**Farewell to Political Obligation: In Defense of a Permissive Conception of Legitimacy**

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**Abstract:** In the recent debate on political legitimacy, we have seen the emergence of a revisionist camp, advocating the idea of ‘legitimacy without political obligation,’ as opposed to the traditional view that political obligation is necessary for state legitimacy. The revisionist idea of legitimacy is appealing because if it stands, the widespread skepticism about the existence of political obligation will not lead us to conclude that the state is illegitimate. Unfortunately, existing conceptions of ‘legitimacy without political obligation’ are subject to serious objections. In this article, I propose a new conception of ‘legitimacy without political obligation,’ and defend it against various objections that the revisionist idea of legitimacy is either conceptually or morally mistaken. This new conception of legitimacy promises to advance the debates between anarchists and statists by making the task of philosophical anarchists significantly more difficult.

Political legitimacy, broadly construed, is about the state’s right to rule. But as one commentator points out, ‘neither having a right nor ruling are transparent notions.’[[1]](#endnote-3) Not surprisingly, philosophers have developed various conceptions of legitimacy.[[2]](#endnote-4) Nevertheless, it has traditionally been assumed and argued that legitimacy *necessarily* entails that the state has a (Hohfeldian) moral power to impose on its subjects a general moral duty to obey the law. Moreover, since the duty to obey the law is created by the legitimate state’s moral power, the traditional view holds that the duty to obey must be *independent*, at least to a significant extent, *of the law’s contents or merits*. In the literature, the issue of whether there is a general content-independent moral duty to obey the law is also known as the problem of *political obligation*. Thus, the traditional view of legitimacy holds that legitimacy *necessarily* entails political obligation on the part of the subjects.

To be sure, the traditional view of legitimacy does *not* hold that legitimacy *only* concerns the state’s moral power to create a duty to obey. Rather, what distinguishes the traditional view of legitimacy is the claim that while a legitimate state may have other Hohfeldian rights (e.g., a liberty to coerce),[[3]](#endnote-5) it must also possess a moral power to create the duty to obey on the part of its subjects; in other words, *other things being equal*, a state is legitimate only if its subjects have political obligation.[[4]](#endnote-6) The view that political obligation is necessary for legitimacy will be referred to as ‘the strong legitimacy thesis.’[[5]](#endnote-7)

Various moral grounds—e.g., the principle of fairness and natural duties—have been explored to see whether one or some of them combined together could justify political obligation. Nevertheless, the literature has shown that this is a rather difficult (if not impossible) philosophical task.[[6]](#endnote-8) In particular, A. John Simmons has argued compellingly that theories of political obligation based on consent, gratitude, fairness, natural duties, and associative obligations fail to explain why subjects of *a reasonably just state* have a general moral duty to obey the law *qua* law.[[7]](#endnote-9) This skepticism about political obligation, combined with the strong legitimacy thesis, renders *philosophical anarchism* (which claims that no existing state, however reasonably just, is legitimate) seemingly inescapable.

Despite Simmons’s efforts to temper the radical implications of philosophical anarchism,[[8]](#endnote-10) many still find philosophical anarchism unacceptable and attempt to refute it. One way to do so, suggested by a number of philosophers, is to reject the strong legitimacy thesis that has been traditionally assumed.[[9]](#endnote-11) Within what might be called a revisionist camp, some conceptions of legitimacy emphasize the state’s liberty to coerce.[[10]](#endnote-12) William Edmundson instead argues that state legitimacy entails only ‘a general *prima facie* duty not to interfere with the *bona ﬁde* administration of the laws of a just state,’ not a general *prima facie* duty to obey the law.[[11]](#endnote-13) More recently, Arthur Applbaum has advanced a conception of legitimacy centering on the state’s moral power to change the normative status of its subjects.[[12]](#endnote-14) These different conceptions of legitimacy all embrace the idea of ‘legitimacy without political obligation,’ and consequently imply that the skeptical conclusion that there is no general duty to obey the law, even if it is true, will not render the state illegitimate.

It should be noted, however, that merely proposing various conceptions of ‘legitimacy without political obligation’ does not suffice to undermine the strong legitimacy thesis. The strong legitimacy thesis can be understood as consisting of two parts: (1) it claims that the conception of ‘legitimacy with political obligation’ is not objectionable, that is, it is neither conceptually impossible for a legitimate state to impose political obligations on its subjects, nor are there sufficient moral reasons to oppose the idea of such an imposition; and (2) it claims that all conceptions of ‘legitimacy without political obligation,’ that is, conceptions according to which a legitimate state *need not* impose political obligations on its subjects, are subject to fatal conceptual or moral objections. To undermine the strong legitimacy thesis, therefore, the revisionist camp has to at least refute one of these two claims.

Let us say (a) that the argument against the strong legitimacy thesis is *offensive* if it attacks the very idea of ‘legitimacy with political obligation’ and tries to show that this conception of legitimacy itself is either conceptually or morally problematic,[[13]](#endnote-15) and (b) that the argument against the strong legitimacy thesis is *defensive* if it aims to meet the objections the proponents of the strong legitimacy thesis have leveled against the idea of ‘legitimacy without political obligation.’[[14]](#endnote-16) This paper adopts the defensive strategy in rejecting the strong legitimacy thesis. It is worth doing so not only because such a strategy has not been explicitly pursued, but also because I believe that the offensive strategy has failed to undercut the strong legitimacy thesis.[[15]](#endnote-17)

To accomplish this goal, in the first section I elaborate a permissive conception of legitimacy, in the aim of proposing an appealing conception of ‘legitimacy without political obligation.’ In the second and third section, I defend the permissive conception of legitimacy against two groups of arguments that are often invoked to endorse the strong legitimacy thesis.

Focusing on the conceptual analysis of legitimacy (that is, on the question of what legitimacy *is*), the first group of arguments contends that we cannot capture the moral features we usually attribute to a legitimate state unless we invoke political obligation; in other words, the idea of ‘legitimacy without political obligation’ is supposed to be conceptually inadequate. Arguments in the second group, in contrast, are concerned with the role or *function* of political obligation; in particular, they contend that the state cannot effectively provide essential public goods without subjects having the duty to obey the law, or without at least subjects *presupposing* the duty to obey the law. I argue that neither group of arguments succeeds in supporting the strong legitimacy thesis.

**I. A Permissive Conception of Legitimacy: Establishing the Initial Plausibility**

Let me first propose a permissive conception of legitimacy, according to which subjects of a legitimate state do not have a duty to obey the law:

A legitimate state has a liberty to create and apply the law within certain limits, a moral power to strip, by issuing the law, subjects of their claim-right against the state not to be coerced, a liberty to enforce the law (as a result of the exercise of the moral power), and finally a claim-right to monopolize the three previous Hohfeldian rights such that they are not enjoyed by any individual or social group within its jurisdiction.

Two clarifications are in order. First, I make a distinction between applying the law and enforcing the law. To apply the law (which is often general and abstract) is to specify precisely what the law requires of each individual subject. As Edmundson says, cases like ‘the sheriff who appears at our door to tell us to “be in court,” the traffic cop who signals us to “pull over,” the judge who orders us to “pay her damages”’ are typical applications of the law.[[16]](#endnote-18) To enforce the law, on the other hand, is to coerce subjects *in the case of disobedience*.

Second, given the purpose of this thesis, the permissive conception of legitimacy is only concerned with the *internal* aspect of legitimacy, that is, with the state’s right to rule *vis-a-vis* its subjects. Thus this conception does not deny that with respect to external legitimacy, a legitimate state also enjoys, for instance, a claim-right of non-interference against outsiders. In addition, the permissive conception of legitimacy is not meant to contain all possible Hohfeldian rights of internal legitimacy, but to specify what I take to be the most important ones.

Now let us look into the elements of the permissive conception of legitimacy more carefully. Since a modern state typically realizes its rule by creating and applying the law in the first place (as opposed to directly coercing its subjects to perform certain actions), it seems safe to say that a liberty to create and apply law is an indispensible element of the state’s right to rule.

In addition, I agree with Robert Ladenson that legitimacy confers upon the state a liberty (or as Ladenson prefers, a justification-right) to coercively enforce the law. As Ladenson notes, ‘[t]he possession of such a right by persons acting under governmental authority presumably differentiates coercive actions on their part from such actions by private individuals.’[[17]](#endnote-19) A liberty to coerce, however, should not be conflated with the justification of coercion all things considered. On the one hand, sometimes a legitimate state with a liberty to coerce may not be justified, all things considered, to use coercion.[[18]](#endnote-20) On the other hand, in some particular occasions, anyone (including an illegitimate state) would be all things considered justified to use coercion, even if no one has a liberty to coerce in the first place.[[19]](#endnote-21)

To account for why by issuing the law the state obtains a liberty to enforce the law, we have to invoke the state’s moral power as a second-order Hohfeldian right. Applbaum’s following observation is to the point: ‘legitimate authority typically is exercised through speech-acts … . The status change must be enacted—the power exercised—before enforcement against the subject is permitted.’[[20]](#endnote-22) That a legitimate state has a moral power to change the normative status of its subjects (which correlates to the moral liability of the subjects) is rarely disputed. The disputes rather revolve around what is changed by the state’s moral power. The traditional answer is that by issuing the law, the state imposes a duty to obey on the subjects. But it is entirely unclear why this must be the case, for there are other ways in which a legitimate state could make a normative difference by issuing the law. For instance, one can accept that subjects of a legitimate state do not have a duty to obey the law, but maintain that by issuing the law the state imposes on its subjects a duty not to interfere with the enforcement of the law. Compared to this view, my view of legitimacy is *even more* permissive, for it merely grants the state a liberty to enforce the law, which is compatible with subjects’ liberty to defy the enforcement of law.[[21]](#endnote-23)

But having those three Hofeldian rights is still not enough. As Leslie Green correctly notes, to establish the state’s supremacy over other social groups within its jurisdiction, a state must claim a monopoly of ruling.[[22]](#endnote-24) Exactly what is monopolized by a legitimate state is, once again, disputable. But given the above exposition, I believe that a legitimate state should monopolize three Hohfeldian rights, that is, a liberty to issue and apply the law, a moral power to strip subjects of their claim-right against the state not to be coerced, and a liberty to enforce the law. A legitimate state’s claim-right to the monopoly of the three Hofeldian rights logically correlates to the subjects’ duty to accept the state’s monopoly. This point is supported by our intuition that in a legitimate state even a group of law professors are not morally entitled to make, apply, and enforce the law. They may, of course, produce a law-like book of rules, say, X1. But X1 would not be the law even if in terms of the content it is more just than its counterpart X (the law) issued by the state. And the group of law professors is also morally prohibited from enforcing X1 to secure the compliance of other subjects.[[23]](#endnote-25)

Finally, it is worth pointing out that while these Hofeldian rights a legitimate state possesses are meant to be *general* in scope, they are not without boundary. For instance, it is widely accepted that egregiously unjust laws (i.e., laws violating fundamental interests of human beings) fall out of a liberal state’s legitimate domain. Consequently, a liberal state does not have a liberty to make, apply and enforce those laws. The same can also be argued with respect to laws that are not egregiously unjust, but clearly contradict core liberal ideals (e.g., a discriminatory law that prohibits females from applying for PhD programs).[[24]](#endnote-26)

But it should also be emphasized that not all kinds of unjust laws fall out of a liberal state’s legitimate domain. In my view, a legitimate state could have a liberty to make, apply and enforce laws that are in fact moderately unjust but does not clearly contradict core liberal ideals (e.g., a law on affirmative action that is intended to better uphold liberal ideals but in practice still treats some disadvantaged social groups unfairly). These laws are instances where a legitimate state can make a moral difference regarding how its subjects should act, and/or how its subjects should be treated by the state, against the background of general requirements of justice. And this kind of moral difference is the key to differentiate the practical stance of state legitimacy from that of philosophical anarchism, for in the view of philosophical anarchists the illegitimate state can never acquire a liberty to make, apply and enforce even mildly unjust laws.

Before proceeding to the next section, I would like to address a worry that the permissive conception of legitimacy might give rise to. One may worry that since the state’s liberty to enforce the law is compatible with the subjects’ liberty to defy the enforcement of the law, this conception of legitimacy is *too permissive* as it would allow widespread defiance that might eventually lead to political inefficiency and instability.[[25]](#endnote-27) For this reason, it might be argued that a legitimate state should at least impose on subjects a duty not to interfere with the state’s enforcement of the law.

My reply to this worry is threefold. First, it is ultimately an empirical question whether the permissive conception of legitimacy has this worrisome implication. While I am not able to offer any solid empirical evidence to completely dissolve this practical concern, we have good reasons to believe that this practical concern is probably overstated. Remember that the permissive conception only says that if legitimate, the state has a liberty to enforce the law in cases of disobedience. The conception does not deny that other moral reasons may make a subject obligated to obey the law or to refrain from defying the state’s enforcement of the law. Thus, with the permissive conception of legitimacy, the moral scene of obedience is not as bleak as it appears. Since most citizens are decent and often act or try to act morally, they will probably obey the law in the first place. But even if we assume that people often act out of pure prudential reasons, we cannot simply conclude that under the permissive conception of legitimacy the state will inevitably face massive disobedience and further pervasive defiance. Note that to achieve practical efficacy, the law often makes the cost of disobedience so high that prudentially it is not worth disobeying. Further, a legitimate state must be a state that effectively wields its power, that is, does a credible job of enforcing the law in cases of disobedience. Therefore, even from a prudential perspective, it is safe to assume that most rational citizens will not commit to disobedience, let alone defiance. [[26]](#endnote-28)

Second, while more *reassuring,* the view that legitimacy, among other things, entails a duty of non-interference with the enforcement of the law is not without problems. One major problem I have in mind is that it is not clear where this duty of non-interference comes from. For if there is no duty to obey the law in the first place, why do the subjects of a legitimate state incur a duty not to interfere with the *enforcement* of the law?

Third, I would be happy to accept the view that legitimacy entails a duty of non-interference with the enforcement of the law if there is a good answer to the question raised above, for the purpose of this paper is not to identify and defend *the best* conception among all conceptions of ‘legitimacy without political obligation’; it is rather to propose an *appealing* conception of ‘legitimacy without political obligation,’ and to argue that it is able to meet all the objections against the idea of ‘legitimacy without political obligation.’

**II. Is Political Obligation Conceptually Indispensable for Legitimacy?**

In the preceding section, I have isolated some plausible elements of a permissive conception legitimacy, which, like other conceptions of ‘legitimacy without political obligation,’ claims that a legitimate state *need not* impose political obligation on its subjects. But in literature, proponents of the strong legitimacy thesis have made two groups of arguments to show that it is either conceptually or morally wrong to claim so. Thus, unless the permissive conception of legitimacy is proven to be immune to those objections, it cannot undermine the strong legitimacy thesis. In this section, I test the permissive conception against the first group of objections.

Let me begin with two fairly simple arguments in favor of the strong legitimacy thesis. The first one appeals to the *particularity* requirement of political legitimacy. Since legitimacy is concerned with the moral bonds (in terms of rights and duties) between a state and *its* subjects, these moral bonds must be particularized. The argument thus claims that only political obligation can account for this particularity feature. No doubt, political obligation, if justified, is a particularized moral duty existing between a state and its subjects. But political obligation is not the *only* particularized moral bond we can conceive of. The particularity requirement can be easily meet by the permissive conception developed above, within which, for instance, the moral power-liability relationship is particularized—one is only liable to the moral power of her state, not to other states (even if they are equally just).

The second one contends that the idea of ‘legitimacy without political obligation’ would trivialize civil disobedience, since according to it subjects of a legitimate state all have a (standing) liberty to disobey the law. I admit that the permissive conception of legitimacy would lower the justification bar for civil disobedience, and therefore could perhaps make it less interesting. But this alone does not yet shows that the permissive conception is therefore misconceived. We should note further that for three reasons, the permissive conception does *not entirely* dismiss the distinctiveness of civil disobedience. First, not all law-breaking acts amount to cases of civil disobedience, if we follow Rawls in defining civil disobedience as ‘a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in law or policies of government.’[[27]](#endnote-29) Second, features of civil disobedience could still be taken into account in determining whether or not an act of disobedience is ultimately justified. Third, the permissive conception of legitimacy does not preclude a perhaps standard element of civil disobedience that citizens should be *willing* to accept the punishment related to disobedience; what is precluded is instead citizens’ *duty* to accept the punishment.

 I now proceed to canvass more complicated arguments for the strong legitimacy thesis. Consider Simmons’s argument that relies on his famous distinction between legitimacy and justification. According to Simmons, the justification of a state concerns ‘the general quality or virtues of a state,’[[28]](#endnote-30) the evaluation of which is made by comparing a state to ‘all feasible nonstate alternatives.’[[29]](#endnote-31) But the legitimacy of a state is ‘the complex moral right’ it possesses over its subjects; in particular, ‘state legitimacy is the *logical correlate of* various obligations, including subjects’ *political obligations*.’[[30]](#endnote-32) The point of this distinction is to show that the mere fact that the state is justified cannot by itself ground legitimacy. And in making this distinction, Simmons obviously endorses the idea of ‘legitimacy with political obligation.’ He is, however, also aware of ‘weaker moral notions of legitimacy, according to which legitimacy is a mere liberty right or “justification right”.’[[31]](#endnote-33) Nevertheless, he rejects them by arguing that ‘[s]uch notions of legitimacy … sharply diminish the argumentative distance between accounts of state justification and accounts of state legitimacy.’[[32]](#endnote-34)

But why should we believe that the argumentative distance between justification and legitimacy is *as large as Simmons describes it*? Indeed, as Simmons himself anticipates, one might object that:

[T]his talk of a hard distinction between the virtues or the moral quality of a state and the state’s relations with individual subjects … is highly artificial. For surely the state’s ‘moral quality’ simply consists in or is largely constituted by the sum of its morally significant relations with individual subjects. Beneficial states are beneficial precisely by creating or distributing benefits to their subjects; just states are just by virtue of treating their subjects justly; and so on.[[33]](#endnote-35)

Simmons’s reply is that:

[T]his objection proceeds too quickly. From the fact that good states provide benefits for subjects … it does not follow that those states have with any particular subject the kind of morally significant relationship that could ground a state’s right to impose duties. … And even if some state perfectly exemplified all the stately virtues and actually succeeded in benefiting all (and treating all well), it is not obvious that the mere unsolicited provision of benefits … would ground a right to direct and coerce.[[34]](#endnote-36)

Simmons is certainly right to insist on *some* argumentative distance between justification and legitimacy. Nevertheless, it seems to me that Simmons’ reply also ‘proceeds too quickly,’ for the question we are concerned with is not whether there should be any argumentative distance between justification and legitimacy; the question is rather why the argumentative distance must be as large as Simmons describes it. Ladenson himself may happily accept that ‘the mere unsolicited provision of benefits’ cannot ground a state’s justification-right to coerce, and therefore also accept *some* argumentative distance between justification and legitimacy. But as far as Simmons’s reply goes, it provides no argument to show why the argumentative distance Ladenson might have in mind is not big enough. That is to say, Simmons has not shown why state legitimacy must logically correlate to political obligation. Various weaker notions of legitimacy, including Ladenson’s own and the permissive conception I favor, therefore remain intact at this point.

More recent, however, Simmons suggests a possible answer. Faced with Allen Buchanan’s contention that since ‘we can have decisive reasons (prudential, religious, and moral) to comply with the law,’ the idea of political obligation ‘is not of much consequence for political philosophy,’[[35]](#endnote-37) Simmons replies:

This also seems to me false. While we may certainly often (though, just as certainly, not always) have reasons to comply independent of a duty to obey, it is the duty to obey that must be invoked to explain why it is morally wrong for us to compete with our authorities or to decline political association with those around us.[[36]](#endnote-38)

This reply seems to fill in the lacuna left by Simmons’ first argument since it offers a possible answer to the question as to why the argumentative distance between justification and legitimacy must remain *sufficiently* large (so that a duty to obey must be invoked), namely, to prevent subjects from morally competing with the legitimate state. And it seems that with this answer, Simmons could also explain why Ladenson’s conception of legitimacy is conceptually inadequate: since in Ladenson’s view legitimacy merely confers the state only a justification-right to coerce, which is compatible with subjects’ justification-right to defy, Ladenson’s conception of legitimacy fails to prevent subjects from morally competing with the legitimate state.

While I agree with Simmons that a legitimate state must possess normative supremacy to prevent its subjects from morally competing with itself, I don’t think political obligation ‘must be invoked’ to account for the state’s normative supremacy. To see this point, note that there are two ways in which subjects could morally compete with their legitimate state. In one way, subjects might compete with the legitimate state with respect to the morality of (dis)obedience to the law (that is, they deny a duty to obey the law and claim to have a liberty to disobey the law). In the other way, subjects might challenge the legitimate state’s monopoly in creating, applying and enforcing the law, that is, subjects deny the duty to accept the state’s monopoly and claim to also have a liberty to create, apply and enforce the law. Nevertheless, it seems to me that Simmons overlooks this latter way;[[37]](#endnote-39) he simply assumes that a legitimate state cannot allow its subjects to have a liberty to disobey or even to resist enforcement (and arguably this would be his explanation for why Ladenson’s conception of legitimacy is conceptually inadequate). But it may well be the case that a legitimate state may, on the one hand, disallow its subjects from challenging the state’s monopoly in creating, applying and enforcing the law, yet, on the other hand, allow its subjects a liberty to disobey or to resist. In this case, a legitimate state still has normative supremacy over its subjects (in terms of their duty to accept the state’s monopoly) without invoking the duty to obey the law. And this is, of course, precisely what the permissive conception of legitimacy implies.

Moreover, as I have argued in the last section, allowing subjects of a legitimate state to compete with the state in the first way will not cause significantly negative political consequences, for subjects may have other decisive reasons to obey the law and the state still has uncontested physical power to secure the general compliance with the law. By contrast, allowing subjects to compete with the state in the second way is much more likely to bring about political chaos. If my argument is sound, then it is the subjects’ competition with the state in the second way that is *morally wrong*; in other words, it is not the duty to obey the law but the duty to accept the state’s monopoly in creating, applying and enforcing the law that must be invoked to explain the state’s normative supremacy. It seems, therefore, that the second argument suggested by Simmons fails to show why the permissive conception of legitimacy is *conceptually* inadequate.

Let us now move to Joseph Raz’s argument for the idea of ‘legitimacy with political obligation.’ Raz regards ‘[legitimate] authority over persons as centrally involving a right to rule, where that is understood as correlated with an obligation to obey on the part of those subject to the authority.’[[38]](#endnote-40) In light of my previous arguments, however, Raz needs to explain why, in the case of political authority, the duty to obey *must* be correlated with the right to rule possessed by a legitimate state.

Raz suggests three strands of argument, but all of them, I believe, fall short. First, in refuting Rolf Sartorius’s claim that political obligation can be separated from legitimate political authority,[[39]](#endnote-41) Raz contends that it would be difficult to explain the normative capacities (i.e., second-order moral powers) possessed by the legitimate authority unless we invoke the duty to obey as the result of the exercise of these normative capacities. ‘The only explanation which has succeeded in withstanding objections and in gaining widespread acceptance explains them [normative capacities] as, essentially, abilities to impose or revoke duties or to change their conditions of application,’ says Raz.[[40]](#endnote-42) But as I noted earlier, aside from imposing a duty to obey, there are other ways for the legitimate state to change the subjects’ normative status via the exercise of its moral power.[[41]](#endnote-43)

Raz’s second argument resides in his following observation:

It seems plain that the justified use of coercive power is one thing and authority is another. … The exercise of coercive or of any other form of power is no exercise of authority unless it includes an appeal to compliance by the person(s) subject to the authority. … But appeal to compliance makes sense precisely because it is an invocation of the duty to obey.[[42]](#endnote-44)

That the (standing) right to rule involved in legitimate authority should be distinguished from the all-things-considered justification of coercion is clear to me. To use Raz’s own example, that I am justified to knock out people with fatal contagious diseases and lock them up does not mean that I have a right to rule these people.[[43]](#endnote-45) But in light of the permissive conception of legitimacy, the distinction in question will not take us to the conclusion that ‘an appeal to compliance’ and hence ‘an invocation of the duty to obey’ must be a part of the right to rule.

Here comes Raz’s third argument:

 [A]ll the other functions authorities may have are ultimately explained by reference to the imposition of duties. … *In every case the explanation of the normative effect of the exercise of authority leads back*, sometimes through very circuitous routes, *to the imposition of duties* either by the authority itself or by some other persons.[[44]](#endnote-46)

Note, first, that in this explanation Raz seems to accept that ‘the normative effect’ caused by legitimate authority can be other things other than the duty to obey. Nevertheless, Raz would not accept the permissive conception of legitimacy, for he believes that the normative effect ultimately relies on ‘the imposition of duties.’ But there are different types of moral duties imposed on the subjects of a legitimate state. Why, then, must we assume that the normative effect ultimately relies on the duty to obey, and not on, say, the duty to accept the state’s monopoly in creating, applying and enforcing the law? Raz provides no argument to show that ‘the imposition of duties’ necessarily collapses into the imposition of the duty to obey. Indeed, I do not think that any plausible argument could be advanced, for as I just suggested, the subjects’ moral duty to accept the state’s monopoly in creating, applying and enforcing the law is much more fundamental than the duty to obey.

Finally, it should also be noted that an empirical claim that the state typically conceives itself as a duty-imposer is often thought to further support the ‘conceptual truth’ of the strong legitimacy thesis. Someone who believes in the state’s self-image as a duty-imposer[[45]](#endnote-47) may find the idea of ‘legitimacy without political obligation’ somewhat counterintuitive: ‘This is not what the state typically claims to be.’ Nevertheless, this temptation should also be resisted, for it is highly questionable that the state’s self-image as a duty-imposer is empirically solid. It is certain that the state (or the law) demands obedience. But it is far less obvious that the state typically *also* demands that its subjects *therefore* have a moral duty to do what the law commands. In addition, some legal philosophers also deny that legal systems necessarily or typically claim to impose a general, content-independent moral duty of obedience on their subjects.[[46]](#endnote-48) Moreover, in evaluating the state’s self-image we also have to examine popular attitudes toward political obligation, which is the reflection of the state’s image on the part of its subjects. George Klosko conducts such a survey and finds that ‘[while] people strongly believe they have moral requirements to obey the law, … [they] generally require that laws be content justified. They regularly disobey laws that lack clear bases and make no bones about this.’[[47]](#endnote-49) Clearly, people do not share the state’s belief that there is a moral duty to obey the law simply because it is the law.

To sum up, I have argued that it is not a conceptual truth that legitimacy necessarily entails political obligation. As a result, we can say that the permissive conception of legitimacy, as a conception of ‘legitimacy without political obligation,’ survives the conceptual analysis of legitimacy.

**III. Is Political Obligation Necessary for the State’s Provision of Public Goods?**

As I have indicated, the second group of arguments in supporting the strong legitimacy thesis takes a different path than merely analyzing what the proper conception of legitimacy is. Arguments in this group, instead, contend that the state cannot effectively provide essential public goods[[48]](#endnote-50) without subjects having the duty to obey the law, or without subjects *presupposing* the duty to obey the law. If successful, these arguments could serve as a premise for a different argument that the idea of ‘legitimacy without political obligation’ is morally objectionable. The argument may run as follows:

A1. The state cannot effectively provide essential public goods without subjects having the duty to obey the law, or without at least subjects presupposing the duty to obey the law.

A2. According to the idea of ‘legitimacy without political obligation,’ however, a state can be legitimate without subjects having the duty to obey the law.

A3. The idea of ‘legitimacy without political obligation,’ therefore, implies that a state can be legitimate without effectively providing essential public goods

A4. But a state that does not provide essential public goods is not morally justified.

A5. It is morally objectionable to claim that an unjustified state can be legitimate.

A6. Thus idea of ‘legitimacy without political obligation’ is morally objectionable as it implies that an unjustified state can be legitimate.

Clearly, the nub of this argument is the premise A1: once A1 is accepted, then it is very hard to resist A6.

One natural way to argue for A1 is to take one step back by arguing that political obligation is necessary for citizens’ *actual* obedience to the law. If this claim can be established, given that obedience is closely connected to (if not necessary for) the state’s effective provision of essential public goods, one could also safely conclude that A1 is also true. Nevertheless, this line of argument is not pursued by philosophers in the debate on political obligation; instead, they often assume that in a reasonably just state, subjects still have other kinds of reasons (moral, prudential and even religious) to obey the law even without a general moral duty to obey.[[49]](#endnote-51)

Notably, Klosko develops a different line of argument for A1 in his recent book *Political Obligations*. But to my knowledge, before Klosko, Raz also suggested (albeit implicitly) an argument to support A1. Let us, therefore, start with Raz’s argument.

Remember that Raz regards legitimate authority as having a right to rule, and he believes that the exercise of authority changes the subjects’ reasons for action by creating a duty to obey on the part of its subjects. He takes it to be a ‘common view’ of authority and attempts to defend it against other alternatives, especially against the recognitional conception. Raz rejects the recognitional conception for it ‘leads to the no difference thesis, i.e., the view that authority does not change people’s reasons for action,’ and therefore ‘cannot explain the role of authority in the solution of co-ordination problems.’[[50]](#endnote-52) His critique can be summarized as follows:

B1. Co-ordination problems ‘are problems where the interests of members of the group coincide in that, among a set of options, the members prefer that which will be followed by the bulk of the members of the group above all else.’[[51]](#endnote-53)

B2. A co-ordination problem can be solved if there is a convention, in which each person has a sufficient reason ‘to believe that many will choose a particular option’ and then each one could ‘follow them and choose it as well.’[[52]](#endnote-54)

B3. When there is a new co-ordination problem but there are no existing facts or conventions to provide such a salient reason, it is the function of authorities to ‘designate one of the options as one to be chosen.’[[53]](#endnote-55)

B4. But the designation can be ‘a successful resolution of the problem’ only if it, by imposing an obligation to do what is directed, creates a new reason for action that the subjects never had before.[[54]](#endnote-56)

B5.The recognitional conception of authority, however, treats authoritative directives as ‘reasons for belief, not for action.’ Hence, it should be rejected.

From B3 and B4, it is not hard to see that Raz will also hold the following view: public goods such as traffic regulation that rely on the state’s co-ordination (for short, ‘co-ordination public goods’) cannot be effectively provided if the state cannot impose an obligation to obey onto its subjects.[[55]](#endnote-57) This view is, of course, equivalent to A1.

Nevertheless, Raz’s argument for A1 faces a serious problem, which lies in B4’s deviance from B2. Note that according to B2 (which I take to be true), to solve a co-ordination problem Y each person needs *only a salient reason to believe* that others will do X (X being an option of a given set). B2 does not say that for Y to be solved, each person *must have a reason to do* X. (Of course, if each person does have a reason to do X, then Y will also be solved.) But B4 implies that if a *de facto* authority is involved to solve Y, then for the successful resolution of Y it must create a reason to do X for its subjects (that is to say, it must become a legitimate authority to impose a duty to do X on its subjects). B4 is false because it overlooks the case where there is a *convention of accepting a de facto authority’s salience*; this convention could give each relevant person a salient reason to believe that others will follow the *de facto* authority’s directive to do X; and as a result, Y is solved. In other words, when the *de facto* authority in question is salient for its subjects by convention, its directive can solve Y even if it in fact imposes no duty on its subjects to do X. Similarly, with respect to co-ordination public goods, it seems highly plausible that the state’s conventional salience can effectively provide these goods even if the state’s directives do not in fact impose a duty to obey on its subjects. Hence, A1 is not true.

But Raz might object that my invocation of a *de facto* authority’s conventional salience is question-begging. Accepting the fact that many *de facto* authorities do enjoy conventional salience, Raz could contend that there is no way to account for the conventional salience of a *de facto* authority *unless we assume that in the beginning the exercise of authority did impose duties on its subjects*. If this is correct, the invocation of a *de facto* authority’s conventional salience could not disprove B4 because B4 accounts for the genesis of a *de facto* authority’s conventional salience.

But there is no reason to accept such a contention, at least when *de facto* authorities refer to modern states. There are two ways to account for the conventional salience of modern states other than invoking the duty to obey. First, someone like Heidi Hurd may develop ‘an account of the genesis of the law’s conventional salience that is compatible with a theory of *theoretical* authority [which creates reasons for belief, not for action].’ Here is her proposal:

The most plausible account … appeals to the features of lawmaking that explain why the law could be theoretical authoritative in answering moral questions that do not invite multiple, equally acceptable responses. If we can account for the theoretical authority of law concerning moral questions that have but singular right answers, it becomes plausible to surmise that persons would begin to conventionally seek its guidance when such questions arise. In situations where there are several equally right answers concerning how best to bring about a desirable state of affairs, this convention of looking to law would provide persons with a reason to think that others would conform their behavior to the solution prescribed by law.[[56]](#endnote-58)

But for brevity’s sake, I will not repeat her argument as to what kinds of institutional features of lawmaking make the law theoretically authoritative.[[57]](#endnote-59)

Second, the conventional salience of the law or the state might also be based on the uncontested coercive power the state has. Since the state will *credibly* enforce the law and punish those who disobey, this provides a salient reason for each of subjects to believe that other will follow the state’s directives. In addition, as Hurd points out, a modern state could *simultaneously* serve as a theoretical authority and employ coercive power.[[58]](#endnote-60) So the above two ways can be combined to account for the conventional salience of the state, which can further explain why the state can effectively provide co-ordination public goods without invoking political obligation.

Now it is time to examine Klosko’s argument for A1. Faced with the idea of ‘legitimacy without political obligation’ advanced by Buchanan and others, Klosko attempts to show that ‘legitimacy is not enough,’ for ‘states without obligation are more problematic than they allow.’[[59]](#endnote-61) He believes that ‘authority can be shown to be necessary in large areas of these institutions’ operations,’[[60]](#endnote-62) especially in the state’s provision of public goods with the structure of a prisoner’s dilemma. For easy reference, I follow Klosko in calling them ‘PD public goods.’[[61]](#endnote-63) PD public goods should be distinguished from co-ordination public goods. According to Klosko, PD public goods refer to non-excludable public goods that ‘recipients have incentives not to pay for’, since they will be provided whether one contributes or not.[[62]](#endnote-64) But for co-ordination public goods, ‘individuals do not have incentives not to comply in their provision.’[[63]](#endnote-65) Here is the summary of Klosko’s argument:

C1. If the state X’s being legitimate does not entail political obligation, then the subject Grey ‘may well obey the law on specific occasions … depend[ing] on the specific factors present in each situation.’[[64]](#endnote-66) This means that if X wants Grey to obey a particular law, ‘it will have the burden of explaining why [he] should do so.’[[65]](#endnote-67)

C2. Suppose that ‘Grey *prefers* not to contribute to defense [as a sort of PD public good],’ and that ‘his unwillingness will not have detectable consequences [of hurting other people]’[[66]](#endnote-68) then X will have problems explaining why Grey should be required to contribute.

C3. ‘Even if Grey is required to support the provision of defense in territory of X, his contribution can assume different forms.’[[67]](#endnote-69) Hence, X will still have difficulties in explaining why Grey’s contribution must take a particular form, e.g., paying taxes or serving the army.

C4. If C3 is true and ‘circumstances are similar for large numbers of other X-ites,’ then ‘it will mean that defense will not be supplied.’[[68]](#endnote-70)

C5. On the other hand, if the state X has authority over Grey, then Grey has a moral duty to ‘follow the dictates of the state, because they are so dictated.’[[69]](#endnote-71) This means that ‘there is a presumption that Grey should obey. The burden of justification is on him to explain why he should not.’[[70]](#endnote-72)

C6. It is reasonable to assume that in most cases where Grey prefers to disobey, Grey cannot offer sound justification, and that ‘circumstances are similar for large numbers of other X-ites.’ As the result of Grey’s and other X-ites’ obedience, PD public goods would be effectively supplied.

C7.Therefore, X can effectively provide defense and other sorts of PD public goods only if its subjects have political obligation.

Unfortunately, Klosko’s argument from C1 to C4 is not sound as he overstates the problem that PD public goods may pose to a legitimate state without political obligation. In C2 and C4, Klosko seems to assume that in the absence of a general moral duty to obey, subjects of X will *mainly (if not solely) act on one particular prudential reason, namely, to avoid the cost.* This assumption leads Klosko to believe that in the case of defense, the prisoner’s dilemma is inescapable and will severely undermine the supply of defense. But this assumption is not plausible for two reasons: (1) it contradicts C1, where Klosko acknowledges that even in the absence of a general moral duty to obey, subjects of X may still obey the law *by taking into account all kinds of relevant reasons, including moral reasons*; (2) even if subjects of X act mainly on prudential reasons (due to the relatively heavy cost perhaps), their incentive to avoid the cost will also be balanced and even outweighed by their incentive to avoid the state’s sanctions in its enforcement of the law (remember that a legitimate state has a liberty to enforce the law).[[71]](#endnote-73) Hence, contrary to what Klosko assumes, (1) even if Grey prefers not to contribute at first, after deliberating he will probably eventually choose to obey, and (2) even if Grey finally chooses to disobey, this will not be the case for large numbers of subjects of the state X. It is, therefore, rather safe to assume that a legitimate state without political obligation has no difficulty in providing PD public goods.

So far, I have shown that both Raz and Klosko fail to show that political obligation is necessary for the state’s provision of essential public goods. Before ending this section, however, let me briefly consider and reject a *weak* claim that may come to the minds of Raz and Klosko: the state cannot effectively provide essential public goods unless *it at least claims that its subjects bear political obligation.* This claim is weak in that the subjects are merely sincerely *told* by the state to bear political obligation; the presupposition of political obligation need not be validated. But it seems to me that the weak claim is also untenable. As the above argument has indicated, a legitimate state (with, among other things, its uncontested coercive power and a liberty to enforce the law) can secure the provision of essential public goods; it simply need not presuppose or claim that its subjects bear political obligation.

If my argument in this section is sound, then it is not true that the idea of ‘legitimacy without political obligation’ is morally objectionable, for there is little reason to believe that the state cannot effectively provide essential public goods without subjects having the duty to obey the law, or without at least subjects presupposing the duty to obey the law.

**IV. Conclusion**

In this article, I argued for the separation of political obligation and political legitimacy by developing a permissive conception of legitimacy, and defending it against various objections that the idea of ‘legitimacy without political obligation’ is either conceptually or morally mistaken.

The conception of legitimacy presented here is morally *permissive* in that it does not entail the duty of obedience to the law or the duty of noninterference with the law; that is to say, it leaves ample space for individual subjects’ private moral judgment. But it is not a morally *weak* conception of legitimacy as it still contains a bundle of Hohfeldian rights that together could secure the proper functioning of the legitimate state. From a liberal point of view, therefore, this conception of legitimacy embodies an attractive moral relationship between the state and its individual subjects. In addition, it also lowers the threshold of the justification of political legitimacy.

I admit that strictly speaking this conception alone is not enough to stop philosophical anarchism, as it is still possible for philosophical anarchists to contend that even under the permissive conception of legitimacy no reasonably just state can be legitimate. Since the permissive conception of legitimacy cannot yet exclude the likelihood of philosophical anarchism, it might be asked: what then is the point of my proposal? The answer is that the value of a new appealing conception of ‘legitimacy without political obligation’ does not wholly depend on the success of showing that a reasonably just state can meet the criteria set out by this new conception. With the permissive conception of legitimacy on the table, philosophical anarchists cannot simply rely on arguments denying the general moral duty to obey the law; rather, they have to develop *new* arguments, arguments that also address the permissive conception. By making the task of philosophical anarchists significantly more difficult, the permissive conception promises to advance the debates between anarchists and statists.[[72]](#endnote-74)

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**Notes**

1. Applbaum, A. (2010). ‘Legitimacy without the Duty to Obey,’ *Philosophy & Public Affairs* 38 (3), pp. 215-39. [↑](#endnote-ref-3)
2. Throughout this article, conceptions of legitimacy merely refer to various specifications of what state legitimacy is; they do not address the substantive issue as to how state legitimacy could be justified. [↑](#endnote-ref-4)
3. It is disputable whether a legitimate state also possesses a claim-right to have the law obeyed, which correlates to the subjects’ duty to obey. This correlation has been challenged by both Allen Buchanan and David Copp. See Buchanan, A. (2002). ‘Political Legitimacy and Democracy,’ *Ethics* 112 (4), p. 69; Copp, D. (1999). ‘The Idea of a Legitimate State,’ *Philosophy & Public Affairs* 28 (1), p. 13. But Simmons has replied to this challenge. See Simmons, A. J. (2005). ‘The Duty to Obey and Our Natural Moral Duties,’ in C. Wellman and A. J. Simmons (ed.) *Is There a Duty to Obey the Law?* Cambridge: Cambridge University Press, p. 98, note 2. This paper need not take a stand on this issue, as it is intended to show that the subjects’ duty to obey the law is not even necessary for state legitimacy. [↑](#endnote-ref-5)
4. For various defenses of such a claim, see Simmons, A. J. (2001) ‘Justification and Legitimacy,’ in *Justification and Legitimacy.* Cambridge: Cambridge University Press, pp. 112-57; Raz, J. (1986). *The Morality of Freedom.* Oxford: Oxford University Press, pp.23-30; Klosko, G. (2005). *Political Obligations.* Oxford: Oxford University Press, pp. 51-7. As Stephen Perry correctly points out, however, that the existence of a general moral duty to obey the law does not entail legitimacy. For a detailed analysis of ‘the reverse entailment problem,’ see Perry, S. (2013). ‘Political Authority and Political Obligation,’ in L. Green and B. Leiter (ed.) *Oxford Studies in Philosophy of Law*, vol. 2. Oxford: Oxford University Press, pp. 31-4. [↑](#endnote-ref-6)
5. I borrow this term from William Edmundson. See Edmundson, W. (1998). *Three Anarchical Fallacies: An Essay on Political Authority.* Cambridge: Cambridge University Press, p. 38. In literature, ‘the strong legitimacy thesis’ defined here is also referred to as ‘the inseparability thesis,’ see Durning, P. (2003). ‘Political Legitimacy and the Duty to Obey the Law,’ *Canadian Journal of Philosophy* 33 (3), pp. 373-89; Wyckoff, J. (2010). ‘The Inseparability Thesis: Why Political Legitimacy Entails Political Obligations,’ *Southwest Philosophy Review* 26 (1), pp. 51-59. [↑](#endnote-ref-7)
6. Leslie Green suggests that it is ‘a significant coalescence of opinion,’ if not an emerging consensus, among political theorists that political obligation cannot be justified. See Green, L. (1996). ‘Who Believes in Political Obligation,’ in J. T. Sanders and J. Narveson (eds.) *For and Against the State*. Lanham, Md.: Rowman & Littleﬁeld, 1996), p. 1. [↑](#endnote-ref-8)
7. See Simmons, A. J. (1979). *Moral Principles and Political Obligations*. Princeton, N.J.: Princeton University Press; *Justification and Legitimacy,* and ‘The Duty to Obey and Our Natural Moral Duties.’ [↑](#endnote-ref-9)
8. Simmons distinguishes the weak version of philosophical anarchism from the strong version in terms of their different practical stances with regard to the illegitimacy of the state. Simmons correctly (at least in my view) endorses the weak version, according to which, state illegitimacy only ‘entails the nonexistence of general political obligations, that is, the removal of any moral presumption in favor of compliance with and support for the state’; it does not entails a moral duty to actively oppose or even eliminate the state. See Simmons, ‘Philosophical Anarchism,’ in *Justification and Legitimacy*, p.105. [↑](#endnote-ref-10)
9. The second way to counter philosophical anarchism is to revise and develop theories of political obligation. See, for instance, Klosko, *Political Obligations*; Estlund, D. (2008). *Democratic Authority: A Philosophical Framework*. Princeton: Princeton University Press. I doubt that the above theories provide us a convincing justification of political obligation, but I cannot address this issue here. For a critique of Klosko’s argument, see Zhu, J. (2014). ‘Fairness, Political Obligation, and the Justificatory Gap,’ *Journal of Moral Philosophy* (advance article), DOI: 10.1163/17455243-4681047. [↑](#endnote-ref-11)
10. For examples, see Ladenson, R. (1980). ‘In Defense of a Hobbesian Conception of Law,’ *Philosophy & Public Affairs* 9(2), pp.134-59; Sartorius, R. (1981). ‘Political Authority and Political Obligation,’ *Virginia Law Review* 67 (1), pp. 3-17; Wellman, C. (2001). ‘Toward a Liberal Theory of Political Obligation,’ *Ethics* 111(4), pp. 735-59. [↑](#endnote-ref-12)
11. See Edmundson,W. (1998). ‘Legitimate Authority without Political Obligation,’ *Law and Philosophy* 17 (1), p. 44. [↑](#endnote-ref-13)
12. See Applbaum, ‘Legitimacy without the Duty to Obey.’ While in conceiving legitimate authority, Stephen Perry also emphasizes the moral power-liability relationship between the state and its subjects, he nevertheless takes the power to impose the duty to obey to be ‘the most fundamental power.’ See Perry, *Political Authority and Political Obligation*, p. 3. Thus, Perry’s conception of legitimacy is not a version of ‘legitimacy without political obligation.’ [↑](#endnote-ref-14)
13. For arguments adopting the offensive strategy, see Edmundson, *Three Anarchical Fallacies*, Chapter 2; Applbaum, ‘Legitimacy without the Duty to Obey’; and Coakley, M. (2011). ‘On the Value of Political Legitimacy,’ *Politics Philosophy & Economics* 10 (4), pp. 345-69. [↑](#endnote-ref-15)
14. It is worth noting that unlike the offensive strategy, the defensive strategy is open to the idea that there can be different conceptions of legitimacy, for it does not attempt to undermine conceptions of ‘legitimacy with political obligation.’ [↑](#endnote-ref-16)
15. For a critique of Edmundson’s refutation of the strong legitimacy thesis, see Lefkowitz, D. (2004). ‘Legitimate Political Authority and the Duty of Those Subject to It: A Critique of Edmundson,’ *Law and Philosophy* 23 (4), pp. 399-435. For a critique of Applbaum’s argument, See Zhu, J. (2012). ‘Legitimacy as a Mere Moral Power?A Response to Applbaum,’ Diametros (33), pp. 120-137. [↑](#endnote-ref-17)
16. See Edmundson, ‘Legitimate Authority without Political Obligation,’ p. 45. [↑](#endnote-ref-18)
17. Robert Ladenson, ‘In Defense of a Hobbesian Conception of Law,’ p. 137. The permissive conception of legitimacy is, of course, different from Ladenson’s own conception of legitimacy, as the former involves more than a liberty to coerce. [↑](#endnote-ref-19)
18. Consider this example: the state has a liberty to punish a captive terrorist, but if the same terrorist group credibly threats to launch an attack that will kill hundreds innocent lives unless their ‘comrade’ is set free, then the state is, all things considered, not justified to imprison this terrorist. [↑](#endnote-ref-20)
19. Imagine that a man enters into a shopping center, acting like any other customer. No one has a liberty to coerce him. Suddenly, however, the man pulls a sharp knife out of his bag and attempts to stab whoever he could reach. Then, it seems that anyone is justified to coercively disarm and control him. [↑](#endnote-ref-21)
20. Applbaum, ‘Legitimacy without the Duty to Obey,’ p. 235. [↑](#endnote-ref-22)
21. Jason Wyckoff overlooks the role of a moral power discussed here and therefore mistakenly claims that for a state to have a liberty to coerce, it must in the first place generate a duty to obey on its subjects. For this reason, his defense of the strong legitimacy thesis is untenable. See Wyckoff, ‘The Inseparability Thesis: Why Political Legitimacy Entails Political Obligations,’ p. 55. [↑](#endnote-ref-23)
22. Green, L. (1989). *The Authority of the State*. Oxford: Oxford University Press, p. 86. Buchanan, and Renzo also emphasize on the legitimate state’s monopoly feature, see Buchanan, ‘Political Legitimacy and Democracy,’ pp. 689-90, Renzo, M. (2011). ‘State Legitimacy and Self-Defence,’ *Law and Philosophy* 30 (5), p. 576. [↑](#endnote-ref-24)
23. It is important to note that the subjects’ duty to accept the legitimate state’s monopoly is *not created* by the state’s directive. The duty exists whether or not the state claims monopoly, because the subjects have a natural duty not to interfere with the state’s just governance (assuming that the monopoly is necessary for the state to govern effectively and justly). Thus, this duty is different from the duty to obey the law, which comes from the legitimate state’s say-so. [↑](#endnote-ref-25)
24. See Van Der Vossen, B. (2012). ‘The Asymmetry of Legitimacy,’ *Law and Philosophy* 31(5), p. 571. [↑](#endnote-ref-26)
25. For instance, we can find a trace of this worry in Applbaum’s article on legitimacy, where he argues that ‘[e]ven simple moral permissions [such as the state’s permission to enforce the law] *come along with a* *duty not to interfere with the exercise of the permission* in some way or another—not by conceptual necessity, but by a sort of practical necessity if *the permission is not to be futile*.’ Applbaum, ‘Legitimacy without the Duty to Obeyt,’ p. 226, my emphasis. [↑](#endnote-ref-27)
26. There are, of course, persons who are ‘evil’ or irrational. But since they normally only constitute a small minority, they cannot possibly pose a significant threat to political efficiency and stability. More importantly, it makes no sense to talk about morality to them. With regard to these persons, therefore, it makes no difference whether the state also has a claim-right of noninterference in the enforcement of the law. [↑](#endnote-ref-28)
27. Rawls, J. (1971). *A Theory of Justice*. Cambridge, MA: Harvard University Press, p. 364. [↑](#endnote-ref-29)
28. Simmons, ‘Justification and Legitimacy,’ p. 136. [↑](#endnote-ref-30)
29. Ibid., p. 126. [↑](#endnote-ref-31)
30. Ibid., p. 130, my emphasis. [↑](#endnote-ref-32)
31. Ibid., p. 131. [↑](#endnote-ref-33)
32. Ibid., p. 131. [↑](#endnote-ref-34)
33. Ibid., p. 139. [↑](#endnote-ref-35)
34. Ibid., p. 139. [↑](#endnote-ref-36)
35. Buchanan, ‘Political Legitimacy and Democracy,’ p. 693, 697. [↑](#endnote-ref-37)
36. Simmons, ‘The Duty to Obey and Our Natural Moral Duties,’ p. 98, note 2, my emphasis. [↑](#endnote-ref-38)
37. To be fair, Simmons might have noticed the second way of competition. In his ‘Justification and Legitimacy,’ he says that ‘legitimacy … includes an *exclusive* power over subjects to impose duties and enforce them coercively, which *correlates with obligations on others to refrain from these tasks*.’ See ‘Justification and Legitimacy,’ p. 130, note 20, my emphasis. Since ‘others’ includes not only outsiders, but also subjects, Simmons might well be thought to conclude that it is the subjects’ duty to refrain from challenging the legitimate state’s exclusive power (that is, the monopoly in creating, applying and enforcing the law) that explains the normative supremacy of state legitimacy. Nevertheless, he pays so much attention to the legitimate state’s right to have the law obeyed, which correlates with subjects’ duty to obey, that he overlooks the possibility of an alternative account of normative supremacy possessed by a legitimate state. [↑](#endnote-ref-39)
38. Raz, *The Morality of Freedom*, p. 23. [↑](#endnote-ref-40)
39. Sartorius, ‘Political Authority and Political Obligation.’ [↑](#endnote-ref-41)
40. Raz, *The Morality of Freedom*, p. 23. [↑](#endnote-ref-42)
41. For a similar view, see also Applbaum, ‘Legitimacy without the Duty to Obey,’ p. 219. [↑](#endnote-ref-43)
42. Raz, *The Morality of Freedom*, pp. 25-6. [↑](#endnote-ref-44)
43. Ibid., p. 25. [↑](#endnote-ref-45)
44. Ibid., pp. 44-5, my emphasis. [↑](#endnote-ref-46)
45. Green, *The Authority of the State*, p. 86. [↑](#endnote-ref-47)
46. For examples of such a view, see Kramer, M. (1999). *In Defence of Legal Positivism: Law without Trimmings*. Oxford: Oxford University Press, pp. 78–112; Kenneth Himma, K. (2001). ‘Law’s Claim of Legitimate Authority’ in J. Coleman (ed.) *Hart’s Postscript: Essays on the Postscript to The Concept of Law*. Oxford: Oxford University Press, pp. 271-309; Soper, P. (2002). *The Ethics of Deference: Learning from Law's Morals*. Cambridge: Cambridge University Press, Chapter 1-3. [↑](#endnote-ref-48)
47. Klosko, G. (2011). ‘Are Political Obligations Content Independent?’ *Political Theory* 39 (4) , pp. 509-10. [↑](#endnote-ref-49)
48. I will not define which public goods are essential. Instead, I take it for granted that traffic regulation and national defense (which will be discussed later) are two essential public goods. [↑](#endnote-ref-50)
49. For example, see Buchanan, ‘Political Legitimacy and Democracy,’ p. 697; Simmons, ‘Philosophical Anarchism,’ p. 114. [↑](#endnote-ref-51)
50. Raz, *The Morality of Freedom*, p. 30. [↑](#endnote-ref-52)
51. Ibid., p. 30. [↑](#endnote-ref-53)
52. Ibid., p. 30. [↑](#endnote-ref-54)
53. Ibid., p. 30. [↑](#endnote-ref-55)
54. Ibid., p. 49. [↑](#endnote-ref-56)
55. Raz, after all, believes that ‘solving co-ordination problems is one of the important tasks of political and many other practical authorities.’ See ibid., p. 31. [↑](#endnote-ref-57)
56. Hurd, H. (1999). *Moral Combat.* Cambridge: Cambridge University Press, p. 174. [↑](#endnote-ref-58)
57. Ibid., pp. 175-76. [↑](#endnote-ref-59)
58. Ibid., p. 178. [↑](#endnote-ref-60)
59. Klosko, *Political Obligations*, p. 57, and p. 51. [↑](#endnote-ref-61)
60. Ibid., p. 51. [↑](#endnote-ref-62)
61. Ibid., p. 28, 36. [↑](#endnote-ref-63)
62. Ibid., p. 27. [↑](#endnote-ref-64)
63. Ibid., p. 37. [↑](#endnote-ref-65)
64. Ibid., p. 52 [↑](#endnote-ref-66)
65. Ibid., p. 52 [↑](#endnote-ref-67)
66. Ibid., p. 55, my emphasis. [↑](#endnote-ref-68)
67. Ibid., p. 55. [↑](#endnote-ref-69)
68. Ibid., p. 56. [↑](#endnote-ref-70)
69. Ibid., p. 52. [↑](#endnote-ref-71)
70. Ibid., p. 52. [↑](#endnote-ref-72)
71. Klosko also makes a mistake in C1 in saying that a legitimate state has to bear the burden of explaining why the subjects should obey, for a legitimate state does not care why its subjects obey as long as they do obey. And in cases of disobedience, a legitimate state has a liberty to enforce the law. [↑](#endnote-ref-73)
72. Early versions of this article were presented at the 70th Annual Midwest Political Science Association Conference, and Fudan Institute for Advanced Study in Social Science, Fudan University. One later version was incorporated in my PhD Thesis, ‘Farewell to Political Obligation: Toward a New Liberal Theory of Political Legitimacy’ (University of Hong Kong, 2013). I thank all the conference participants and examiners of my PhD Thesis for their questions and comments. I am especially grateful to Uwe Steinhoff, Anthony Reeve, and two anonymous referees of *Pacific Philosophical Quarterly* for their helpful comments. [↑](#endnote-ref-74)