
Are Political Obligations Content Independent?

Political Theory
39(4) 498–523
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DOI: 10.1177/0090591711408247
<http://ptx.sagepub.com>



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Abstract

Current scholars generally view political obligations as “content independent.” Citizens have moral reasons to obey the law *because it is the law*, rather than because of the content of different laws. However, this position is subject to criticism on both theoretical and practical grounds. The main consideration in favor of content independence, the so-called “self-image of the state,” does not actually support it. Properly understood, the state’s self-image is to comply with laws because of the underlying moral reasons that justify them, rather than because they are laws. Because content independence has played a central role in the widespread belief that a suitable theory of political obligation is not possible, rejecting it allows the possibility of a theory that establishes moral requirements for virtually all citizens to behave in accordance with virtually all laws, although these requirements are particular to different laws, and subjects are not required to obey them because they are laws.

Keywords

political obligation, content independence, “self-image of the state,” philosophical anarchism, principle of fairness

While questions of political obligation are subject to widespread debate, scholars generally agree about basic features of political obligations themselves. My focus in this essay is one particular assumption, that political

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obligations are not only moral requirements to obey the law but requirements to obey the law for the content-independent (CI) reason *that it is the law*. Understanding political obligations as CI has a long history, dating back at least to the time of Hobbes. In *Leviathan*, Hobbes provides a clear account of CI reasons for obedience, in his definition of command: “Command is where a man saith, *Doe this* or *Doe not this*, without expecting other reason than the Will of him that says it.”¹ In recent years, several scholars have rejected CI political obligations, notably so-called philosophical anarchists. Although they do not doubt that political obligations are CI, because of inability to establish a satisfactory CI theory, these theorists claim that there are no political obligations, although they examine other reasons to obey particular laws. In this essay, I criticize content independence directly. In spite of its distinguished provenance, it cannot bear scrutiny, while accepting it also has undesirable practical consequences.

What remains with the rejection of content independence is an alternative account of moral reasons to obey² laws. Because adherence to content independence impedes development of an acceptable theory, in the spirit of Wittgenstein, rejecting it lets the fly out of the fly bottle. Rather than looking for a kind of moral reason to obey the law that is at best extremely difficult to identify, and so concluding that there are no political obligations, if we set content independence aside, we are able to make progress in regard to the central task of traditional theories of political obligation, establishing moral reasons to behave in accordance with all defensible laws.³ On this revised view, moral reasons to obey the law depend on the content of particular laws. Rather than *creating* moral reasons why subjects should obey, through legislation, state authorities determine or specify the content of subjects’ already existing moral requirements.⁴ In general, moral reasons why subjects should obey law *L* are bound up with the reasons that justify the state’s ability to make *L*, the moral force of which “pass through” to *L*.⁵ As opposed to a CI theory, this view turns on “content dependent” (CD) reasons to obey the law. On such a view, the fact that *L* is a law carries no independent moral force.

I criticize content independence along four main lines. First, one reason for accepting it is an analogy between promises and political obligations. As promising appears to generate CI moral requirements, so something similar appears to be true of laws. However, brief examination shows that, in central respects, the analogy does not hold.

The second subject, which requires detailed discussion, centers on the so-called self-image of the state.⁶ As discussed below, the standard view of this notion is that the state has power to create normative requirements in

regard to any content it chooses, by enacting laws. This view of the state is probably the main consideration in favor of content independence. However, I believe the state's actual self-image is somewhat different. Properly understood, this is consistent with a CD theory, that citizens should obey given laws because of underlying moral reasons rather than because they are laws. A CD view is supported by the fact that adequate underlying reasons are a necessary condition for a binding law. There is a fundamental tension between content independence and limited government. Reasons to obey any given law depend on the basis of the state's authority to legislate in that particular area, as opposed to areas in which it may not make laws. The fact that the state may make laws only in areas in which it is justified in doing so tells against a "strong view" of the state's self-image, that it may impose normative requirements in regard to any content it pleases. This still leaves open the possibility of a "weak view," that the state may create CI moral requirements in the limited areas it controls. But as we will see, even in these areas, specific laws must be justified on the basis of their content.

The third set of considerations concern popular attitudes towards the law. According to general views that also have strong intuitive support, people feel they should obey only laws that have adequate underlying reasons. For ease of reference, we may refer to laws that lack these as "useless." If a given law lacks adequate reasons, people generally feel they need not obey it and do so without compunctions. The fact that it is a law carries no independent moral force.

The second and third considerations just noted provide the main basis for a CD view. As I have noted, the self-image of the state properly understood indicates that appropriate underlying factors are a necessary condition for a moral requirement to obey a given law. This conclusion is supported by popular attitudes, that people believe they do not have moral requirements to obey laws that lack these factors, even though they are laws. If it is true that the fact that useless laws are laws carries no independent moral force, it is up to the defender of content independence to explain why circumstances are different for laws that are not useless, that is, exactly how the fact that they are laws contributes to moral reasons to obey them.

Finally and more generally, examination of how content independence actually works shows it to be complex and messy. In moral requirements to behave in accordance with different laws, content-independent considerations are often intermixed with others. Exactly what we mean by content-independent reasons will be discussed directly. In order to see the point here, we should note that different kinds of reasons satisfy the conditions for content independence, although they rest on considerations other than that they are laws. In many cases, there are content-independent reasons to act as the

law commands, but in virtually none of these are the reasons to do so *because it is the law*. Accordingly, we should distinguish between:

1. moral reasons to behave as the law says to behave that are independent of content;
2. and moral reason to behave in this way for the content-independent reason that it is the law.

From this point on in this essay, unless specific contexts indicate otherwise, discussion of CI theories of obligation is in reference to the particular content-independent reason that the actions in question are laws—that is, (2) rather than (1). Reasons that are (1) but not necessarily (2), will be referred to as “formal” reasons. According to a CD view, then, the moral reasons to obey a given law are based on particular underlying moral factors relative to it, along with whatever formal reasons apply. In other words, a CD view includes all but reasons (2), that given laws should be obeyed because they are laws.

In addition to these concerns, practical reasons to reject content independence are discussed in the concluding section. However, because of considerations of length, these can only be touched on in this essay.

Content Independence

According to standard analysis, obligations are moral requirements that have distinctive structure, generally resting on some specific performance by the obligee.⁷ If A promises B to do *p*, the moral requirement to do *p* is owed only by A and only to B. Other people who have not made similar promises incur no such requirements to do *p*, while people to whom such promises have not been made are not owed performance of *p*. Promises are also characterized by what H.L.A. Hart refers to as “independence of content.”⁸ The obligation to keep a promise does not arise from the nature of the promised action but from the promise itself. If Brown promises Grey that she will do *p* and *p* is independently the sort of action that she should perform, Brown’s moral requirement to do *p* does not stem from its independent moral desirability. Actions *q*, *r*, and *s* may be equally desirable, but Brown will not have requirements to do them, over and above her general duty to perform morally desirable actions. The fact that Brown promises to do *p* distinguishes it from the class of morally desirable actions and creates an obligation in regard to it. Along similar lines, even if *t* is a morally neutral action, Grey’s promise to perform it still creates a moral requirement to do it. In this case, the requirement is obviously independent of the nature of the promised action. Accordingly, on this analysis,

the content of a given obligation is distinct—independent—from the performance through which it becomes morally required.

This analysis is extended readily to other kinds of obligations, including obligations to obey the law. According to traditional theories of political obligation, if Grey has an obligation to obey the law, this too is CI. He is required to obey law *L* because the state has made it the law, which has rendered it binding on all inhabitants of the relevant territory. The fact that the state has made *L* law creates an additional moral requirement to conform with it, over and above requirements stemming from its nature.

A formal definition of content independence is given by Peter Markwick:

If ϕ -ing's F-ness is a reason to ϕ , this reason is content independent if and only if, for any other act-type μ , there would be reason to μ if F were a property of μ -ing.⁹

This account focuses on two main features. (1) The commanded action possesses some property that gives it normative force in regard to the obligee. We may refer to this property as the “obligating condition.” (2) The obligating condition ranges over a variety of actions that otherwise differ but are normatively required because they possess it. Our concern in this essay is of course one particular obligating condition, that a given action is required by the law. In a CI theory of political obligation, acts *a*, *b*, *c*, . . . *n* are required not only because of their particular content but also because the law says so.

In the literature on political obligation, scholars generally limit reliance on particular features of obligations. They generally reject the claim that an adequate theory of political obligation must center on obligations in the strict sense, moral requirements the subject imposes on herself by performing specific actions.¹⁰ However, scholars have generally not gone far enough. Although they recognize that political obligations need not be self-assumed, content independence is still widely subscribed to.

Examples are common in the literature. In the work that pioneered philosophical anarchism, Robert Paul Wolff advances a content-independent conception of obedience: “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*.”¹¹ Accordingly, the philosophical anarchist “will deny that he has a duty to obey the laws of the state *simply because they are the laws*.”¹² Similarly, M.B.E. Smith orients his influential article criticizing *prima facie* political obligations around the following question: “Is the moral relation of any government to its citizens such that they have a *prima facie* obligation to do certain things merely because they are legally required to do so?”¹³ A. John Simmons, who is probably the most influential philosophical anarchist,

conceptualizes political obligations similarly: “Subjects have no political obligation, . . . to obey the law because it is law or to support the political leaders or institutions that try to compel their allegiance.”¹⁴

Viewing political obligations as CI is not limited to philosophical anarchists. Philip Soper describes much modern legal theory as subscribing to “the peculiar claim . . . that an action is wrong/permissible in part just because someone else (an authority) says it is.”¹⁵ According to Chaim Gans, “Acknowledging the duty to obey the law means acknowledging that there is reason for performing the acts it ordains merely because it so ordains.”¹⁶ According to Leslie Green, who is an especially strong proponent of content independence: “Political obligation is the doctrine that everyone has a moral reason to obey all the laws of his or her own state and that this reason binds independently of the content of the law.”¹⁷ Green views this feature as a “necessary one in any argument purporting to establish the existence of a political obligation.” It could not be abandoned “without abandoning part of any satisfactory analysis of political authority.”¹⁸

Analogy with Promising

Construed on the model of a promise, the idea of content independence may seem intuitively plausible. But as noted above, the analogy breaks down. To begin with, even promises are not entirely independent of content. Promises to perform unjust actions do not bind. Thus, speaking of promises as independent of content is not entirely accurate. Because the main content limitations are moral,¹⁹ we may say that a binding promise must pass “moral justification.” However, because the range of limitations is narrow and clearly recognized, little is lost by referring to promises as independent of content, with this limitation understood.

Circumstances in regard to laws are more complex. The analogy with promises does not hold in two respects. In the case of promises, the content of each specific promise is determined by the obligee, who attaches the obligating condition to the content of each promise through the act of promising. Accordingly, one reason promises are readily viewed as binding without regard to their content is that the person making the promise has chosen the content and, through the promise itself, given it moral force. In contrast, (1) the contents of specific laws are determined by state authorities rather than directly by the obligee. And (2) the obligee does not attach obligating conditions to each law; this is done instead by state authorities. Because the subject has a direct role in neither choosing the content of a given law nor in affixing normative force to its particular content, in order for a law to

generate normative force for a particular content, the basis of the state's right (claim right) to bind its subjects in this way must be explained. As traditionally interpreted, the problem of political obligation has been to identify the relevant features of the relationship between individuals and the state that gives the state this right.

The fact that the content of laws is determined by the state rather than by individuals themselves causes problems not encountered with promises. As with promises, I take it as uncontroversial that laws must pass "moral justification." Unjust laws do not bind. But because the contents of laws are determined by state authorities, the latter are able to create binding laws only in areas in which they possess authority to do so. It is here that we encounter problems with limited government and, as we will see, with the "self-image of the state."

Limited Government

As indicated above, the "strong" view of the state's self image is that it is able to generate moral requirements in regard to any content by making laws. But as I have also noted, there are problems reconciling this view with limited government and the need for laws to have underlying moral bases. In order to see these connections, I will examine a few regimes of different kinds. We may posit a continuum between types of regimes that are able to make laws that require CI obedience and others for which content independence does not apply.

We begin with an extreme point on the continuum. We may describe a regime that is able to make laws that bind entirely or almost entirely without regard to their content as possessing "strong authority." A familiar example is a medieval regime supported by the divine right of kings. This position receives scriptural justification in chapter 13 of St. Paul's *Epistle to the Romans*. In part, the text reads: "Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God" (Oxford trans.). On this view, rulers use their divinely given authority to make laws that it is not only a crime but a sin to disobey. In general, the content of different laws is not a consideration. However, there are exceptions. If a given law directly conflicts with subjects' obligations to God, subjects should not obey, although they also should not resist but accept punishment for their disobedience. The existence of these exceptions follows from the divine basis of rulers' authority, although, aside from such cases, ability to make CI laws is unconstrained.²⁰

Something similar is true of the regime posited in Hobbes's political philosophy. Hobbes of course has subjects transfer virtually complete authority to the sovereign. As a result, governing authorities are able to make whatever laws they believe suitable, and subjects are required to obey. There is once again a narrow range of exceptions, when the sovereign's actions directly threaten subjects' self-preservation.²¹ Once again, these exceptions follow from the basis of the sovereign's authority, in this case, provision of security. But as with the medieval view, in all other circumstances, subjects are required to obey, almost entirely without reference to the content of specific laws.

Although the medieval and Hobbesian regimes may be described as possessing strong authority, their laws do not bind entirely without regard to content considerations, as is clear in limitations on their allowable content—the exceptions just noted. However, while it is necessary to keep the existence of limitations and their implications in mind, because the range of exceptions is so narrow, we may describe the laws of regimes with strong authority as binding *effectively* without regard to their content. Obviously, in other regimes, as the range of exceptions widens and the scope of legitimate authority narrows, laws cease to be effectively CI. Because strong authority's range of exception is so narrow, there is a strong presumption that enacted laws fall within acceptable bounds and require only perfunctory content justification. However, we should also note that, as the medieval and Hobbesian examples make clear, regimes with strong authority are far removed from the kind of regimes we are likely to accept as legitimate.²²

It is possible to imagine a regime with even stronger authority, which is able to make laws that bind entirely without regard to their content. Perhaps an example is an extreme theocracy in which the ruler's word simply is law, because he pronounces it. In order to avoid the limitations on medieval regimes, such a ruler must also be the sole interpreter of the divine basis of his power and its implications. But as we may readily see, such a regime will be even farther removed from those we accept as legitimate.

On the end of the continuum opposite from strong authority is an entirely CD conception. Assume a society without any laws. The members recognize that murder is wrong and should not be committed. In such a case, obviously, a requirement not to murder is based on the wrongfulness of the act. Assume that the members of the society decide to formalize this understanding and so enact a rule against unjustified killing, which will be enforced by the community. Assume that the rule also specifies what constitutes murder and penalties for violations. Under these circumstances, too, the moral requirement to adhere to the rule and so not to murder stems from the wrongfulness of the act. In such a case, the moral force of the requirement passes through from the

moral wrongfulness of the forbidden act to the requirement to obey the rule that forbids it. It is not clear what exactly the fact that the injunction has become a formal rule (or law) adds to the force of the moral requirement not to murder.

A more complex CD case builds on the previous example. Assume that the community requires a speed limit law for a given road, to lower the number of traffic accidents and protect pedestrians. Assume that, if we take into account considerations of efficiency as well as safety, we will recognize a range of acceptable speed limits, say, between 45 and 60 MPH. Exactly which one is chosen is to some extent arbitrary, although of course once 50 MPH is chosen, it will become law and not only enforced, but citizens may well have moral requirements to obey it. There is a sense in which citizens are required to adhere to the 50 MPH speed limit because it is the law. But we should recognize that in this case, as in the murder case, the moral force of the requirement is based on the safety needs noted. In this case too, the moral wrong of violating the safety considerations passes through to the law in question. What exactly the fact that it is law adds to the relevant moral force is once again not clear—although this will be examined farther below, in reference to other coordination cases.

Falling between strong authority and a CD view is a regime such as that posited by Locke. Although in this case, too, it may appear that laws are to be obeyed because they are laws, I believe the requirements to obey pass through from CD considerations. According to Locke, government's lawmaking authority stems from consent. In entering civil society, people agree to majority rule, binding themselves "to be concluded by the *majority*."²³ We should note that although members agree to set aside their own understanding of natural law and follow the community's determination, they retain a residual right to judge the adequacy of the community's determinations. Still, with this exception, it appears that all are bound by majority decisions because they have consented to do so, and so that majority decisions are CI laws. However, because citizens' grant of authority is limited, Locke's case differs significantly from strong authority. While in those cases, limits on strong authority's powers are narrow or nonexistent, in the Lockean case, because the limitations are wide, government is no longer able to make laws that are CI. According to Locke, citizens grant government only specific powers—mainly to interpret the law of nature, to judge cases under the law, and to enforce the judgments.²⁴ Even though subjects have consented, laws can no longer simply be presumed to bind but must pass content justification. They must be able to be shown to advance the purposes for which people ceded their authority. Any edicts of government that go beyond these functions are illegitimate and not binding. And so in these cases, laws are no longer effectively CI.

Consideration of this range of regimes raises a basic dilemma for content independence. On the one hand, if a regime has strong authority and so ability to make laws that bind or effectively bind without regard to content, it must have power that is effectively unlimited, and we will not regard it as legitimate. But on the other hand, regimes with powers that are limited cannot make laws that are effectively CI. However, one could object to this entire line of argument. The overall relationship between questions of limited and unlimited powers and CI versus CD laws is beside the point. The two concerns do not intersect. Within even a limited sphere, government may have the ability to make laws that are CI, that bind only because they are laws. The fact that government cannot make laws on all subjects does not limit its ability to make CI laws in the areas it controls. However, I believe the very notion of limited powers tells against such an analysis. This can be seen in regard to what I view as the actual self-image of the state.

The “Self-Image” of the State

It is apparent that a strong reason to believe we should obey the law because it is the law is that this is what the state tells us to do. According to Green, the state conceives of itself not only as a “duty imposer,”²⁵ but as one that does so by making CI laws. As Green notes, one reason the state’s self-conception is significant is because this is “one of the main sources for evidence about the content of political obligation.”²⁶ This tells us that the content of the law is what the state says it is and also supports a CI conception of political obligation, “that everyone has a moral reason to obey all the laws of his or her own state and that this reason binds independently of the content of the law.”²⁷

However, while I believe a version of this view of the state’s self-image may fit states with strong authority, for states with limited authority, the state’s self-image is rather different. Such a state sees itself—or more exactly, should see itself—as possessing limited powers and so ability to legislate only within definite parameters. Although this is inconsistent with a “strong view” of the state’s self-image—that the state can create moral requirements in regard to any content whatsoever—it may still leave intact a weaker version. As just noted, it is possible that a government could have authority to make CI laws in the limited areas it controls. But examination of basic features of American law tells against this interpretation. Even in areas in which it possesses authority to make laws, the laws themselves must be justified in terms of their content.

At first sight, state behavior does appear to support a strong view of content independence. If one asked political actors what they thought, it is likely that many would endorse the notion. A congressman might well say that if a majority of each house of Congress passes a bill and the President signs it, then it is the law, and subjects are bound to obey it. Many judges would presumably accept a related account. If a given statute is construed by the courts in a certain way, then that is the law and how subjects are bound to obey it. But I believe this conception is overly simple. Our concern in this essay is moral obligation, not legal. But even in regard to legal obligation, the accounts of these officials are incomplete. A given statute might be invalidated by the courts, while the decision of a particular court could of course be overturned by a higher one. But these circumstances seem no longer to bear if courts of the highest level uphold a given statute, in which case the question of legal obligation is settled.

However, closer attention to the views of political actors tell against a strong interpretation of the state's self-image. The state does not claim unlimited authority, but authority to act within certain limits. In the United States, these are defined by the Constitution, which is of course the fundamental law of the land, and enforced by judicial review.²⁸ Courts are empowered to oversee the constitutionality of different laws; what is unconstitutional is declared void.²⁹ But such limitations do not appear to undermine the state's ability to make CI laws within accepted parameters.³⁰ It could be argued that judicial review does not undermine a strong view of the state's self-image, since what constitutes law is still construed by the state, although by the judicial rather than legislative branch. However, the binding force of law is circumscribed by additional considerations. Even though the Constitution itself is a body of law passed by the state, a Constitution embodies a set of values that define morally acceptable ends of government, such as those listed in the Preamble to the U.S. Constitution: to "form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense," etc. If a given law that is in fact inconsistent with these values passes judicial review and so is upheld by the courts, including the Supreme Court, it will be a valid law and subjects enjoined to obey it. But in such a case, the courts are simply wrong, and the law is without binding moral force.

The requirement that laws be in accord with the values embodied by the Constitution is enforced by the doctrine that law have a "rational basis," which is central to American law. Rational basis is not only inconsistent with a strong view of the state's self-image but also with a weak view, as according to rational basis, even in areas in which the state may legislate, laws must be justified on the basis of their content.

According to general understanding, the rational basis constraint is in two parts, requiring that a given law be rationally related to a legitimate state end and that the means be appropriate to that end. Justices and scholars disagree about how the standard should be applied, notably about the state's burden to demonstrate it is satisfied and the kinds of evidence this requires.³¹ Rational basis is generally viewed as the lowest level of judicial scrutiny, and it is generally presumed that laws satisfy it. The force of the constraint is further weakened by the general presumption that it is the state itself that determines whether the means selected are in fact justified. But even so, the standard is not purely pro forma. One recent Supreme Court decision in which the standard was invoked is *Lawrence v. Texas*, which invalidated a Texas statute outlawing homosexual sex.³² In his majority opinion, Justice Anthony Kennedy argued "that some objectives, such as 'a bare . . . desire to harm a politically unpopular group,' are not legitimate state interests."³³ And so the statute was overturned. Kennedy notes that, according to the state of Texas, the statute did advance a legitimate interest, promoting morality, but he rejected this argument.³⁴ We need not be concerned with the complexities of the rational basis test—and certainly not of particular Supreme Court decisions. However the standard is construed exactly, its existence—as the practice of judicial review more generally—demonstrates that the state views its powers as limited, and the laws it makes as subject to content justification. It may not make any laws it pleases, but only laws it is able to justify as consistent with the values of the Constitution. Even if in practice the test rules out relatively little, its existence implies recognized limits on state power. Within a permissible area, whatever the state mandates becomes law because it is so ordered. But this is only within the range of possible laws that can be justified.³⁵

For these reasons, both the strong and weak versions of the standard view of the state's self-image should be set aside, and with this, the support they provide for content independence. Because the state recognizes that it is able to make binding laws only when there are underlying justificatory reasons, its self-image properly understood supports a CD view of political obligation.

Popular Attitudes

Empirical studies of people's attitudes toward political obligation are surprisingly scanty.³⁶ While the evidence we have indicates that people strongly believe they have moral requirements to obey the law, common experience qualifies this belief. The claim that people believe they should obey *the law* is too simple. People generally require that laws be content justified.³⁷ They

regularly disobey laws that lack clear bases and make no bones about this—an attitude that receives strong intuitive support. For example, large numbers of people drive above the speed limit. This is not to say that speed limits are ignored entirely. Drivers who go extremely fast, especially in highly populated areas, are a danger to others and are generally condemned. But it is accepted conventional wisdom that one is allowed to go 5 to 10 miles above the speed limit. Although the state imposes a duty to go, say 55 MPH, few people take this literally. In fact, in a form of police job action—related to though the opposite of a work slowdown—the police enforce the letter of the law and so ticket motorists who violate the speed limit only slightly. This sort of action is effective because it runs counter to general driving habits and, for this reason, is bitterly resented. As noted above, specific speed limits are to some extent arbitrary. The state might just as well set the limit at 57 MPH as at 55. But once again, according to a view that the state's lawmaking power is CI, once the state decides on 55 MPH, that is the law and people are required to obey. However, people's actual behavior, supported by their clear beliefs, demonstrates their recognition of content considerations underlying such laws, rather than the state's ability to impose CI duties.

There are other examples. Circumstances are similar in regard to laws against various “unnatural” sexual practices, which are, again, widely ignored. Other laws on the books that are generally viewed as useless or pernicious are seldom enforced and generally ignored. Hart cites as an example laws against witchcraft that are still on the books in various British jurisdictions.³⁸ It could be argued that because a given law against witchcraft has fallen out of use, it has been effectively repealed and is no longer law. Such reasoning is supported by the doctrine of desuetude. But this is obviously getting things backwards. The reason the law has been effectively repealed is because of its worthless content. If the force of the law were actually based on its status as law, the fact that it serves no purpose would be irrelevant to its standing. The fact that witchcraft laws and many others are disregarded by both citizens and state officials shows that their moral force depends on their content.

Strong evidence that the laws I have mentioned are subject to content justification, which they are unable to satisfy, is that widespread disobedience has few if any negative consequences. Laws requiring one to drive at or under the exact speed limit are useless because of the lack of adverse consequences when they are generally disobeyed. Compare antipollution laws. These lack adverse consequences if a few people disobey, but general disobedience could be catastrophic.³⁹ Speed limits too may have negligible consequences if a few people disobey, but in these cases things also work acceptably when

everyone goes a few miles over the limit. In such cases, the presumption that a given law promotes the public good has been overturned by experience. It is because the consequences of general behavior in cases such as speeding and disregarding laws against “unnatural” sexual practices are widely viewed as acceptable that people feel no compunction about violating them. When the state does enforce them, the offending parties do not respond with contrition but with outrage.⁴⁰

Our attitudes about useless laws are especially clear in regard to laws that obviously lack any point. Imagine that the state passes law *W*, according to which everyone should whisper hooray on Tuesdays between 10:00 AM and 11:00 AM. It seems apparent that most people would feel no compunction about violating such a law. The reason for this is obviously the fact that obeying *W* serves no useful purpose. People will not recognize the fact that *W* is a law as in itself generating any moral reason to obey. Once again, if the fact that laws are laws carries no normative force with laws that are useless, a defender of content independence must explain why this changes for laws that have underlying justificatory reasons. Exactly how does the fact that they are laws contribute to moral requirements to obey them?

“Formal” Considerations

On the assumption it has been shown that neither the analogy with promising nor the state’s self-image supports CI political obligations and that CI obligations are not supported by popular attitudes, in this section we examine other possible bases for content independence. Although CI reasons to obey all laws cannot be established, certain attributes of the state and the law-making process do provide reasons to obey many laws. These factors affect the practical and moral landscapes in which people act, and so may also affect people’s attitudes toward the law and make them more likely to obey. But as a rule, although many of these factors satisfy the requirements of content independence, they are not reasons to obey the law *because it is the law*. Once again, because these factors concern aspects of laws other than their individual content, I refer to them as “formal” features. Since they vary from state to state and across different laws, a large number could be relevant, although in this context I am able to discuss only a few representative examples.

We may begin with coordination problems.⁴¹ In many familiar cases, the fact that the state passes a law may give people strong reasons to conform, because of their expectation it will affect the behavior of other people. When the state legislates that everyone should drive on the right-hand side of the

road, this gives Grey strong reasons to do so. But although these reasons are content independent, they are not reason to obey because the law says to do so. In such cases, it is the likelihood that other people will behave in a certain way that gives Grey too reasons to behave in that way, while the state's coercive power also contributes to general obedience—and gives Grey an additional reason to obey.

One could, however, argue against this conclusion. In our example, had the state not acted there would be no reason to drive on the right. And so one could contend that the law in question is CI. However, I believe the moral force of such a law is actually CD. It passes through from the factors that justify the law. The main content considerations behind traffic laws are:

1. the need for traffic regulations, for reasons of convenience and safety;
2. the need for everyone to follow one set of regulations.

The relevant rules are then made by the state. Under these circumstances, although Grey may have many reasons to obey, his main moral reason is to avoid endangering and inconveniencing other people and himself. But this rationale is based on predictions about how other people will behave—that they will drive on the right—rather than that the provision in question is the law. If we distinguish between (i) reasons to obey because of other people's behavior and (ii) reasons to obey because of others' behavior determined by the law, in this case the relevant reasons are (ii). But this is not enough to make the reasons in question CI. Both (i) and (ii) should be distinguished from (iii), reasons to obey because it is the law *simpliciter*. Although general patterns of behavior may be traced back to the existence of the law in question, it is still the behavior rather than a requirement to obey because it is the law that provides moral reasons to obey. As Larry Alexander writes, if for some reason I do not predict that a given law will affect other people's behavior, "my reason for and against A remain exactly as they were before the law was enacted."⁴² Considerations are similar in other coordination cases. In these too, moral reasons to obey result from combinations of CD considerations that are passed through to the laws in question and predictions about how other people will behave. In such cases, the fact that a given provision is the law in itself provides no moral reason to obey.

There are closely related cases that do not involve coordination, in which the state acts on its discretion. Assume the state passes a law establishing a 25% income tax. For Brown to disobey would be a clear *malum prohibitum*. In itself, there is nothing morally obligatory about a 25 percent tax. Had

the law set the rate at 30 percent, Brown would have been required to obey that instead. Thus in cases like this, too, the state may appear to establish CI obligations.

But this appearance too is deceiving. This case is similar to the limited authority view discussed above. Although the state has discretion in regard to what it requires, this is only within limits set by content considerations. Presumably the state sets a specific figure for reasons of administrative convenience. But whatever figure it posits must be justifiable, presumably as effective means to provide state revenue, which in turn requires that the purposes for which the funds are used be legitimate. Although the state has authority to establish the particular means to attain this end, moral requirements to comply with the specific provisions on which it decides depend on both the legitimacy of the end and the effectiveness of the means. As we have seen, citizens would not have moral requirements to comply with laws that lacked these factors, even if they were mandated by proper authorities. Accordingly, in this case too the formal factors at work are not moral requirements to obey the law because it is the law.

Additional cases concern people's desire to make correct choices. In areas such as product safety, it is frequently advisable for Brown to follow state guidelines. In many cases, state functionaries possess expertise that she lacks, while they also have the time and resources to make the relevant determinations. But once again, her reasons here are CD, based on her desire to use the products in question safely. In cases of this sort, the state's past performance may provide additional reasons to comply. The fact that Brown's state has a long record of acting effectively in a wide range of cases may well cause her to give it the benefit of the doubt, contributing to an attitude of respect for the law. Although such concerns, once again, do not constitute CI reasons, in certain circumstance the attitude to which they contribute could dispose her to obey. It is likely that the weight one accords this factor will vary in accordance with the state's record. As in traditional theories of obligation, a long record of unjust actions—a long train of abuses—may delegitimize a state, a long record of effective actions could well promote obedience. In such a case, Brown may approach state activity with a strong expectation of finding it worthy of support; even if she has reasons to be suspicious, she could take special care before accepting that conclusion. But how these factors affect Brown's attitude to the laws in question will depend on factors specific to them rather than that they are laws.

Something similar holds in regard to democratic states. These are the final examples I will consider. To the extent the institutions of a state are truly democratic and provide strong opportunities for deliberation by informed and

morally serious citizens, Grey has reason to defer to their conclusions. If he disagrees, the fact that his fellow citizens have decided differently should give him pause and cause him to review his own beliefs, to make sure they are sound. As in the last paragraph, the extent to which Grey should be moved by such concerns depends on the nature of the processes in question. Exemplary deliberations should receive more weight than what takes place in ordinary states. However, unlike the circumstances discussed in the last few paragraphs, the fact that a particular law results from democratic deliberation may in itself constitute a strong reason to obey. However, while we may imagine political conditions under which such reasons would be sufficiently strong to be viewed as CI political obligations in the usual sense, it is likely that those conditions are not widely found in actual states.⁴³ In the absence of such conditions, effective democratic law-making may still provide a formal reason to obey, but in itself, this will ordinarily not be sufficient to require obedience. Once again, it would be a factor to consider along with others.

Accordingly, a brief look at these formal factors indicates important ways in which they should and most likely do affect citizens' attitudes, which in certain cases could contribute to respect for the law and willingness to obey. It is likely that they also contribute to the self-image of the state, as traditionally conceived.⁴⁴ However, as our discussion of the state's self-image shows, obligations to behave as the laws say one should depend on a range of content considerations in regard to specific laws. Ordinarily, formal factors in themselves are not sufficient to generate moral requirements to obey.

Practical Considerations

In addition to the considerations we have discussed, there are practical reasons to reject content independence. Practical reasons are concerned with action. A suitable theory of political obligation could have important implications for the behavior of the relevant population. I will discuss this subject briefly, as a conclusion to this essay. Because of concerns of length, it cannot receive the attention it deserves.

In the literature, theorists present a number of different criteria for a satisfactory account of political obligation.⁴⁵ For present purposes, we may focus on two. A suitable theory must be *general*; that is, it must establish moral requirements binding on all or nearly all citizens. And these requirements must be *comprehensive*; there must be moral requirements to act in accordance with all laws, that is, laws covering the entire range of state functions.⁴⁶ A theory that meets these two requirements will accomplish the practical goal of explaining citizens'—all citizens'—moral requirements to act in accordance with all laws.⁴⁷

As it seems to me, content independence has played a central role in the current widespread belief that a successful theory of obligation is not possible. In the literature, a series of theorists have criticized traditional theories of obligation, demonstrating that none is able to bear scrutiny.⁴⁸ Thus in the most influential work along these lines, Simmons criticizes and rejects theories based on consent, fairness, gratitude, and a natural duty of justice.⁴⁹ The result of a series of such works is widespread doubt about the possibility of a workable theory of political obligation. Scholars refer to a “skeptical consensus” in the literature.⁵⁰ However, I believe we should recognize that these criticisms are generally made against theories of CI political obligation and work far less well against theories without this feature. Accordingly, the CD approach I suggest, based on establishing moral requirements in regard to each specific law or area of the law on the basis of the moral considerations that pertain to it, is able to withstand such criticism.

The influence of content independence is apparent in the way questions of political obligation are commonly framed. The standard question is “Is there a duty to obey the law?” One will note that “a duty to obey *the law*” implicitly construes such a duty to obey the law because it is the law. Such a duty is to obey, without reference to different laws’ content. Positing the existence of such a duty also suggests a certain kind of answer to questions concerning the duty’s nature, one that focuses on the basis for the state’s unique position and ability to impose such duties. This is epitomized by consent theory, according to which consent of the governed gives the state the right to shape citizens’ moral requirements.⁵¹ With the collapse of consent theory, scholars have attempted to work out suitable analogous theories based on other principles, while this overall endeavor largely accounts for one of the literature’s distinctive features. Scholars critical of traditional political obligations review and criticize different possible principles of obligation one by one and as a result declare that there are no political obligations. A notable example is Simmons in *Moral Principles and Political Obligations*. Similar strategies are pursued by Raz, Smith, Green, and other theorists. However, criticizing and rejecting principles one by one ignores how principles may bear on particular laws and possible ways different principles and other moral considerations may work in combination.⁵²

Once critical theorists dismiss the possibility of CI political obligations, they frequently embrace some form of philosophical anarchism. Although they do not believe in general moral reasons to obey the law because it is the law, they argue that there are good moral reasons to behave as many laws require, and so that overthrowing traditional theories of obligation has effects that are less drastic than are commonly believed. Although I approach the question of content independence from a different direction, my conclusion is basically similar, and I believe that, in this sense, philosophical anarchists

have made an important contribution to our understanding of political obligation. But their conclusion is correct only up to a point.

I agree that there is no single solution to the problem of the state's right to rule and impose CI duties. However, careful consideration of the reasons in favor of behaving in accordance with particular laws—more careful consideration than is generally provided by philosophical anarchists—will be largely successful in establishing reasons to comply with all morally defensible laws. In other words, although I cannot demonstrate this in this essay, the result of compiling CD reasons for behaving in accordance with the entire range of morally defensible laws—along with whatever formal features are also relevant—will be a theory of political obligation that satisfies the generality and comprehensiveness conditions discussed above. If we assume that in reasonably just states almost all laws will pass content justification, the resulting theory will ground requirements for all or almost all citizens to behave in accordance with almost all laws, and so accomplish the traditional practical aim of theories of obligation. Because such a theory will establish general moral requirements to comply with almost all laws, it will largely defang philosophical anarchism. Their view will be largely without practical effect, and the skeptical consensus just noted will have to be severely revised.

In criticizing philosophical anarchism along these lines, I am assuming this position is intended to have significant practical as well as theoretical implications. To do so, it must license disobedience of meaningful laws. If it does not do so, the position will be “toothless,” to borrow Gans's term.⁵³ A claim that philosophical anarchism has practical significance is clearly advanced by Simmons: “Of course, philosophical anarchism does require a reasonably dramatic (and counterintuitive) shift in our conception of the overall citizen-state relationship.”⁵⁴

I do not believe this is true. Once again, for reasons of space, I cannot present a full account of a CD theory of obligation in this essay. To some extent, the outlines of a workable theory are presented in my previous work, to which I refer the reader.⁵⁵ Once again, such a theory will work from the ground up, establishing reasons to behave in accordance with individual laws or different classes of laws. While some of these reasons may be described as content independent, they are not CI reasons to obey the law because it is the law. The key idea is that, as long as laws serve valid public purposes, identifying reasons to behave as they say one should will not be overly difficult. This position will not rely on a single moral principle but will employ multiple and overlapping moral reasons bearing on each law it aims to justify. Central to this approach, as it seems to me, is the principle of fairness (or fair play). If individuals receive important benefits from the burdensome cooperative

activities of their fellow citizens, they incur moral requirements to bear like burdens themselves. Obviously, in the present context, I cannot provide a full account of this principle or respond to the many criticisms it has received.⁵⁶ But I believe this principle establishes general moral requirements to comply with all laws through which central public goods are provided. As just noted, although these requirements may be described as content independent, they are not requirements to obey the law because it is the law. Consider a cooperative scheme that provides public goods that are necessary for defense. If Grey profits from these services, provided by the cooperative labors of his fellows, he will incur moral requirements to bear his fair share of the burdens of providing these public goods. In this case, as in many others discussed in this essay, exactly what he is required to do will be determined by government and mandated by law. There is a sense in which the resulting obligation is CI, as it is to do what government says he should. But the moral force of this requirement is clearly do his fair share in providing the public goods because of his own need for defense and obligations of fairness owed to his fellow citizens, with the moral force of the latter passing through to the laws in question. Moral requirements in regard to other laws work similarly. Because the principle of fairness is a “self-benefit principle,” as Richard Arneson has shown,⁵⁷ it cannot satisfy the comprehensiveness requirement by itself, but it must be supplemented by additional moral principles that will, for example, support public assistance and welfare programs, intended to better the condition of less fortunate members of society. Other worthwhile functions of government are supported by additional moral principles, with the result being a theory of political obligation that satisfies the generality and comprehensiveness requirements.⁵⁸ This is not to say the resulting theory will require that we behave as all laws say we should. Because individual laws must pass content justification, it is likely that there will not be sufficient reasons to obey many laws. But in a reasonably just state, I assume that most laws are justifiable and so that citizens will have moral reasons to behave in accordance with them. If philosophical anarchists wish to dispute this conclusion, they cannot proceed on a global level by examining the ability of particular moral principles to ground requirements to obey *the law*, but must examine the specific reasons for and against complying with a myriad of different laws.

And so to conclude, although I have not attempted to develop a complete alternative theory of political obligation in this essay, the above discussion should allow one to imagine what a fully developed theory would look like. Although the resulting theory will not require that citizens obey the law *because it is the law*, it will fulfill the important practical function of grounding general and comprehensive requirements to behave as all defensible laws say one should.

Acknowledgments

I am grateful to the following friends and colleagues for comments and suggestions on previous versions of this essay: Ernie Alleva, Colin Bird, Chaim Gans, Leslie Green, Luke Gregory, John Horton, Dave Klein, Ryan Pevnick, Massimo Renzi, Jennifer Rubenstein, Micah Schwartzman, and John Simmons. I am also grateful to my anonymous referees and to audiences at sessions of the American Political Science Association, the University of Virginia Philosophy Department, and my own department, where previous versions were presented. I would also like to acknowledge the Henry L. and Grace Doherty Charitable Foundation, which funded the sabbatical during which I completed much of the work on this article.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge: Cambridge University Press, 1991), chap. 25, 176.
2. To avoid cumbersome locutions, throughout this essay I use “obey” and related terms in a loose sense. Thus to “obey” a given law is to recognize a moral requirement to act as the law says one should, without reference to whether in doing so one is acceding to the will of the lawmaking authority.
3. The relationship between this view and the views of philosophical anarchists is discussed in the final section of this essay.
4. For a sophisticated account of how this is done, see F. Schauer, *Playing by the Rules* (Oxford: Oxford University Press, 1993), although I should note that I differ from Schauer on points related to the “stickiness” of rules.
5. For an influential account of a process along these lines, see J. Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), chaps. 2-4. According to Raz’s “dependence thesis,” “all authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their actions in the circumstances covered by the directives” (p. 47; italics removed). Although Raz’s view of authority is commonly believed to be based on CI authoritative reasons, evidence against such an interpretation is the fact that the force of authoritative reasons runs out in regard to clear mistakes (p. 62), and that it is limited in scope, by the preexisting reasons that apply (p. 73).

6. L. Green, *The Authority of the State* (Oxford: Oxford University Press, 1988), chap. 3.
7. For the concepts of duty and obligation, see R. B. Brandt, "The Concepts of Obligation and Duty," *Mind* 73 (1964); H. L. A. Hart, "Legal and Moral Obligation," in *Essays in Moral Philosophy*, ed. A. I. Melden (Seattle: University of Washington Press, 1958); A. J. Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), chap. 1; J. Mish'Alanai, "'Duty,' 'Obligation,' and 'Ought,'" *Analysis* 30 (1969). Throughout this essay, the terms *obligation* and *duty* are used interchangeably.
8. Hart, "Legal and Moral Obligation"; "Commands and Authoritative Legal Reasons," in *Essays on Bentham* (Oxford: Oxford University Press, 1982). In her biography of Hart, Nicola Lacey reports that, in his notebooks, Hart characterized as "revelatory" "the notion of a rule binding valid by virtue of its 'source' not content." N. Lacey, *A Life of H.L.A. Hart* (Oxford: Oxford University Press, 2004), 227 (Hart's emphasis).
9. P. Markwick, "Law and Content independent Reasons," *Oxford Journal of Legal Studies* 20 (2000): 582.
10. See Simmons, *Moral Principles*, 30-31; C. Pateman is an exception (*The Problem of Political Obligation* [Berkeley: University of California Press, 1979]).
11. R. P. Wolff, *In Defense of Anarchism* (New York: Harper and Row, 1970), 9 (his emphasis).
12. *Ibid.*; his emphasis.
13. M.B.E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" *Yale Law Journal* 82 (1973): 952.
14. "Philosophical Anarchism," in *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), 106-7.
15. P. Soper, *The Ethics of Deference* (Cambridge: Cambridge University Press, 2002), 4-5.
16. C. Gans, *Philosophical Anarchism and Political Disobedience* (Cambridge: Cambridge University Press, 1992), 14.
17. Green, "Who Believes in Political Obligation?" in *The Duty to Obey the Law*, ed. W. Edmundson (Lanham, MD: Rowman and Littlefield, 1999), 309.
18. Green, *Authority of the State*, 226, 239.
19. There are other minor limitations, for example, in regard to promises to perform acts that are impossible.
20. In briefly discussing different positions, I set aside questions concerning the accuracy of my interpretations of historical texts, although the views I present are widely accepted. For the sake of argument here, these views function as representatives of different positions, and so we may stipulate that they accurately reflect the intentions of the authors to whom I ascribe them.
21. Hobbes, *Leviathan*, 93, 98.

22. I assume a conventional view of legitimacy, as in accord with the basic beliefs of democratic citizens. For instance, a legitimate regime must not seriously violate subjects' rights or take other actions that are significantly unjust, and must be acceptably democratic.
23. Locke, *Second Treatise*, sec. 96 (his emphasis).
24. Esp. *Second Treatise*, chap. 9. The situation in regard to Locke is further complicated by the existence of natural law, which functions as an additional check on government. Any law in violation of natural law is illegitimate, and so not binding (esp. sec. 135).
25. Green, *Authority of the State*, 86.
26. Green, "Law and Obligations," in *The Oxford Handbook of Jurisprudence and the Philosophy of Law*, ed. J. Coleman and S. Shapiro (Oxford: Oxford University Press, 2002), 520.
27. Green, "Who Believes in Political Obligation?" 309.
28. For discussion of this subject, I am indebted to Dave Klein and Micah Schwartzman.
29. The limits on the self-image of the state discussed in the following paragraphs pertain only to states that have written constitutions and/or practices of judicial review. My discussion focuses on the United States. While I believe similar claims could be established about the self-images of other states, I cannot pursue this subject here. I believe similar limits exist in states such as the United Kingdom, that do not have written constitutions. But this subject too I cannot pursue here. No state we would regard as legitimate claims the right to make any laws whatsoever, regardless of their content. For discussion of this issue, I am indebted to Leslie Green.
30. Cf. the view of Soper, *Ethics of Deference*.
31. An influential statement of a permissive standard is Clarence Thomas' majority decision in *FCC v. Beach Communications*, 508 U.S. (1993), at 313-14; cf. the standard presented by John Paul Stevens, in his concurring opinion in the same case (at 323 n.3). For criticism of permissive interpretations, see C. Neily, "One Test, Two Standards: The On-and-Off Role of 'Plausibility' in Rational Basis Review," *Georgetown Journal of Law & Public Policy* 4 (2006); R. A. Epstein, "A Rational Basis For Affirmative Action: A Shaky but Classical Liberal Defense," *Michigan Law Review* 100 (2002).
32. 539 U.S. 558 (2003).
33. At 526-27 (his ellipsis).
34. At 582, 585.
35. As an obvious objection to appealing to judicial practice to fill in the self-image of the state, it could be argued that requiring laws to be consistent with the Constitution does not necessarily limit the discretion of the state, because, once again, the Constitution itself is law, made by state bodies. However, although this is true

of the origin of the Constitution, the very existence of a written constitution with enumerated powers—implying that some powers are not given to the government—posits basic limits. (For this point, including language used in this sentence, I am indebted to Micah Schwartzman.) For the United States or some other constitutional government to proclaim that it could make any laws it pleased, regardless of all constraints, simply through acts of will, would be outrageous and widely viewed as such. As Justice Marshall wrote in *Marbury v. Madison*: “The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation” (1 Cranch, 137 [1803], at 176-77).

36. For a brief discussion of the survey research, see G. Klosko, *Political Obligations* (Oxford: Oxford University Press, 2005), 198-200.
37. See the focus group studies presented in Klosko, *Political Obligations*, chap. 9.
38. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 60-61.
39. For discussion, see Klosko, *The Principle of Fairness and Political Obligations* (Savage, MD: Rowman and Littlefield, 1992), Appendix 1.
40. Defenders of content independence could respond that the factors discussed in this section do not show that the laws in question lack CI force, but only that the CI force they have is outweighed by other considerations. I believe this response misconstrues the moral facts. In a case of what is generally viewed as a prima facie obligation that is overridden, the original obligation stays in effect. Although it need not be complied with, its influence is still felt. (For a brief discussion of prima facie obligations, with references, see *ibid.*, 12-14.) For example, I make an appointment to meet with a student to discuss an assignment, but on the way to the meeting I encounter an accident victim who will die if I do not take him to the hospital. Under these circumstances, it would be wrong for me to fulfill my obligation to meet the student. But evidence that the original obligation still exists is that I owe the student an apology and explanation, while evidence that I was right in not complying with the original obligation is that the student would be unreasonable not to accept my apology. With speeding or witchcraft laws, common experience is quite different. When Jones goes five miles over the limit, he does not feel he is doing something wrong but is justified anyway. He does not regard the law as having any moral force at all. In contrast, if he has to go thirty miles over the limit to get an accident victim to the hospital, he will feel that he is doing something wrong but is justified. When Jones disobeys a law against witchcraft by, say, using a deck of tarot cards, once again, it is unlikely that he will have any experience of doing something wrong. Cases along these lines are evidence that laws without valid purposes lack moral force, rather than that the force they have is overridden by other factors.

41. The following discussion is indebted to L. Alexander, "Law and Exclusionary Reasons," *Philosophical Topics* 18 (1990).
42. *Ibid.*, 8.
43. If Grey has consented to abide by the results of democratic deliberations, this could be a CI reason to obey. But claims concerning actual general consent are generally recognized as suspect. For an excellent discussion, see Simmons, *Moral Principles*, chaps. 3-4. Other reasons for the authority of democracy are discussed by T. Christiano, "The Authority of Democracy," *Journal of Political Philosophy* 12 (2004); and D. Estlund, *Democratic Authority* (Princeton: Princeton University Press, 2007).
44. Cf. Alexander's persuasive account of why it is advantageous for the state to present itself as possessing the ability to create morally binding, CI reasons to act (i.e., political obligations as traditionally conceived), even if it does not actually possess this ("Law and Exclusionary Reasons," 10-12).
45. For discussion, see Simmons, *Moral Principles*, chaps. 1-2; Klosko, *Political Obligations*, chap. 1; *Principle of Fairness*, chap. 1.
46. Other criteria, especially "particularity," need not be discussed here; for this criterion, see Simmons, *Moral Principles*, 31-35.
47. The ability to justify obligations to obey *all* laws is qualified below.
48. Simmons, *Moral Principles*; Green, *Authority of the State*; Smith, "Prima Facie Obligation"; Raz, *The Authority of Law* (Oxford: Oxford University Press, 1979), chap. 12; also Pateman, *Problem of Political Obligation*.
49. Simmons, *Moral Principles*.
50. C. Morris, *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), 214; A. Buchanan, "Political Legitimacy and Democracy," *Ethics* 112 (2002): 696.
51. This is a main reason why Green concentrates on consent theory in *Authority of the State*.
52. For references, see note 48; for discussion, see Klosko, *Political Obligations*, chap. 5. I should note that in many scholars' direct criticisms of different theories of obligation, content independence is not invoked directly but, as noted, shapes their approaches to the overall problem. See especially, Simmons, *Moral Principles*, 29-38; Green, *Authority of the State*, 232-34.
53. Gans, *Philosophical Anarchism*, 90.
54. Simmons, "The Anarchist Position: A Reply to Klosko and Senor," *Philosophy and Public Affairs* 16 (1987): 279.
55. Especially Klosko, *Principle of Fairness*; and *Political Obligations*, esp. chap. 5. Also see Klosko, "John Simmons on Political Obligation," *APA Newsletter on Philosophy & Law*, 7 (Fall 2007); and see Simmons' response in the same issue.

56. See the previous note. For additional aspects of the principle of fairness, see the articles listed in the bibliography of Klosko, *Political Obligations*. I should note that, at the present time, the principle of fairness is widely believed to provide an especially secure basis for political obligations. For instance, Green characterizes it as “perhaps the most influential contemporary theory of obligation” (“Law and Obligations,” 530); similarly Soper, *Ethics of Deference*, 103, see chap. 6; W. Edmundson, *Three Anarchical Fallacies* (Cambridge: Cambridge University Press, 1998), 31.
57. R. Arneson, “The Principle of Fairness and Free-Rider Problems,” *Ethics* 92 (1982).
58. See Klosko, *Political Obligations*, chap. 5.

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