

The Virtue of Law-Abidance

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The last half century has seen a steady erosion of confidence in the defensibility of a duty to obey the law—even a qualified, *pro tanto* duty to obey the laws of a just or nearly just state (Wasserstrom 1961; Simmons 1979). Over roughly the same period, there has been increasing interest in virtue ethics as an alternative to the dominant consequentialist and deontological approaches to normative ethics (Anscombe 1958; McDowell 1979). Curiously, these two tendencies have so far only just barely linked up. There has been discussion of the question whether patriotism should be considered a virtue, a vice, or an ambiguous or neutral trait (MacIntyre 1984; Nussbaum 2002); but being patriotic and being subject to a duty to obey the law are quite different things. There has also been some abstract discussion about the virtuous person’s relation to authority and justice in general (Swanton 2001, 2003). But, following Leslie Green’s (1988, 261-63) dismissal of a virtue of obedience, there has been little virtue-orientated discussion having specific reference to the kinds of difficulties that have motivated the ascendant skepticism about political obligation.¹ This silence has persisted despite repeated calls for renewed work on “virtue politics” (Crisp and Slote 1997; Hursthouse 1999).

In this article, I will propose and defend a rough account of law-abidance as a virtue. I will first outline what I mean by the virtue of law-abidance. I will then examine a group of examples—some of them notorious in the literature on political obligation. In discussing these examples I will try to develop two points: first, the relation between law-abidance and other candidate virtues, and, second, the advantages of a virtue-ethical over a traditional, straightforwardly deontological, analysis. I will continue by anticipating objections any virtue-ethical account must face, and by suggesting possible rejoinders. In concluding, I will suggest that a virtue-theoretic account of our relation to the law offers advantages that are not contingent upon the independence or priority of the virtues with respect to consequentialistic and deontological components of a complete moral theory. Chief among these advantages is the promise of an alternative to the deadlocked positions taken by apologists for the duty to obey the law and their philosophical-anarchist critics—positions which, between themselves, have been tacitly assumed to occupy all the spaces on the board.

I. Abidance versus Obedience

The virtue of law-abidance is a complex character trait whose core consists in the actor's acceptance of a duty to comply with what I will characterize as "retail" operations of the legal system, a disposition so to comply, and a disposition to

regard the bare lawfulness of an action as a nontrivial though not necessarily conclusive reason in its favor. The virtue does not, however, comprise a disposition to obey the law qua law, regardless of its moral merits; although it does include a disposition to conform to the conventional moral norms of the actor's society—where those norms constitute customary law and are not patently unjust. There are other elements as well which, though not entailed by the central core, reinforce it and give it greater concreteness. For example, the law-abiding are not compulsive students of the law, nor are they quick to use a law's injustice to excuse their own noncompliance. When the law-abiding face a direct order to submit to the administration of what they view as a morally flawed law, they will either comply or openly and peacefully pursue whatever channels there may be for redress. I will try to clarify these elements and their interrelatedness in what follows—often by contrast to other recent conceptions, such as Leslie Green's account of the virtue of civility and Joseph Raz's of respect for the law.

What I offer is a defense of the virtue of law-abidance, not of obedience.² My account of the distinction between the two is at least partly stipulative: I believe but will not insist that much of it is latent in ordinary usage. On this account, the difference between obedience and abidance has mainly to do with the relation of each to the concept of political or legal authority. A legal or political authority characteristically claims that its subjects have a duty to obey whatever is

laid down as law. A political authority, then, typically claims that its subjects labor under a general duty of obedience, which is particularized by the ever-shifting content of its *corpus juris*. Orders by officials do not normally specify the justification backing this claim—when a justification is forthcoming, it may invoke democracy, or fairness, or consent. Whatever the justificatory “back story” may be, the task of getting justice done is one the state insists it is generally better at than its citizens acting severally. The state intends its laws to preempt its citizens’ acting on their own—possibly superior—notions of what justice requires.

The authority of the state has traditionally been understood to encompass the power to legislate and a right to command obedience to the law. Law-*abidance*, however, is a concept that has attracted less attention from philosophers. Etymologically, *abidance* has ties both to the idea of continuously dwelling in a place and to acquiescence if not cooperative engagement. It is readily understood as a term of praise: to say that so-and-so is a “law-abiding citizen” is normally so offered and taken. Law-*abidance* qualifies as a candidate virtue-term on a number of grounds. It refers to a settled disposition to act and to feel: but it is not itself a feeling or a faculty. It is neither natural nor contrary to human nature; and it is a nearly universal component of moral education. It typically benefits those who possess it, and they are typically thought better of for

having it. Finally, it is a character trait that harmonizes well with other standard virtues—such as honesty and fairness.³

A settled disposition to *obey* the law—in contrast—is less likely to withstand scrutiny as a candidate virtue. One who obeys a legal command to ϕ must ϕ and, having ϕ ed, will have originated a token of ϕ ing partaking in all the moral qualities of that ϕ ing. Yet the actor's ϕ ing is expected by the law regardless of the actor's own assessment of the moral and prudential qualities of ϕ ing generally or of ϕ ing in the circumstances in which the actor finds himself. Such a character trait is neither clearly admirable nor clearly beneficial to the actor. Law-*abidance*, as I have defined it, is different: one who is law-abiding may well fail to comply with a legal requirement to ϕ : the actor may be ignorant of the requirement, or the actor may choose to challenge the requirement—ready of course to obey any eventual specific order to comply.⁴ The law-abiding actor will not disregard legal rules, but she may not know of all that apply to her, and in coming to know she may choose to challenge them generally or as applied to her. The law-abiding are not outlaws even when they knowingly disobey: for they do comply with direct orders, except in those rare cases in which noncompliance is the only way to initiate review of the justice of a law or official policy. The law-abiding regard the law as invariably a reason for action, but they are not generally disposed to obey regardless of their own assessments of the moral and rational

merits.⁵

Obedience seems a virtue only in the attenuated sense that being disposed generally to discharge one's duties is a virtue. Obedience might get one past one's resistance to discharging certain of one's duties—and this thought is a familiar element in accounts of the role of law. But, so conceived, the virtue of obedience to the law is beneficially effective only where there is some duty to obey. If there were no duty to obey some particular legal command, and the performance it required were valuable on no other ground, many would be disinclined to praise supererogatory compliance as an exhibition of any virtue, and might in fact criticize it as sycophantic. Thus, any virtue of obedience would be very closely tied to the existence of a moral duty to obey. The virtue of obedience, in other words, would be keyed to the duty to obey—and ensnared in the controversies attending this latter notion. In contrast, the virtue of law-abidance does not presuppose the existence of *any* duty to obey the law *qua* law. Rather, it is keyed to the fittingness or suitability of respecting legal institutions and officials; and being ready to comply with them, when they insist, or alternatively to submit one's objections to the legally appropriate dispute-resolution forum.⁶ The law-abiding thus acknowledge the preemptory force of legal directives that channel and resolve disputes. Socrates exemplifies the law-abiding citizen: he submitted to the order of the assembly that condemned him to

death, but the order was entered against him on the charge that he had corrupted the piety of the youth of Athens. Insofar as it was contrary to the law of Athens to corrupt the piety of the youth, Socrates was disobedient. But his willingness to accept his sentence showed him to be law-abiding.

Obedience, as I have indicated, is an unpromising candidate for the canon of virtues. Obedience involves a relationship with another person—natural or corporate—and as such is not the same as diligence. Socrates, in the *Crito*, ties obedience to gratitude. But, granting that gratitude is a virtue, it is very doubtful that it encompasses obedience of the law (Wellman 2003). Even with respect to our parents, an obedient disposition seems less and less appropriate as we mature, yielding its place to ones of gratitude and respect. So, even if political and filial obligations were analogous, the analogy would fail to support a virtue of obedience as an adult trait. Its closest cousin in Aristotle's account seems to be justice, for "evidently both the law-abiding and the fair man will be just" (*NE* 1129^a33). Justice is the chief virtue, for him, and it encompasses legal justice; but as soon as natural and legal justice are distinguished (*NE* 1134^b8-14) the role of obedience becomes problematic. Aristotle goes on to identify equity as a corrective to legal justice, and as such superior to it (*NE* 1137^a31-^b12)—which suggests that a fully detailed Aristotelian account could give only a qualified endorsement to the idea that obedience was a virtue (except to the extent that

subordinate persons—women, children, and slaves—could be said to be capable of virtues appropriate to their natures). Whatever law-abidance is, it is not obsequiousness, but is related to what he described as political friendship.

In the *Politics*, Aristotle acknowledges that ancient laws can become absurdly obsolete and, moreover, that the law's generality and what justice demands in particular cases can diverge. Nonetheless, just as it is harmful to the state too frequently to amend the laws, it is harmful to the citizen to correct what the lawgiver has thought wise to let stand; for, otherwise, the citizen "will lose by the habit of disobedience" (*P* 1269^a15-20). Such corrections can enfeeble the law, for it "has no power to command obedience except that of habit" (*P* 1269^a20-21). But to say all this is not quite to say that "the habit of obedience is a good" (*pace* Christie 1990, 1314 n.10) or that obedience is a virtue. It may very well be true that a widespread habit of obedience strengthens the state and that a habit of disobedience harms the individual, without its being the case that obedience is a virtue or that it benefits the individual (*cf.* Green 1988, 257-59). It may be that neither habitual obedience nor habitual independence gets matters right for the full citizen; and that the more distanced attitude I have called law-abidance is the better candidate virtue.⁷ But this is not the place to explore the interpretation of the Greeks' views with the care they require. It will have to suffice here to say that both obedience and abidance on the part of a citizen of the *polis* take their

cast and complexion from the relative intimacy of the *polis*. As Constant (1988) noted centuries ago, transposing Greek virtues to modern circumstances is a dubious undertaking: so much more so now.⁸

II. Law-Abidance and Puzzle Cases

The rough sketch I have given can be sharpened. The recent literature on political obligation has tended to revolve around the question how to treat certain puzzling examples: e.g., Robert Nozick's "classical music" scheme (1974, 93-94); John Simmon's Montana-based "Institute for the Advancement of Philosophers" (1979, 148) ; and M.B.E. Smith's stop sign in the desert (1973). It will be helpful to fill out some of the details of the virtue of law-abidance by way of revisiting Smith's example, as well as some others drawn from beyond the political-obligation literature.

Harmless lawbreaking. Recent disputes about the existence of a pro tanto duty to obey the law have often revolved around examples of harmless lawbreaking—such as running a stop sign in the desert (Smith 1973). Cases such as "stop sign" are specified in such a way that the imagined instance of lawbreaking causes no harm and no significant risk of harm. Spelling all of this out involves stipulating that there are no witnesses who might be corrupted and that the lawbreaker herself not

become corrupted by the single exercise in (as it were) experimental lawbreaking. The stipulation may even be buttressed by the supposition that the actor takes a drug immediately after running the stop sign, to induce amnesia and thus minimize the possibility of repeated lawbreaking. These moves are part of a wider dialectical pattern that is prominent in discussions of moral particularism, the view that there are no interesting and intelligible moral generalizations (Dancy 2000). What is notable for the present purpose is that stop-sign-type examples work best for the particularist—and for the skeptic about political obligation—when offered with the assurance that the actor’s character will not be affected by the isolated act of lawbreaking. The straightforward way to understand this seriousness is as a manifestation of the importance we intuitively assign to cultivating a law-abiding character.

This straightforward way is not blocked by the suggestion that all we really care about is the train of further consequences flowing from the one-off act of lawbreaking. To see this, imagine some different personal trait: not a vice, perhaps, but something not desirable, like clumsiness. It is possible that a clumsy person—a schlemiel—might blunder through life doing no harm. The schlemiel might leave his feet out in the aisle of the bus; but happen never to encounter a schlemazl to trip over them. As in a Harold Lloyd comedy, a figurative girder serendipitously appears whenever the schlemiel is about to step out onto thin air.

Lucky fellow—but not as admirable a fellow as one who had been lucky roughly to the same degree, but without being clumsy. The person whom the falling piano narrowly misses is lucky but not clumsy; but the lucky schlemiel *is* clumsy. (The lucky schlemazl, by definition, does not exist (Rosten 1968).) My point is that our desire not to be the schlemiel is not wholly the product of our desire not to be involved in harm and embarrassment. So also, our reluctance to accept the skeptics' verdict on the stop-sign case, without first receiving what we could call the “characterological assurance,” is not wholly the product of our concern with consequences (cf. Adams 1976, 474-75). Taking the law lightly would be a regrettable habit to form even if, somehow, no harm happened ever to come of it.

Abiding nearly-just laws of unjust regimes. Theories of political obligation normally concede that there is no duty to obey the laws of unjust regimes. Positive accounts thus typically defend the view that there is a pro tanto duty⁹ to obey the laws of *sufficiently just* states; while allowing that other moral principles will be needed to support particular duties to comply with just laws promulgated or administered by unjust states. The moral credentials of the state—which are distinct from but surely somehow related to those of the current and recent governments directing the state—are thus the organizing principle. A sufficiently just state is the focal point of political obligation. An insufficiently just state

cannot focus the collection of particular compliance duties that may and typically will exist for its subjects. Any duty to comply with the administrative prerogatives of an insufficiently just state must arise either from the state's functions satisfying a "second-best" qualification generally, or from particular facts and circumstances (cf. Hart 1994, ps).

A virtue-ethical account need not place such stress on the moral credentials of the state; and this is an advantage. It is difficult to muster agreement upon criteria of the ideally just state, and perhaps even more difficult to specify what may pass as "good enough" justice of the state. To the extent that an agent's moral relation to the law is determined by a global evaluation of the justice of the state, that relation will remain problematic. Because a virtue-ethical account builds, as it were, not from the outside in but inside out, the moral credentials of the state need not be of such paramount importance. Those credentials are not to be ignored, of course; but, as Rawls held, we should not take the state's faults as a too-ready excuse for ignoring its laws. Although Rawls characterized this constraint as a "duty of civility," his point could better be put in terms of a *virtue* of civility (Green 1988, 265-67).¹⁰ The virtue of civility, as Green has outlined it, need not involve any "surrender of judgment" to the authority of the state. It is "a weaker form of commitment: the conservative one of self-restraint." It is a virtue not so much for fostering stability but because it

“express[es] a kind of social solidarity and a public conception of justice.” Even so, “it is not obligatory to be civil,” and thus, for Green, there is no duty of civility. Nonetheless, “civility will in certain circumstances generate obligations, particularly if others are induced to rely on our self-restraint.” Civility, in sum, is a political virtue “lying between the vices of rigorism on the one hand and complacency on the other.”

Green’s brief account of the virtue of civility is elusive on the subject of the relation between virtue and right action; and it is silent on the questions whether and how civility benefits its possessor. Nonetheless, it is a helpful starting point. Of particular value, I think, is the idea that there may be a political virtue that is not rigoristic about justice. A law-abiding citizen does not keep a running account of the state’s moral performance as part of her reasoning with legal precepts. Justice matters for the law-abiding, of course. I will discuss the relation between the virtues of law-abidingness and of justice in the section on civil disobedience, below.

Ignorance of the law and of legally material fact. The law-abiding citizen does not scan the statute books to discover loopholes or standards more lenient than those embodied in customary norms. The venerable maxim *ignorantia legis nemo excusat* rests not so much on administrative convenience as on the supposition

that positive enactments merely make more determinate the customary and moral norms observed generally throughout society. Ignorance or mistake of law ought therefore to be an excuse only for the virtuous, as Dan Kahan has argued (1997). Going to the statute book ought to be an extraordinary occasion for the law-abiding. (Unlike the situation of those who are disposed to obey rather than to abide the law; and who would, one would imagine, devote substantial time to discovering obscure prescriptions.) Those who go to the statute book in a law-abiding spirit are to be forgiven if they make honest and reasonable mistakes. Those who go to the statute book hoping to find a legal dispensation for departing from community norms ought not to be forgiven, however reasonable their mistaken readings might be.

When the law-abiding lapse and knowingly violate community norms, they accept that the risk falls upon them that the law has prohibited what society already disapproves. Moreover, they accept the risk that facts, circumstances, and outcomes of their wrongdoing may be worse than they suppose. The law-abiding do not expect to be excused on technical grounds—as, for example, that they reasonably believed that a female was of age though still young enough to be called a girl—except where their conduct is morally innocent though *malum prohibitum*.¹¹

Civil disobedience. This faded subject may seem now to belong in a curio cabinet of topics destined never again to be topical. The appearance of John Simmons's *Moral Principles and Political Obligations*, in 1979, made it impossible to discuss with the same earnestness the question, "How, if at all, may one go about disobeying the law?" Although there were earlier straws in the wind (e.g. Wasserstrom 1961; Wolff 1970; Smith 1973), the rigor and thoroughness of Simmons's treatment succeeded in bringing about a decisive reversal of the presumptive starting point. The question, "How ought I disobey, if I may at all?" was bumped aside by philosophical anarchists' increasingly confident challenge, "Tell me why I should *obey* at all." Interestingly, though, the former question was taken seriously by no less a luminary than John Rawls (1969), who insisted that civil disobedience is justifiable only as a *form of address*. Rawls took seriously, for example, the problem of *indirect* civil disobedience, by which one violates a just law *A*—such as a criminal trespass ordinance—in order to protest the injustice of law *B*—such as a segregation statute or a policy of waging undeclared war. For Rawls and others, the civil disobedient acts not only permissibly but rightly if, but only if, her actions are public, nonviolent, and are intended as an appeal to officials and fellow citizens to reconsider and rectify what is in fact a serious injustice. Sabotage, terrorism, and furtive noncompliance, however, are not justifiable responses to legal injustice within reasonably just legal systems, on

this type of view—which I refer to as the “petition view.”

I think the petition view makes better sense if law-abidance is an admitted virtue ([self-identifying reference omitted]). More importantly, the issue the petition view addresses provides at least one criterion by which to distinguish law-abidance from law-obedience. Obviously, if one has taken the position that obeying the law is a virtue, one is going to have difficulty explaining how disobeying the law might be not only permissible but virtuous. For if obeying is sometimes virtuous and disobeying is sometimes virtuous it would appear that what is really at work is some virtue to be characterized generally enough to cover both the rightful obeyings and the rightful disobeyings. But if, as I propose, the relevant virtue is one of law-*abidance*, the problematic nature of obedience is, if not avoided, then at least not built right into the definition of a virtue one will be at pains to make plausible. Let me explain.

The law-abiding are among those who want to get along with others on just terms. The law-abiding value justice but do not posit perfect justice as an overriding goal or *sine qua non* of getting along. Justice may appear to the law-abiding as, in John Gardner’s phrase, “a remedial virtue...a virtue for dispute-resolvers—whose job is to mop up when things have already gone wrong—and dispute-anticipators” (2000, 29).¹² In the absence of law, there is of course no occasion to acquire or exercise the virtue of law-abidance, unless in the sense that

there is always an occasion to take part in the creation of legal institutions. Creating legal institutions against a background of merely customary primary norms is, as Hart (1994) explained, a matter of bringing it about that a certain (not necessarily proper) subclass of persons—officials—comes to be recognized and a certain second-order rule—a “rule of recognition”—comes to be internalized among that official class. Law-abidingness will emerge as a disposition to conform to primary norms because they are the primary norms of one’s society and to accept the sincere efforts of officials to manage primary norms—which, as social life becomes increasingly complex, tend to become antiquated, inefficient, and in conflict one with another. Officials will, however, have to use blunt tools to reengineer and manage primary norms. Officials will, roughly, have to deal both wholesale and retail. By wholesale, I mean by prescribing rules, whether by constitution-making, ordinary legislation, executive edict, or judicial doctrine. By retail, I mean interfering with the ongoing stream of conduct by specific interference—issuing a subpoena or a summons or a license, making a traffic stop or an arrest or a judicial sale. Such retail operations typically serve to forestall particular disputes (say, by directing vehicular traffic at an accident site) or to channel particular disputes into legal or legally authorized processes for orderly resolution.¹³

The law-abiding willingly defer to officials as they conduct the state’s

retail operations—assuming that the official is not patently acting in bad faith. The law-abiding also willingly comply with the not-outrageously-unjust informal norms that make social life tolerable. But the law-abiding need not have a well-settled disposition toward statutory or judge-made law in bulk. For one thing, not all of it is directed to them (Hart 1994; Dan-Cohen 1984). For another, the law is not only overbroad, as noted already, but often unenforced—as where a statute has fallen into desuetude, or compliance with a regulatory measure is not seriously expected (e.g., freeway speed limits, in some localities; or statutes criminalizing adultery). For yet another, the law-abiding are ignorant of the bulk of law (despite the official presumption to the contrary). The law-abiding are strongly disposed to avoid and condemn *malum in se*, but (as Wolff, Simmons, Feinberg, Green and others have pointed out) not so much because the law prohibits it as because *morality* does. The law-abiding avoid and condemn those *mala prohibita* of which they are aware, not necessarily as a result of assigning an overwhelming moral weight to legal enactment per se, nor by treating legal enactments as Razian exclusionary (or, more precisely, “protected”) reasons. Rather, the law-abiding intuitively appreciate the power of the positive law to coordinate what might otherwise be an inefficient or even disastrous cacaphony of individual strategies and habits. The law-abiding acknowledge that the existence of a legal rule directing one to ϕ is always a reason to ϕ . But that is as far as they need go. An

attitude of “waiting watchfulness,” in Simmons’s (1987) phrase, is not necessarily inconsistent with law-abidingness. What is disallowed is the idea that the fact that a legal rule exists is “neither here nor there” for purposes of practical reasoning, or that the law may lightly be disobeyed.¹⁴

Now contrast the much more stringent constraint under which the law-abiding labor with respect to retail operations. The fact that an official has specially, and perhaps even personally, directed one to “pull over,” to “be in court,” to “pay the plaintiff \$X,” or even to “step into this cell,” operates for the law-abiding not merely as a reason among others. Compliance in such cases is often habitual, and the habit need not have been deliberately acquired. Rationalizing such habits may take any of the several forms explored in the literature on authority (Shapiro 2002). To the degree that theoretical difficulties attend any general account of the rationality of habit, the virtue of law-abidance will be involved in theoretical difficulties. But in my view these difficulties are more likely to be worth seeing through on behalf of a plausible and tightly conceived virtue than on behalf of a breathtakingly open-ended (as well as putatively “content-independent”) duty, such as the embattled duty to obey the law.

American criminal-law doctrine presents a seeming difficulty to the idea that the law-abiding citizen is one who is disposed to comply with retail

operations, rather than with the law in its more abstract and sweeping formulations. If the relevant virtue in this field looks toward community norms of civil behavior and to officials' retail operations, then one would expect that the criminal law, at least, would be willing to excuse those who followed an official's good faith advice rather than a conflicting, abstractly stated, legal, norm. But the cases are mixed. One, *Hopkins v. State*, involves a statute forbidding the display of signs offering the service of solemnizing marriages. The cautious defendant asked the State's Attorney whether he might legally put up a sign advertising that he was both a minister and a certified notary public. The State's Attorney told him this was permissible; but that official's successor (presumably) then successfully prosecuted the defendant for violating that very statute.¹⁵ This is a suspicious result, especially if retail operations (the official's specific advice) are supposed to be more pertinent than the bare words of the statute. But the result is an understandable response to a genuine worry about official corruption, for if a defense of "reasonable reliance on bad legal advice" were recognized, then, as the *Hopkins* court put it, "such advice would be paramount to the law." The U.S. Supreme Court and the influential Model Penal Code, however, have not let that worry control. Unlike *Hopkins*, their doctrines are consistent with the idea that the law-abiding citizen, acting in good faith, ought to look to the on-the-spot official for guidance, and ought to be able to do so without having to answer to

“the law” more abstractly conceived, even if the official had been mistaken.¹⁶

Civil disobedience on the petition view is a form of address. It is, as Joel Feinberg put it, “a violation of the law without loss of respect for the law” (Feinberg 1979, 153). It differs from what Rawls calls “conscientious refusal,” which is “noncompliance with a more or less direct legal injunction or administrative order,” but noncompliance not intended as a form of public address—rather as a simple doing of the right thing, perhaps motivated solely by a wish not to dirty one’s hands (Feinberg 1979, 155). Conscientious refusal is normally manifest to an official, but not necessarily so. “One’s action is assumed to be known to the authorities,” Feinberg says, “however much one might wish, in some cases, to conceal it.” In my view, the law-abiding will not exploit the opportunity to conceal their noncompliance with retail operations, even when they might do so by morally innocent means. But the law-abiding may indeed engage in civil disobedience in the “proper” and “narrow” sense defined by the petition view. A law-abiding person may, in my view, enjoy “soft” drugs recreationally, and may serve modest amounts of alcohol to minors on family occasions. But she will not slip away from a mass arrest, even if she might do so safely. A law-abiding person may harbor fugitive slaves. But she will either comply with or openly defy an official seeking personally to enforce a judicial order to surrender a fugitive slave. She will not covertly defy an administrative

prerogative. Her defiance exhibits law-abidance only if it takes the form of a petition.

Law-abidingness is not rigoristic about justice; but it is not complacent about it, either. A legal regime may be so thoroughly unjust that law-abidingness ceases to be a virtue. To acknowledge this fact may seem to be to abandon the virtue-ethical project of working from the inside out. Whether this is really so will depend upon how the account of justice goes—in particular, upon the success of a virtue-ethical account of justice. It could turn out—as a simple understanding of the “unity of the virtues” thesis has it—that law-abidingness, like courage, is a virtue only as exhibited by the just person. Alternatively, it could turn out that justice and law-abidingness are always at least potentially at odds—even if it turns out, as Rosalind Hursthouse has suggested, that not every right act exemplifies justice, rather than some virtue or other of narrower scope (Hursthouse 1999, 5-6), or perhaps none we have a specific name for. But the big question emerging here is: what acts *are* right if law-abidingness is a virtue (cf., e.g., Annas 2004; Johnson 2003)? To that I now turn.

III. How Is the Virtue Related to Right Action?

The general relation between doing the right thing and being virtuous is so vast and important a topic that I can do little more here than to acknowledge that the

thesis I outline may seem only to shove a problem under a rug—an expensive rug at that, which itself requires costly care. The difficulty could be called *Williams's Thesis*: roughly, that the right is prior to the virtuous and therefore the effort to “virtue-center” ethics is a futility (Williams 1980; Solum 2003).¹⁷ Virtue ethics, in trying to work from the inside out, in fact manages only to put the cart before the horse. In the present case, William's Thesis predicts that we will find that some sort of *duty* of law-abidance is prior to the virtue, with the suggestion that the specification and defense of that duty—rather than of the virtue—will turn out to be where the real action is.

My response is, first, to confess that Williams's Thesis may not be worth resisting—and certainly not here, where I need to persuade those who go along with him.¹⁸ I, too, find little satisfaction in the thought that we should simply stop talking about duty and obligation—as though they deserved to be popped into the nearest oubliette. Similarly, I find little nourishment in the suggestion that the duties that have to be discussed—and perhaps admitted as prior—are merely “imperfect” duties in some sense of that protean term. So, the second part of my response is to confess that speaking of law-abidance as a virtue must be taken as a way of asserting that there is a (perfect, though *pro tanto*) duty of law-abidance that is distinct from any duty of obedience or of justice and, moreover, that is both plausible and interestingly connected to other concepts of political philosophy,

like legitimacy.

The third and final part of my response is to avoid the conclusion that an “aretic turn” in political philosophy is nothing more than an unpaid vacation from serious work on the theory of right. I hope I have already said enough to avoid that conclusion, at least as it pertains to the subject of law-abidance. The pro tanto duty to comply with retail operations, an acceptance of that duty and a disposition so to comply, combined with a disposition to regard the bare lawfulness of an action as a reason invariably valenced in its favor, is what there is to the virtue of law-abidance, as I have unpacked it. A disposition to conform to the not-outrageously-unjust conventional moral norms of one’s society also belongs here, insofar as customary law is law (cf. Kraut 2002). The dispositions concerned here are not bloodless tendencies; but rather—as is the case with the virtues generally—are ones thickened by affect (Hursthouse 1999, 108-20). A state is legitimate, in my view, just in case the moral duty part of this package is borne by all within the relevant territory, and the dispositions are sufficiently widely if not universally ingrained. The aretaic part of this package has for too long been disparaged as a merely “de facto,” descriptive, sociological condition. But, contrary to what seems to be the prevailing philosophical view, the existence of a widespread disposition among people to do the lawful thing because it is the lawful thing to do is not a circumstance whose value is utterly derivative from or

conditional upon the justness of the state whose law is involved.

Here is a related objection: a duty of law-abidance is open to the same lines of criticism that brought down its predecessor, the duty of obedience. Therefore, the only positions open on the board are philosophical anarchism, á la Simmons and Green, and defenses of the duty of obedience, á la Klosko, Wellman et al. I won't respond in detail here, but will restrict myself to stating two points. The first is that this objection does not challenge the cogency of distinguishing obedience and abidance. The objection is, rather, that a duty of law-abidance is as vulnerable to Simmons-style criticism as the duty of law-obedience (cf. Lefkowitz 2004). The second point is that the *duty* of law-abidance is what we see when we look at the virtue of law-abidance from a deontological standpoint. But there is more to the virtue than the duty—and this makes a difference.¹⁹ Contrast the duty of obedience. No philosopher since Aquinas, so far as I am aware, has had very much to say in favor of the idea that a disposition to obey the law because it is the law, or to obey the law “as it claims to be obeyed,” is a *virtue*. Qualify the duty to obey as much as you like, there still seems to be little to say about it as an excellence or condition of human flourishing—little, that is, beyond the unnourishing bromide that it is a virtue to be disposed to discharge our duties, whatever they may be. The virtue of law-abidance, on the other hand, seems to me to offer something more than yet another candidate duty. The reason

is that it makes connection with the idea that sociability²⁰ is a helpful and healthy trait—and that sociability is a matter of putting up with others and getting along with them. It is even, sometimes, a matter of doing what they say to do just because they say so. To paraphrase a remark of Phillipa Foot's, because "cooperation is something on which good hangs in the life of the wolf," the non-law-abiding wolf "is not behaving as it should" (Foot 2001, 35). In other words, absent some extraordinary set of circumstances, there is *something wrong with* a person who is not law-abiding, just as there is something wrong with a person who is incapable of empathy.²¹

The connection between law-abidance and sociability helps explain how being disposed to abide by the law benefits the actor. Aristotle's discussion of the difference between *enkrasia* ("continence") and full virtue is especially in point (*NE* 1145^b8-16; 1151^a29-1152^a3). The actor who, outwardly, acts as the law-abiding do, but who does so enkratically, fails to act "with the right aim, and in the right way" (*NE* 1109^a28). The enkratic actor may, for example, respond to a summons or comply with a judicial order simply out of a calculating aversion to (further) legal penalties. The enkratic actor's compliance is grudging, and represents the frustration of her contrary impulses to proceed as though her own preferred, extralegal course of action took precedence over legal or social requirements. The (reasonably) just and overwhelmingly beneficial demands of

social existence thus present themselves to the enkratic actor as challenges to the sovereignty of her own predilections and appetites. This hardly seems a healthy way to be. The fully virtuous law-abiding actor, in contrast, willingly submits to the direct orders of legal officials, welcoming the fact that—however burdensome—his cooperation manifests and reinforces a wholesome solidarity with them. But the submission of the law-abiding is in no way pusillanimous—it may in fact be the prelude to a vigorous challenge to that very order.

Those who act as the law-abiding do, but only enkratically, could be compared to those who conform to everyday social norms while inwardly rebelling. Occasionally this is the stuff of comedy: an actor (in the literal sense) wonders why he should not take “How are you?” as a literal inquiry into his current state of mind, and proceeds to startle others with disclosures that detail how very far from “Fine!” he happens really to feel. But suppose he suppresses the urge to ignore the conventional significance of the question “How are you?” and goes along, mouthing the ritual “Fine, and you?” solely because he is averse to the modest social penalties he knows he will pay should he let his literalism show. If this kind of merely enkratic compliance persisted past adolescence, it would not constitute a devastating handicap but at the same time it would not be a sign of emotional well-being. So also, I argue, with a merely enkratic disposition to comply with the procedurally regular, bona fide demands of legal officials.

The mature adult who, outside his study, is disposed to wonder “Why should I?” and “Who will make me?” when encountering an official directive, is not in a good way.

IV. Taking the Worry out of Being Close

Another objection might be put in the form of a worry. If Williams’s Thesis is confessed to, isn’t the virtue of law-abidance awfully close to the (discredited) prima facie duty to obey the law? Put in syllogistic form, the worry is that the view I am defending licenses the following inference:

- P1 It is virtuous to believe that if ϕ is legally required there is a reason to ϕ .
(my thesis)
- P2 It is right to believe that if ϕ is legally required there is a reason to ϕ .
(from P1, by Williams’s Thesis)
- P3 There is a duty to believe that if ϕ is legally required there is a reason to ϕ . (from P2, by substituting “there is a duty” for “it is right” in its objective sense)
- P4 There is a duty to believe that if ϕ is legally required there is an at least pro tanto duty to ϕ . (substituting “there is a pro tanto duty” for “there is a reason”)
- C There is an at least pro tanto duty to ϕ , if ϕ is legally required. (from P4,

by an “Elimination of Duties to Believe” Principle, to be explained below).

If the passage from P1 to C is sound, then the putative virtue of law-abidance seems to lie so close to the duty to obey the law that it could be its shadow.

What, then, can have been gained by the “aretaic turn”? We seem to be back where we started when, in the early 1970s, R.P. Wolff and M.B.E. Smith were firing the first shots across the latter duty’s bow.

There is one move of avoidance that I will repudiate right away. It won’t do to simply cull out the offending P1 and downsize the package I have offered so that it contains nothing but what relates to retail operations. That would reduce the virtue to one of abiding certain conduct of legal officials, rather than the law. It is easy enough to conceive of an agent who though indifferent to the law is disposed to do as legal officials direct, and even to do so because the agent believes herself duty-bound to do so. But what such an agent is disposed to abide does not quite reach the law itself. Law cannot achieve its distinctive advance over customary rules if the law-abiding attend only to custom and specifically directed official goading. Indeed, the state has a sound motive for claiming authority beyond what it rightfully possesses in order to persuade citizens to look to the law as a source of reasons ([self-identifying reference omitted]).

The “Elimination of Duties to Believe” Principle, which licenses the step

from P4 to C, looks like a good place to attack the imputation that my virtue-ethical account harbors the fugitive duty to obey. But the Principle seems right to me. If there is a duty to believe something—taking duty in an objective sense—what could possibly be its ground other than the truth of what one is to believe? Eliminativism as to “there is a duty to believe that *p*” seems as well motivated as eliminativism toward “it is true that *p*.” Neither locution adds much to the bare assertion that *p*. Maybe duties to believe have to be grounded in more than truth; but surely the truth of *p* is a necessary condition of there being an objective duty to believe that *p*. Counterexamples of the predictable “Believe that *p* or I’ll lay waste to your village” variety are invitations to an excursion into the possibility of compelling belief (ought implying can, and all that). But rather than take the bait I will assume that the passage from P4 to C is warranted—if not by the Elimination Principle then by something else.

I prefer a different maneuver to avoid the charge that my virtue-theoretic account presumes that there is a duty to obey, and so cannot avoid the difficulties that have brought that duty into disrepute. I deny that “there is a pro tanto duty” may be freely substituted for “there is a reason.” In short, there is a gap between there being a reason—even a “moral” reason—in favor of a course of action and there being a duty—even a merely pro tanto duty—to pursue that course. What are often cited as “imperfect” duties are better understood as cases in which reasons

don't quite add up to duty. Here is an example: Suppose I see Susan's new book on the shelf in the bookstore. I know that she worries that her years of labor have yielded no more than "another brick in the wall," and she is anxious about how it is selling. There is a reason for me to buy the book: doing so will make Susan feel better. But I have no duty to buy the book—even if I can easily afford it. I do not have even a *pro tanto* duty: the language of moral requirement is misplaced here. Even if there is no reason whatever against my buying the book, my doing so remains optional. Reasons don't always amount to requirements, even when nothing opposes them but inertia (Broome 2003; Simmons 1987; Raz 1979).

Reasons amount to requirements—duties, oughts, etc.—only when they are significantly weighty or include a "booster" reason, like a solemn promise. There are thus two stations on the way from being a mere reason to being an all-things-considered requirement, or duty. The first is the plateau a reason must attain to become a *pro tanto* requirement or duty. Once on this plateau, a reason automatically goes to the next, and becomes a requirement all-things-considered, unless it is defeated (outweighed, or perhaps excluded à la Raz). If there is competition on the first plateau only the weightiest (if any: incomparabilities may exist between reasons) will go on to the second.

This doesn't mean that "mere" reasons are safe to neglect. A reason is a consideration that is always worth taking into account, whether or not it amounts

to a pro tanto duty. Moreover, one must be careful not to take any reason too lightly. The vice that lurks behind philosophical anarchism is the vice of taking the law too lightly. Laws aren't *necessarily* mere reasons. Nor is a law a mere dummy for reasons that might justify it. *Cessante ratione legis, cessat ipsa lex* is a maxim for the guidance of those who have already acknowledged law's status as a source of reasons. A necessary part of the virtue of law-abidance is to be mindful of the fact that laws can stand for reasons that often are not obvious. Acknowledging the command of law as a reason to obey is a virtue that is as much intellectual as moral. It is related to the intellectual virtues of open-mindedness, fairness, and humility (Zagzebski 1996). These virtues, individually and in combination, are exhibited in a readiness to consider the testimony and deliberative conclusions of others—lawmakers included.

It may be helpful here to contrast Joseph Raz's account of the *attitude of respect* for law (Raz 1979, 250-61). Raz denies that there is a general obligation, prima facie or otherwise, to obey the laws of a just or nearly just state of which one is a citizen. He further denies that there is a general reason to obey the law, or that the several existences of laws generally provide reasons to obey. Nonetheless, an attitude of respect toward the law of a just or nearly just state is morally permissible, perhaps as an expression of one's (morally optional) loyalty to the state. Respect, for Raz, has two aspects: one cognitive, the other practical.

Cognitive respect consists in thinking well of the law: practical respect consists “largely of a disposition to obey the law (i.e. to do that which it requires because it so requires, because it is right as a moral principle to obey it)...”(1979, 251).

The two aspects are independent: one might have a low opinion of the law and yet believe oneself duty-bound to obey it, or a high opinion of (e.g.) foreign law but no disposition to submit to it.

Are the respectful then self-deceived, on Raz’s account, in believing themselves duty-bound to obey, when in fact they are not? He denies that this is so. By adopting an attitude of respect, on Raz’s account, the adopter becomes morally obligated to obey. Raz defends his account by analogizing respect to friendship: although no one is morally obligated to form friendships, obligations flow from them once they have formed. Similarly, those who adopt the morally optional attitude of respect for law become subject to obligations of obedience which they would be free of had they not adopted a respectful attitude.

Obligation flows from respect, for Raz, and not the reverse.

Raz does not characterize the attitude of respect for law as a virtue.

Razian respect is morally optional, and may be no more or less admirable than failing to adopt any general attitude toward the law of the good state—pro or con.

Virtues are different: there is something wrong with those who lack them. Razian respect also differs from the virtue of law-abidance in subtler ways. Razian

respect does not distinguish between retail operations and the general rules that constitute a legal system's wholesale operations. Razian respect does, however, allow the agent to pick and choose among laws and types of law—there are, in other words, “possibilities of qualified respect” that exclude legal doctrines the agent dislikes (1979, 259). Such excluded laws not only fail to obligate, they do not even provide the agent a reason for action. In contrast, those who possess the virtue of law-abidance have, with regard to every law that applies to them, a reason favoring obedience. But, unlike the Razianly respectful, the law-abiding need not regard themselves as obliged to obey the law wholesale. The virtue of law-abidance emphasizes practical rather than cognitive respect: the law-abiding have, and accept that they have, reason to obey laws they think silly and even unjust.

Why, in this regard, is there invariably a reason to do as the just or nearly just state says do? I would explain it this way: the law trades wholesale because the lawmaker cannot anticipate the direction of history in detail. It is called upon to forestall what may be valetudinarian worries. It is called upon to solve coordination problems that may or may not require retail state supervision. It is called upon to express the sense of the majority, or some influential segment, of the populace about controversial issues in a dynamic context. In industrialized democracies the process of legislation is a deliberately encumbered one: nothing

is likely to survive the passage to enactment unless it reflects some significant public perception of a problem and a possibly effective way out. This perception is of course fallible. That is one reason why the executive department is understood to retain wide discretion in matters of enforcement. Something like a national highway speed limit, for example, may seem to be a reasonable response to one problem (petroleum shortages), but may turn out to have ameliorated another (traffic accidents) even after the precipitating crisis has passed. A law-abiding citizen acknowledges that the fact that the legislature has chosen to address certain matters by guiding behavior in certain ways is a reason—of uncertain strength—to act accordingly, whatever one’s own “take” on the matter. Moreover, the law-abiding citizen at least implicitly understands that legislation carves out a range of discretionary prerogative that, when exercised in a way focused upon her, she is duty-bound to accede to.

One matter to bear in mind is the weakness of “mere” reasons. In a sense, there is a reason to do whatever one is called upon to do, insofar as doing so would please (or ought to please) the asker. But the reason to do as the law requires is seldom as weak as this, for the law of a just or nearly just state is rarely a mere whim of the lawmaker. Just and nearly just states are democracies in which the process of legislation is a deliberately encumbered one: no wholesale, mandatory law is likely to survive the passage to enactment unless it reflects

some significant public perception of a problem and a possibly effective way out. Assuming the process is functioning well, no law will be without at least the rational force that one would accord to the directives of a representative, deliberative body seeking to promote the public good.²²

At this point, one might ask why anyone should think that there is invariably a *good* reason to do as the law says. A good reason might fall short of constituting a *pro tanto* duty, yet still be more than a “mere” reason. One circumstance that might prevent a mere reason’s being counted as a good reason is its source. A whimsical demand might generate a (mere) reason to comply—but there is an understandable hesitation to count such a demand as a good reason; and that hesitation does not hang upon a sensitivity to the distinction between a reason and a *pro tanto* duty. More to the point, an *illegitimate* demand might fail to provide a good reason to comply—even if it were grudgingly granted to provide a (mere) reason. Philosophical anarchists insist not only that there is no *pro tanto* duty to obey the law, they further claim that states are typically illegitimate and that the demands expressed in their laws are therefore illegitimate (though, where they coincide with independent moral requirements, the law’s demands are perhaps merely presumptuous, or impertinent: the highwayman who enjoins me, at gunpoint, to observe the Golden Rule gives me no good reason to observe the Golden Rule). On similar grounds, a determined philosophical anarchist might

deny that the mere reasons that exist to do as the law demands amount to good reasons, for they issue from an illegitimate source.

The correct answer to the philosophical anarchist here begins with a decoupling of the concept of the legitimacy of the state from the beleaguered pro tanto duty to obey the law. Although it is surely too soon to say that the traditional duty to obey cannot be defended, nothing here hangs upon that possibility. Nor would I deny that the state characteristically claims to impose such a duty when it legislates. What has been convincingly denied, I think, is that the legitimacy of the state hangs upon the truth of its claim to impose such a duty (self-identifying reference suppressed). If this denial is correct, then the philosophical anarchist's attack on the duty to obey fails to obtain the further objective of exposing the illegitimacy of the state. Therefore, if the (moral) legitimacy of the state is untouched by the philosophical anarchist's critique of the duty to obey, the reasons for action that the law supplies are not disqualified from counting as good reasons. That doesn't make them good reasons—the justice or near-justice of legal institutions must do that²³—but it removes an obstacle to counting law as a good reason to do as the law says.

Now, to answer an even harder question: why think there is a duty to comply with the retail operations of a just-enough state? Let me sketch out one argument. There is a duty of justice, to which we are all individually subject (cf.

Cohen 1997; Murphy 1998). But justice does not fill all of moral space; and not all of its demands are unmediated. Justice in our everyday dealings presupposes a considerable degree of background justice, which has an essentially institutional character. What is mine and what is thine are sometimes natural facts, but are more usually institutional ones. Even where there is a correct, pre-institutional answer to a question of justice, there are further questions about how to resolve disagreements between individuals, and about permissible correctives. These further questions are always, and inevitably, institutional. Institutions of justice make possible a division of moral labor between background justice—by which I mean the justice of basic social arrangements, norms, and institutions—and “foreground” justice, that is, justice in the individual case, which always potentially raises “background” disputes. The individual’s virtue of justice would overwhelm us if it were of as wide a scope as justice, the virtue of institutions. Individuals cannot, by their own efforts, assure background justice; although they can, because they ought to, act justly in their foreground dealings. This division of labor must be respected if a plurality of values is to thrive within the context of social life (Rawls 1993; Scheffler 2005).

Unless it is the state’s prerogative to determine when and whether to bring retail (and, thus, foreground) disputes before tribunals of justice, the advantages of this division are lost. There is an almost palpable difference between ignoring

a traffic law or traffic sign, on the one hand, and ignoring a traffic ticket or traffic cop, on the other. What is called in question in the latter instances is not, what was it safe to do in the circumstances, but the very legitimacy of a system assigning a special moral role to officials. Similarly, the division of moral labor is confounded if the judgments of dispute-resolving tribunals are not at least presumptively obligatory. The difference between ignoring a creditor's demand for payment, on the one hand, and ignoring a court order awarding the creditor the sum demanded, on the other, is similarly palpable. In ignoring summonses, judgments, and similar retail operations of the law, citizens might, serendipitously, do no foreground injustice. But background justice is undermined. Background justice is not fixed but—especially in a pluralistic context—is a matter of dynamically balancing a variety of interests and values and fairly allocating benefits and burdens. A justice system's ability to correct itself depends upon its having (and being seen to have) presumptive command of the channels by which retail disputes about justice are resolved.²⁴ Moreover, the bare existence of a legal system of justice depends, as Hart (1994) outlined, upon its being recognized as having authority to decide retail disputes—whether or not it claims or possesses authority in the wholesale sense. In short, the arguments from necessity and from fair play that fail as a prop for the duty to obey the law wholesale (see [self-identifying reference omitted]) seem to be sturdy enough, in

proper combination, to carry the day for a duty to comply with the law in its retail deployment.

V. Conclusion

The problem of political obligation that Robert Paul Wolff raised most pointedly, and that John Simmons has pressed with care and determination, presented us with a tangle of conceptual and normative issues. I think substantial progress has been made toward untangling the conceptual from the normative. For example, I think it is now widely appreciated that the legitimacy of the state is connected to a duty of obedience much less strongly and directly than had once been supposed (e.g., Greenawalt 1987; [self-identifying reference omitted]). Once the normative issues have been isolated and identified, they can be treated as such—if not resolved. That law-abidance is a distinct notion is something I think I have shown. Whether it is in fact a virtue is another matter. At the end of the day, astute philosophers may simply say, as they have about the duty to obey, “I don’t see it,” as Joel Feinberg put a similar point (1979). In other words, whether one recognizes the virtue of law-abidance or not may in the end be a matter of how one was reared. But this epistemological situation is exactly what one would expect, from the standpoint of an ethics of virtue. As Aristotle observed, we should not expect the virtues to be appreciated by those who have not acquired

them. But I am happy to argue with anyone who doubts there is anything wrong with slipping away from a mass arrest—her mind might not be hopelessly corrupt.

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Endnotes

1. One exception is Richard Dagger (1997, 61-80, 197), who identifies fair play as a civic virtue, and derives a duty to obey the law from that. The current state of the “fair play” justification of a duty to obey is described in [self-identifying reference omitted].

2. William Galston (1988, 1283-87) uses the term, “virtue of law-abidance,” but does not distinguish abidance and obedience (cf. Galston 1989, 93).

3. Many of the points I make in this paper reflect a broadly Aristotelean understanding of the virtues and their place in an account of morality. Nonetheless, my account is intended to be accessible from either side of the division that is said to separate a “pure” virtue *ethics* from a virtue *theory* that is an appendage to a fundamentally consequentialistic or deontological moral theory (cf. Hursthouse 1999). My account is also designed to be neutral between “agent-based” and “agent-focused” approaches to virtue ethics (cf. Slote.2001). It may be that what I say here favors or is favored by one or another of these various stances, but I will not attempt to sort through the possibilities here.

4. Law-abidance falls with in a class that Raymond Geuss calls “the cooperative

virtues,” which must be understood as subject to a standing caveat: “an excessive focus on the virtues of cooperation can have very unwelcome consequences....It is of some importance to know to what degree any given society deserves our cooperation, with which particular people we should cooperate and in what way.” Geuss 2005, 95.

5. G. H. von Wright (1963, 141-48) notes that there is no informatively described act-category corresponding to a virtue; for the occasions calling for, say, courage, are far too various to comprise a kind. Moreover, the exercise of courage does not necessarily issue in a courageous action: for the right thing for the courageous to do will on occasion be to withdraw to fight another day. Similar remarks apply here. Law-abidingness (unlike obedience) is not linked to an act-category, nor to any collection of acts compliant with the law. Moreover, the law-abiding may on occasion depart from the law just as the courageous may turn away from danger.

6. As to the general matter of individuating candidate virtues, John Gardner has written that “Each moral virtue is differentiated from other moral virtues by the distinctive rational horizons of those who exhibit it. By this I mean that people and institutions with different moral virtues are animated by different rationally significant features of actions” (2000, 4). I would only add that distinct

candidate virtues may have overlapping rational horizons, but differ in the manner in which they respond to features within it. This is how obedience and abidance—and abidance and justice—differ.

7. Richard Kraut’s careful and detailed discussion suggests that to “obey *well*” might be the best way to characterize the virtue of a citizen who is *nomimos*, or “lawful.” Kraut 2002, 105-11, 379-84.

8. The problem of political obligation as currently understood is one that Aristotle, for example, did not have cognizance of, according to Kraut. This conclusion is contested, in Rosler 2005.

9. I adopt Shelly Kagan’s proposal to replace the term “prima facie duty” with the less misleading expression “pro tanto duty” (Kagan 1989).

10. The term, “duty of civility,” is put to a different use in Rawls (1993).

11. *Regina v. Prince*, L.R. 2 Cr.Cas.Res. 154 (1875); *Ratzlaf v. U.S.*, 510 US 135 (1994).

12. I have taken the liberty of reordering Gardner’s phrasing for emphasis.

13. [self-identifying reference omitted].
14. An anonymous referee has suggested to me that, having relaxed the requirements of political obligation as far as I have, I ought in fairness consider whether, for example, a motive-utilitarian or other sophisticated consequentialistic account might reconstruct law-abidance without drawing upon any distinctively virtue-ethical tenets. Space limitations make that impossible here—but (as noted above) I have not meant to be hostile to virtue theories pursued within larger consequentialistic or deontological positions.
15. *Hopkins v. State*, 69 A.2d 456 (Md. 1950).
16. *Cox v. Louisiana*, 379 U.S.536 (1965); Model Penal Code §2.04(3)(b)(iv) (Philadelphia: American Law Institute, 1962).
17. In the *Doctrine of Virtue*, Kant makes a similar point against what he calls eudaemonism. Kant 1996, 142.
18. Andrew J. Cohen has suggested to me that virtue and duty are “equi-primordial,” so that neither is prior; rather, each represents a distinctive perspective on moral phenomena. Cf Loudon 1984, Geuss 2005.

19. Empirical studies in social psychology have inspired John Doris (1998) and Gilbert Harman (1999) to voice skepticism about the existence of character traits of the kind demanded by virtue ethics. I believe their skepticism has been sufficiently answered by Nafiska Athanassoulis (2000) and Gopal Sreenivasan (2002).

20. The Stoics considered sociability to be a kind of passion, a joyful “well-reasoned swelling” with regard to others. Long and Sedley 1987, 412. My view, which I cannot develop further here, is that in a Stoical scheme sociability would more properly appear as an aspect of justice, alongside honesty and fair dealing—justice itself being *phronesis* or practical wisdom “in matters requiring distribution.” Long and Sedley 1987, 377, 380.

21. Paul Churchland (1998) argues that virtue ethics has a comparative advantage over its rivals in that its emphasis on habituation is congruent with what is known about the neurophysiology of the brain.

22. Admittedly, the process of legislation as we find it will often fall short of the deliberative ideal. But it is corrupted, typically, not by its use of blunt, general,

mandatory rules but by overspecificity in its appropriations from the general fisc.

23. A not-even-nearly just legal regime may be such that there is good reason to obey its laws. But in such cases in which there is, the goodness of the reason will have to derive from something other than justice or near-justice: possibly from the unsociability of disobedience, where reform is unfeasible, or from the likelihood of bad consequences for the actor or others if the law is defied. Obviously, there is diversity of cases. The topic is intricate, but I hope it will suffice here to say that the existence of a legal regime—even a far-from-just one—*can* represent an improvement over its prelegal or extralegal alternatives. But, as Matthew Kramer (1998) has argued, it is not invariably true that it does.

24. This presumptive command is one the state may suspend by choosing—wholesale or retail—to leave certain topics to private ordering or to self-help.