.

24. *Cf.* R.B. Friedman, *On the Concept of Authority in Political Philosophy*, in AUTHORITY 64 (Joseph Raz ed., 1990) (". . .authority is distinguished from coercion as a mode of influence because it involves some sort of 'recognition' on the part of the subject that the person to whom he submits is 'entitled' to obedience and it is distinguished from persuasion in that obedience is not procured by 'argument'").

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at all. And as we have seen, the Standard View (RC) requires a person to recognize a requirement of law in a particular way—as a reason for action, as well as a reason to act for the reason that the act is required. But we have seen the problems with that view as well. But that does not mean that the general idea that there is some distinctive recognition of authority in acts of obedience is mistaken. Indeed, that general idea explains why the sun and stars cannot obey the law but people can. But it remains to be explained what that distinctive recognition must be.

A final puzzling consequence of the reason conformity view is this. If obeying the law requires only a mere correspondence between legal requirement and action, regardless of whether that correspondence is established by intentional, conscious, and rational action by an obedient subject, or entirely by chance, then it becomes difficult to explain why moral, legal, and political philosophers have been concerned, for centuries, with defending (or debunking) the idea of a moral obligation to obey the law. If that alleged obligation is such that a person could discharge it without even being aware that she is doing so, or by acting for reasons that have nothing to do with the legal system to which the person is subject, then it would seem that philosophical debate about its nature would be of far less importance than has long been thought. And yet a core assumption of that debate, from Plato onward, has been that the question of whether such an obligation exists *is* an urgent question of great moral and political significance. Interpretive charity recommends that theories of political obligation are meant to explain (and sometimes justify) something more than mere correspondence between law and obedient action and that therefore RF is false as a claim about what obeying the law requires.

II. OBEYING THE LAW: NEW VIEWS

Let us retrace our steps. We can see now that the standard, reason compliance (RC) view really consists of two claims: to obey the law is, first, to do what the law says, and second, to do it because the law says so. The counterexamples showed that this view was too strong and that all that obedience requires is just the first thing: to do what the law says. This is the reason conformity view (RF), which as we saw was also objectionable. But in order to introduce new views of the matter, I now want to suggest that the very idea of "doing what the law says" presents its own questions.

Recall that the Standard View (RC) of obedience presupposes a certain conception of the agent, on which a theory of authority and obedience is constructed. That shared conception assumes that one defining mark of an agent or person is having the capacity to recognize, appreciate, and appropriately respond to reasons for action and belief. This conception has long been the orthodoxy in legal and political philosophy and, insofar as the Standard View assumes it, partly explains why theoretically grounded views about what obeying the law requires have been so few and far between.

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I want to now expand the possible views of what obedience to law might be by reflecting on a different aspect of agency, which in turn allows us to appreciate a different aspect of the nature and role of authorities, which enables us to generate new views—and new questions—about what obeying the law amounts to.

The aspect of agency with which I'm concerned is therefore not the capacity to recognize and respond to reasons, as the Standard View requires, but rather our capacity to engage in a distinctive sort of thinking about what we do, thinking that plays a role in determining the content of our own self-conception over time. This thinking manifests itself in the ways in which we can spontaneously characterize our own actions, both while we are doing them, and across time, before and after doing them. This ability to almost always say what we are doing, have done, and will do—independent of the reasons *why* we do them—has been recognized by moral philosophers and social psychologists as having a special significance in that our characterizations of our actions shape and are shaped by our self-conception.[25] Philosophers have traditionally focused on the content of future-directed intentions to act; the capacity to which I refer is broader than that, as it involves the characterization of action diachronically, i.e., before, during, and after the formation and execution of an intention.

This aspect of agency points us to a different aspect of the role and nature of practical authority: authorities, and especially legal authorities, engage this capacity of conceptualizing action by giving us things to do—by conceptualizing, and to that extent creating, actions for us to do and requiring that we do them so conceptualized. This is one primary sense in which law is a "hermeneutic concept." As Joseph Raz puts it: "The concept of law is part of our culture and of our cultural traditions. It plays a role in the way in which ordinary people as well as the legal profession understand their own and other people's actions. It is part of the way they 'conceptualize' social reality."[26]

I suggest that one role the law plays in understanding people's actions is that it provides them with characterizations of their actions that are meant to affect the characterizations those people themselves may formulate of those actions. Sometimes an action required by law is characterized in a banal way, in a way in which we would conceive of our actions

25. This capacity of unique and spontaneous action identification was noted by G.E.M. Anscombe in INTENTION (1957). For recent discussions in ethics and social psychology, *see* the essays in AGENCY AND SELF-AWARENESS (Johannes Roessler & Naomi Eilan eds., 2003) and AGENCY AND ACTION (John Hyman & Helen Steward eds., 2004), as well as Robin Vallacher & Daniel Wegner, *Action Identification Theory*, *in* HANDBOOK OF THEORIES OF SOCIAL PSYCHOLOGY 327–348 (P.A.M. Van Lange et al. eds., 2012).

26. Raz, *supra* note 3, at 237. *See also* Stephen Perry, *Hart's Methodological Positivism*, in HART'S POSTSCRIPT: ESSAYS ON THE POSTSCRIPT OF THE CONCEPT OF LAW 324 (Jules Coleman ed., 2001). Brian Leiter claims this idea "has been endorsed by every legal philosopher of the last hundred years, with the exception of the Scandinavian Realists." *See* his NATURALIZING JURISPRUDENCE: ESSAYS ON AMERICAN LEGAL REALISM AND NATURALISM IN LEGAL PHILOSOPHY (2007), at 173.

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anyway—for example, "driving 40 mph on a public road"; but others are characterized in ways such that we would never think to do them, so conceptualized, on our own. For example, the law requires that we act as the reasonable person would and refrain from exposing others to an unreasonable risk of harm (as in tort law), or that we not intentionally kill another person in the heat of passion and in response to adequate provocation (one formulation of an act of voluntary manslaughter), or that we may create a non-possessory security interest in the bottomry of a vessel (as one can do in maritime law).

I think the role that an authority, and in particular the law, plays in conceptualizing action both is important and has been overlooked by the going views of obedience, which assume that the exercise of authority can be understood only in terms of the creation of and acting on a certain sort of reason for action. And focusing on this other aspect of authority can help us better understand obeying the law. Whether or not the law creates reasons for us to act, and whether or not the law requires conformity or compliance with those reasons, it remains trivially true that the law requires us to do things. The intuitive reason conformity view (RF) says that in order to obey we must simply do those things. But what acknowledgement or recognition by the person obeying must be involved in even the case of conformity? What connection must there be between the content of the requirement and an act of obeying that requirement?

We can start with one lesson from the story of the confused but confident king: that it can't just happen to be the case that one has obeyed the law. And one way to ensure that obedience is non-accidental is to say that there at least must be the possibility of some *awareness* that one has obeyed. Perhaps there is more to it. Perhaps in order to obey the law there must be something we must do accompanied by an intention with a characteristic content. But what must we intend?

There seem to be two broad ways to answer this question, using a compliance-conformity distinction similar to the one we encountered in explaining the Standard View, a distinction that we may use to generate two further claims about what an obedient subject must intend or know in order to obey. The stronger, intention compliance, view is that in order to obey the law, one must intend the action the law requires, precisely as characterized by the law itself.

> **Intention Compliance** [**IC**]: If a law, L, requires A to φ, then A obeys L only by φing with the intention to φ.

That is, if the law requires me to φ, I can obey only by intending to φ: to myself characterize my action as one of φing. To adapt a familiar idea

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from the philosophy of action, I must act under the legal description of an act required by law in order to obey it.[27]

Does obeying the law require intention compliance, as IC asserts? That is, if the law requires that I "mitigate damages as the non-breaching party to a contract," must I intend to perform an action of just that description, and perform it with an intention of just that content, in order to obey? While intending to do actions characterized by the sometimes technical language of the law is uncommon, there are cases in which it does occur as a matter of course. For example, lawyers, far more often than ordinary citizens, act with an intention of doing something just as the law characterizes it. This is understandable since lawyers are usually better acquainted with what actions the law requires, in the language in which it requires it. So a lawyer may perform "due diligence" for her client, or "protect the attorney-client privilege," or provide a "short and plain statement of the claim showing that the pleader is entitled to relief,"[28] and so on. Sometimes ordinary citizens also engage in this sort of thing; these are often cases in which there is public scrutiny on a citizen's conduct and the stakes are high should the citizen disobey. An example of this comes from the 2012 presidential election in the United States. Prior to the Republican primaries in 2011, the Federal Election Commission (FEC) clarified the ruling of the Supreme Court in the notorious *Citizens United* case[29] that allowed political action committees to raise unlimited sums of money with which to make advertisements on behalf of a candidate for president. The FEC deemed that this was permissible so long as there was no "coordinated communication" between the committee and the candidate's campaign.[30] After the adoption of this rule, candidates or their surrogates made statements to the media using the precise wording of the regulation, in order to claim that they were acting within its boundaries, and saying that they had not engaged in any "coordinated communication" with a committee that had produced some controversial advertisement.[31] But suffice it to say that these kinds of cases are rare.

There is, however, an objection to the intention compliance (IC) view that is analogous to the objection we encountered earlier against the reason compliance (RC) view of obedience. The law just does not seem on its face to require, as a general matter, that its subjects intend to act precisely in

27. *See* DONALD DAVIDSON, ESSAYS ON ACTIONS AND EVENTS (2d ed. 2001), at 50. In a recent essay, Matthew Hanser assumes IC as an account of obedience, but he gives no reason for preferring it over the Standard View (or any other). *See* his *Doing Another's Bidding*, *in* REASONS AND INTENTIONS IN LAW AND PRACTICAL AGENCY 112–114 (George Pavlakos & Veronica Rodriguez-Blanco eds., 2015).

28. *See* FED. R. CIV. P. 8(a)(2).

29. 558 U.S. 310 (2010).

30. *See* 11 C.F.R. 109.21–22 (2011).

31. *See, e.g.*, Mike McIntyre & Michael Luo, *Fine Line Between 'Super PACs' and Campaigns*, N.Y. TIMES, Feb. 25, 2012, http://www.nytimes.com/2012/02/26/us/politics/loose-border-of-super-pac-and-romney-campaign.html?_r=1.

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terms of the characterization of the action it has specified. In fact, just as the law is (usually) indifferent to the *reasons* why one does the action that the law requires in a given instance, so long as one does it, similarly the law seems to be (usually) indifferent as to what one intends to do when obeying, so long as one does, under some description, what the law says. If a token law requires that I pay my taxes, it makes no difference in obeying whether, when I pay my taxes, I think of what I am doing as "getting the government off my back," "contributing to the general welfare," or whatever.

An additional problem with IC is that it implicitly requires a degree of knowledge of the law that most people lack most of the time. If a person can obey the law only if they intend to act under a description of the act provided by the law, and given that modern legal systems typically govern a vast range of human actions, it would appear that IC would require a similarly vast knowledge of action descriptions in the law, beyond that of even the most seasoned of lawyers and judges. For that reason it seems to follow from IC that obeying the law is an exceedingly rare phenomenon, far less common than has been supposed both by theorists of political obligation and ordinary citizens who self-identify as "law-abiding."[32]

While IC is problematic for these reasons, we can generate a further, weaker view about what an obedient subject must intend in terms of intention conformity:

> **Intention Conformity (IF):** Given that a law, L, requires A to φ, then A obeys L by intending to Ψ, and Ψing, only if it is the case that by Ψing, A φs.

The intention conformity view expresses the idea that if the law requires me to φ, I can obey by intending to Ψ, such that there is some entailment relationship between Ψing and φing. We can at present remain neutral as to the precise relationship between Ψing and φing: perhaps the relationship is one of strict identity, or there is a necessary means-end relationship between Ψing and φing, or Ψing is constitutive (perhaps even only partly constitutive) of φing. Whatever the best way to explain this connection, the intention conformity view says that all that is required for a person to obey the law is to intend (and perform) an action that is describable as the one the law requires. Again, for example, if the law requires you to pay your taxes, you can intend to do a wide range of things as you submit payment—"manage my finances," "do my civic duty," "fund all the free loaders," "perpetuate the welfare state," and so on—so long as you do an action that is describable as the one the law required you to do: pay your taxes.

However, IF suffers from the same problem as the reason conformity view (RF). It is perfectly consistent with again finding "obedience" in the story of

32. The Standard View (RC) suffers from a similar problem. *Cf. supra* note 12. A pioneering empirical study of citizens' self-understanding as "law-abiding" is Tom Tyler, Why People Obey the Law (1990).

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our confused king. For on the simple intention conformity view, there need not be any connection at all, normative, causal, or otherwise, between legal requirements and the actions of the person who obeys them. There need not be any recognition or acknowledgement of the law that we found necessary to take account of in light of the confused king. Purely accidental, and indeed random, intentional acts by oblivious subjects (or non-subjects) would count as obedience, on the intention conformity view.

This view, however, does seem to be on the right track. For its failings suggest that one way to describe the required normative connection between the law and its obedient subjects' actions is to say that, while they need not intend to do precisely what the law literally says to do, in order for their conduct to count as obeying, those subjects must at least recognize that their conduct *is* so describable.[33] Let's call this view intention conformity with knowledge:

> **Intention Conformity with Knowledge (IFK):** Given that a law, L, requires A to φ, then A obeys L by intending to Ψ, and Ψing, only if it is the case that by Ψing, A φs, and A knows that by Ψing, A φs.

While IFK does make some attempt to take account of the platitude that "recognition" of authority is an essential part of obedience, in the form of knowledge that a subject's intended action is describable as one with which the law is in some way concerned, more needs to be said to avoid mere accidental cases of obedience in which subjects have such knowledge, but the knowledge is inert in bringing about the obedient action. Therefore, we should interpret IFK to claim that knowledge of the fact that one's conduct is describable as an act permitted, forbidden, or required by the law must play *some* role in the explanation as to why one acts as one does on the relevant occasion of obedience. I haven't the space here to pursue in any detail the question, rarely asked by legal and political philosophers, of what role that must be. The argument to this point, however, suggests that the knowledge of action-description equivalence need not play an explicit role in the practical reasoning of an obedient subject, for example by functioning as a reason for performing the required action, but yet may make a contribution to action by being in the background of that reasoning.[34] Obedience requires that knowledge

33. Raz long ago characterized something like this view of obedience as "conformity coupled with knowledge." *See* THE CONCEPT OF A LEGAL SYSTEM (2d ed. 1980), at 15. There he mentions it in a critical discussion of John Austin's view of obedience, but does not pursue it further.

34. I use the phrase "in the background" in precisely the sense developed by Philip Pettit and Michael Smith in *Backgrounding Desire*, *in* FRANK JACKSON, PHILIP PETTIT & MICHAEL SMITH, MIND, MORALITY, AND EXPLANATION 271–272 (2004), that is, as a motivating reason for action: "The desire for S figures in the background if and only if it explains the agent's choice of option. It figures in the foreground if and only if the agent reaches that choice via the recognition that he has that desire and that the option has the desirable property. . . More generally, a desire is present in the background of an agent's decision if and only if it is part of the

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of the law at least motivate action, whether or not that knowledge explicitly guides action in deliberation.

The connection described in IFK between the law and its subjects, which is the understanding by the subject that her action is characterizable as one with which the law is concerned, such that that fact in part explains her action, is explained by the broader aspect of authority I explained earlier. Whether or not the law provides its subjects reasons for action, it individuates and conceptualizes a wide range of human actions, such that subjects must adopt those conceptualizations as a condition of obedience. This account does align with a wide range of cases. For example, it is a striking aspect of legal practice, illustrative of this, that otherwise ordinary human conduct can be and is recharacterized all the time in pleadings written by lawyers, and submitted in court proceedings, in order to state a prima facie case before a court. Any plaintiff's lawyer knows you'd better describe the defendant's conduct in the precise terms of the statute or common law rule so as to avoid having the case dismissed by a judge as "failing to state a claim upon which relief can be granted."[35] So, for example, imagine two men in a pub late on a Saturday night who have a disagreement and come to fisticuffs. We might suppose that the victor intended to, and did, "teach him a lesson" or "showed him who's boss." But by Monday morning in the courthouse, what he did has been recast (by his adversary's lawyer) as "intentionally and without consent causing a reasonable and immediate apprehension of imminent bodily harm in another person" (a formulation of the common law definition of assault). And on the view I'm suggesting our bruiser failed to obey because he failed to see that his intended conduct was characterizable in just this way, as at variance with what the law required him to do or refrain from doing, and allowed that to play some motivating role in the explanation of his action.

There are many refinements to be made to this line of thought, but it seems to me that something like IFK is the most promising. One may object that IFK suffers from a similar problem raised against both RC and IC: that IFK requires for obedience detailed knowledge of the law, which most people lack. The consequence of IFK thus would similarly seem to be that most people most of the time do not obey the law. That is, most people don't exhibit any awareness that the things they do in the course of a day are describable in precise legal terms under the law as permitted, required, or forbidden. To be sure, there are some, namely experts in the law (lawyers, judges, administrators, etc.), who may go through a day "taking reasonable care," or "acting in good faith," or "performing due diligence," or

motivating reason for it: the rationalizing set of beliefs and desires which produce the decision." Though they do not explore the possibility, backgrounding knowledge rather than desire or belief is consistent with their account.

35. Fed. R. Civ. P. 12(b)(6). The rule is an interesting case, as it provides an action description (in this case an omission) that the law directs plaintiffs, defendants (in order to raise a motion), and the judge (in order to dismiss a case) to each apply to the conduct of the plaintiff in initiating a lawsuit.

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whatever. But ordinary citizens rarely exhibit this level of knowledge of the law, and thereby are unable to obey it.

The objection in fact sets the bar far too high in regards to what knowledge of the law must be in this context and how it must be manifested in acts of obedience and in the explanations of those acts. For all that IFK requires is knowledge of the relevant legal norms at *some* level of description. A person may know the language of a statute or regulation verbatim, but more often the knowledge that plays a role in motivating action is much more coarse-grained. One may know the core of a legal requirement without knowing the particulars; in the extreme, one may manifest sufficient knowledge of a legal norm only by using what Anscombe once called a "stopping modal," a deontic locution that is opaque with regard to the content of the relevant norm, but references it nonetheless ("You can't cross the street there," "You have to pay the fine," and so on).[36] The character of legal knowledge has received scarce attention from philosophers of law, but for present purposes, it is enough to say that obedience to law allows for such knowledge to take many forms, and for it nonetheless to be the case that the person who obeys both recognizes a legal norm as an authoritative directive and allows that fact to make a difference, both causal and normative, in the production of her action.

III. DISOBEDIENCE

I turn now to the even more neglected topic of disobeying the law; there is not in fact an articulated (much less defended) view of disobedience to be found at all in the relevant literatures (on civil disobedience and philosophical anarchism, for example). So it would be of some interest to arrive at some considered view of the matter, in order to understand better what is at stake in those debates. Given the foregoing discussion of obedience, one question to address at the outset is the logical relationship between obeying and disobeying the law. One view is to treat them as akin to truth values of actions, in the sense that from the point of view of a legal system, for any possible action, it is a token instance of either obeying or disobeying that system or one of its constituent legal norms. At first glance, this seems to be a very strong and capacious take on the proper application of those concepts; it would seem to follow that, for example, anyone who is not (at a given time) obeying the criminal law of Texas is disobeying it, and this does not seem to capture the normative relation (if there is one) between, say, the citizens of France and the relevant parts of the Texas legal system, a relation that seems far more tenuous than that.[37] A weaker and more

36. G.E.M. Anscombe, *On the Source of the Authority of the State, in* COLLECTED PHILOSOPHICAL PAPERS OF G.E.M. ANSCOMBE, VOL. 3: ETHICS, RELIGION, AND POLITICS (1981).

37. Hans Kelsen seems to take this view in an argument for the existence of a single, international *Grundnorm*. *See* his PRINCIPLES OF INTERNATIONAL LAW (1952), at 559–662.

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plausible view is that while a token action by a person subject to a given legal system cannot at once be both an act of obedience and disobedience in respect of the same law, it can be the case that token actions may be neither acts of obedience nor disobedience. In the language of classical logic, the concepts of obedience and disobedience are contraries, and not contradictories.

What then does disobeying the law require? A natural place to start is with the negation of the Standard View of obedience, that of reason compliance.

> **Reason Non-Compliance** [**RNC**]: Given the fact, F, that a law, L, requires A to φ, then A disobeys L by failing to φ for the reason that F.

It is easy to see that this view suffers from problems analogous to the ones raised against the Standard, reason compliance view of obedience (RC). Reflection on specific cases, like the murder example, seems to show that RNC does not capture what it is to run afoul of a legal requirement, especially in such paradigm examples in the criminal law. For example, disobeying the law by failing to refrain from murder for a specific reason, that is, *for the reason that the law forbids it*, implausibly overstates (and drastically complicates) the conditions for the triggering of a sanction. It is enough, it seems, for a person simply to fail to do what the law requires, regardless of their reasons for the failing. This is captured by the negation of the reason conformity view (RF):

> **Reason Non-Conformity** [**RNF**]: Given the fact, F, that a law, L, requires A to φ, then A disobeys L by failing to φ and thereby failing to conform to F.

But again, analogous problems arise with RNF as the ones I raised against RF. Disobedience, on the interpretation of RNF, could occur by cosmic accident; a person could disobey the law by scarcely doing anything, for any reason, or for no reason at all. Nor is there, again, any requirement here of the right direction of fit. The view would therefore entail such absurd consequences as, for example, the idea that distant peoples of the past disobeyed the current New York penal code. RNF also runs afoul of a common feature of the criminal law, according to which it is often the case that offenses (and ipso facto acts of disobedience) are committed with certain sorts of intentions (for example a "mens rea"). So it might be thought that negation of the intention compliance view (IC) is on the right track:

> **Intention Non-Compliance** [**INC**]: Given the fact that a law, L, requires A to φ, then A disobeys L only by φing with the intention of not-φing.

However, yet again, analogous problems arise as we encountered in the discussion of obedience as stated by IC. It is highly implausible (not to mention a peculiar public policy) to require that disobeying a law requires

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acting with a specific intention to fail to do an action under the full description contained in the relevant legal norm. As observed in the previous section, there are exceptional cases in which one intends an action under the legal description of that action, but even more exceptional would be intentional omissions in regards to those descriptions; only the most indignant anarchists would engage in such behavior.

The remaining complementary views to those developed with respect to obedience, however, do seem more promising. Consider:

> **Intention Non-Conformity (INF):** Given that a law, L, requires A to φ, then A disobeys L by intending to Ψ, and by Ψing, only if it is the case that by Ψing, A fails to φ.

This seems to at least partially capture the notion of disobedience (or "offending") underlying the criminal law: to act with an intention to perform an act-token that is reasonably describable as one that the law forbids.[38] There is a wide range of cases that cannot be considered here, though I note that INF is consistent with many of the important theories of the role and content of intentions in the criminal law.[39] I put aside the prospects of INF as a characterization of standard cases of disobedience, in order to isolate what is involved in acts of civil disobedience.

For acts of civil disobedience seem to be markedly different from the ordinary acts of disobedience of thieves and murderers. The most salient difference of those acts of disobedience (*quite apart* from all the aspects, most discussed by political philosophers, which make those acts "civil") is that they *are* done with some knowledge of a range of relevant, applicable laws. These acts are done with knowledge of descriptions of acts provided by the law that agents may perform deliberately, or as a necessary means to deliberately performing civilly disobedient acts. The analogue of the intention conformity with knowledge view (IFK) discussed above captures the idea:

> **Intention Non-Conformity with Knowledge (INFK):** Given that a law, L, requires A to φ, then A disobeys L by intending to Ψ, and Ψing, only if it is the case that by Ψing, A does not φ, and A knows that by Ψing, A fails to φ.

Notice that on this view it is not necessary for A to intend *not to* φ in order to (civilly) disobey, but rather to intend an action that A knows either is or in some way results in not-φing. And we can add the same qualification to INFK as we did to IFK, that the relevant knowledge play some role, if

38. I mean "reasonably describable" in a nontechnical sense so as to avoid any reference to any particular evidentiary standard of proof in establishing the elements of a given crime.

39. *See, e.g.*, GIDEON YAFFE, ATTEMPTS: IN THE PHILOSOPHY OF ACTION AND THE CRIMINAL LAW (2010), at 109–119; MICHAEL MOORE, PLACING BLAME: A THEORY OF THE CRIMINAL LAW (1997), at 459–469; R.A. DUFF, CRIMINAL ATTEMPTS (1996), at 316–319.

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only in the background, in producing the civilly disobedient act. Unlike cases from the criminal law, acts of civil disobedience are a specific kind of intentional omission, what Clarke calls intentional refraining: "one can carry out an intention to A and be aware that, in intentionally A-ing, one will not do something B, without then intending not to B, and yet intentionally refrain from B-ing."[40] INFK attempts to capture this notion and combine it with the idea that the relevant knowledge or awareness must move the agent to act.

I think the concept of disobeying the law on the model of INFK is at the core of the explanation of how a person must in fact proceed if they are to perform an act of civil disobedience. Theorists of civil disobedience rarely look to the actual history and practice of civil disobedience as a guide to theory construction;[41] but my suggestion of what disobedience requires in cases of civil disobedience is consistent with the evidence of how practitioners of civil disobedience themselves characterize what they are in the business of doing.

For example, in one of the classic statements and defenses of civil disobedience, Martin Luther King, Jr., points out that civil rights protestors engaging in civilly disobedient acts aim "*consciously* to break laws,"[42] which I have taken account of in the knowledge constraints of civilly disobedient action as reflected in INFK. To take another example, Mahatma Gandhi once wrote that being merely "mentally disobedient" is a necessary but not sufficient condition of successful civil disobedience; by "mentally disobedient" he seems to have meant intentionally acting with the knowledge that one's action was inconsistent with what the law permits, forbids, or requires, which is precisely the core idea of INFK.[43]

Beyond these classical sources, if one looks to the *practical* literature of civil disobedience and nonviolent resistance, one finds routine expression of the core idea of INFK. In many handbooks of "direct action," used from the 1960s onward, one finds advice to protestors as to which laws they should aim to disobey in the course of their activities, and for which they may be arrested.[44] A recent and striking example is the instructional materials provided to those engaged in civil disobedience in the 2014 "Umbrella Revolution" in Hong Kong, in which students publicly protested

40. *See* Randolph Clarke, Omissions (2014), at 68, and the examples he considers there.

41. Two notable exceptions are Vinit Haksar, Civil Disobedience, Threats and Offers (1986) and David Lyons, *Moral Judgment, Historical Reality, and Civil Disobedience*, 27 Phil. & Pub. Aff. 31 (1998).

42. Martin Luther King, Jr., *Letter from a Birmingham Jail*, *in* A Testament of Hope: The Essential Writings of Martin Luther King, Jr. 293 (1991) (my emphasis).

43. *See* XX The Collected Works of Mahatma Gandhi (1966), at 464–466. Gandhi's point was that mere disobedience of this sort required in addition the now familiar elements of civility (a public, conscientious act, and so on) in order to qualify as civil disobedience.

44. *See* the many historical examples in Gene Sharp's seminal work, The Politics of Nonviolent Action (1973), at 303–319. Examples of such handbooks can be found at http://www.directaction.org/handbook/.

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political oppression by the ruling Communist party in Beijing.[45] In those materials, ordinances of the Laws of Hong Kong are quoted in full (the legal norms setting out the description of such offenses as "obstructing a public place," "unauthorized assembly," and so on), with the clear purpose of providing protestors knowledge of the precise legal descriptions of forbidden acts, in order for them to knowingly and intentionally fail to do them.

So according to INFK, the civilly disobedient citizen must know the law they wish to disobey, and, as it were, take up the point of view of the law regarding her proposed action, in order to determine whether that action would be an act of disobedience at all.[46] Since this person actually *aims* at disobeying, she must make sure that how the law would characterize what she proposes to do is at odds with the action it forbids. There is therefore a certain symmetry between the accounts of what obedience and civil disobedience each require. In each case, a person subject to the law must, to some extent and at some level of description, adopt the understanding that the law provides of a given action or range of actions, in order to act with, and be motivated by, the knowledge or awareness that one is or is not doing something that corresponds to that understanding.

IV. CONCLUSION

I have argued that some versions of IFK and INFK are the best we can do to explain the foundational concepts of obeying and disobeying the law, at least as they figure in the philosophical debates about political obligation, civil disobedience, and legal authority. On the one hand, requiring any more in order to obey the law will simply not bear out what the law actually requires from us in a broad range of cases. On the other, requiring any less would allow us to find obedience everywhere, and thus nowhere, and would leave us as bad off as our king without a kingdom. The same can be said of any plausible account of disobedience. But even so, these accounts begin to clarify what is at issue in the discussions about the possible justifications of a general duty to obey the law, or whether a citizen is justified in civilly disobeying the laws of the state. For those questions are in part about when a citizen must, or should, take up the point of view of the law when understanding their own actions and intentions, a point of view that is essential to understanding themselves. If these views of obedience and disobedience are considered within those debates, it becomes clearer why they are so important, and makes more precise one way in which the state can, and

45. *See* the civil disobedience handbook provided to protestors in Hong Kong at the website Occupy Central, accessible in English at http://oclp.hk/index.php?route=occupy/eng_detail&eng_id=28. *See especially* Section 1, "Guidance Note on Legal Matters."

46. The same qualifications on the knowledge condition discussed above (see text accompanying note 32) apply here as well.

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routinely does, influence those over whom it claims the right to demand obedience and to punish disobedience.

It may be suggested that the regimentation of the concepts of obedience and disobedience I have proposed in this paper is more than we should reasonably expect from them, and that the long-standing inattention to their contours and significance is just as it should be. Some rough notion of "conformity to" or "breach of" the law is all we need to get on with our work in legal and political philosophy, and so I have in effect made a mountain out of a molehill. Nothing is lost, one may think, in the discussions of whether there is a duty to obey the law, or whether civil disobedience is ever justified, if the notions of obedience and disobedience are left virtually unexplained; and, further, nothing is gained on the score of clarity by engaging in the sort of analysis I have offered here.

If this criticism is right, then I think that all of the perennial debates in which the ideas of obeying or disobeying the law feature will continue to be fraught with ambiguity and uncertainty as to the kind of human actions and attitudes under discussion. The long-standing questions of, for example, how a duty to obey the law can be justified, what sort of duty it is, as well as in what sense civil disobedience is permissible or even obligatory, are of course urgent and important. But unless we have a better understanding of what *sort* of thing the duty to obey the law is a duty to do, or just what *sort* of thing one must do in order for one's action to be civilly disobedient, then the very questions that philosophers have long asked about them will themselves remain obscure.

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