

**On Law and Obligation:
The Case for Legitimate Rule**

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Chapter I: **Introduction**

Is there a moral obligation to obey the law? The object of this thesis is to develop a compelling argument that yes, there is a moral obligation to obey the law. The argument will proceed as follows:

1. If the cost is not unreasonably burdensome, then we have a moral obligation to maintain the state
 2. If we have an obligation to maintain the state, then we have an obligation to obey the law
 3. If law is a manifestation of legitimate rule, then obeying the law is not unreasonably burdensome
-
- C. Therefore, if law is a manifestation of legitimate rule, then we have an obligation to obey the law

Through the following two chapters, we will develop this Argument from Legitimacy by thoroughly examining each of these points. In Chapter 2 we will lay the foundation of our argument with an examination of Samaritan duty. The framework for the Samaritan duty claim rises out of Christopher Wellman's work in his *Is There a Duty to Obey the Law?* He asserts that in order to save ourselves and others from the state of nature, we must maintain the state because it provides otherwise unattainable vital benefits and does not impose unreasonable burden in doing so. Additionally, we will find that contained within the obligation to maintain the state is the obligation to obey the law. In concluding Chapter 2, we will develop a modified Samaritan duty claim that characterizes the obligation to maintain the state as a result of the significant degree of stability and quality of life afforded by the state's potential to develop complex social institutions.

In Chapter 3, we will move to discuss the concept of legitimate rule and then apply it to the obligation to obey the law entailed by Samaritan duty. Legitimate rule will be developed as

the legitimate exercise of authority by a state, so we will first establish what constitutes authority and under what conditions the exercise thereof becomes legitimate. After setting the foundations for Samaritan duty and legitimate rule, we can then combine the two concepts to elaborate upon the argument that the obligation to obey the law only holds so long as law is a manifestation of legitimate rule. In closing Chapter 3, we will apply the Argument from Legitimacy to several real-world examples in order to test its limits and practicality.

Before proceeding with our argument, I must first address several preliminary matters. First, and perhaps most importantly, I must explain the motivation and intent behind this thesis. Commonly, when attempts are made to describe the obligation to obey the law, the argument is framed around law as it is understood traditionally in the US legal system. That is, law as it relates to a formal legal institution composed of courts and judges and juries and attorneys and codified sets of governing rules. This thesis intends to construct an obligation argument that can in principle apply in any possible state, so we must account for the fact that law does not always look like the US legal system. As such, this thesis considers both law as it pertains to civil law as well as its potential structural equivalents, or those alternative social structures and processes that satisfy the same needs as civil law.¹ For sake of convenience, however, we will broadly refer to this as law. Further, when we speak of formal or formalized legal systems, this will be in reference to the US legal system.

Secondly, this argument is not proposing that there is an obligation to obey the law in every state nor that there is only an obligation to obey the law in something like a democracy. Rather, this argument seeks to set the conditions where an obligation would arise in any possible state.

¹ The concept of structural equivalents will be explored in Chapter 3, Section 3.

Finally, it is worth noting why I chose to employ Samaritan duty as my base instead of something like contract theory. Primarily, I felt that while no system is without its failings, Samaritan duty is the most intuitive while still providing a strong argument. It makes sense to say that it is more beneficial to live in a state rather than live in anarchy. It makes sense to say that, from a moral perspective, we have a duty to not imperil others. That Samaritan duty requires the maintenance of the state in order to protect ourselves and others from the state of nature is an intuitive claim for me. I also entertained contract theory in the initial stages of writing, particularly for its relevance to defining the state. However, between needing to defend tacit consent and the other standard issues with contract theory, I found too many problems. Most importantly, it did not fit as well as Samaritan duty with my concept of legitimate rule. For its intuitive appeal and easy synthesis with legitimate rule, I found Samaritan duty to be the most compelling base for my argument.

Given the overview of the structure and content of the argument for the obligation to obey the law, let us now begin with an analysis of Samaritan duty.

Chapter II:
Samaritan Duty and the State

Recall:

- 1. If the cost is not unreasonably burdensome, then we have a moral obligation to maintain the state**
 - 2. If we have an obligation to maintain the state, then we have an obligation to obey the law**
 3. If law is a manifestation of legitimate rule, then obeying the law is not unreasonably burdensome
-
- C. Therefore, if law is a manifestation of legitimate rule, then we have an obligation to obey the law

This chapter will develop the argument that Samaritan duty produces a moral obligation to maintain the state and that maintaining the state requires obeying the law. The basic framework for Samaritan duty rises out of Christopher Wellman's work in his book *Is There a Duty to Obey the Law?* For Wellman, "political states provide vitally important benefits that could not be secured in their absence, and they supply these benefits without requiring...unreasonable sacrifices" (Wellman 5). Given that only the state can offer these benefits and the alternative to a political state is the state of nature, we are therefore obligated to maintain the state and protect ourselves and others from the state of nature (Wellman 31). This chapter will evaluate and supplement Wellman's claim in order to better articulate the benefits of the state and therefore build a stronger Samaritan duty argument. We will conclude that the obligation to maintain the state holds due to the advanced degree of stability afforded by the coordination of the state and the capacity to develop strong social institutions.² I will establish this primarily through the following: (1) an overview of Wellman's argument for Samaritan

² I am here borrowing the language of "coordination" from Wellman. This use is more broad than simple behavioral coordination such as requiring everyone to drive on the right side of the road. It is also meant to encompass things like the creation and facilitation of structures like towns, cities, etc. Coordination, in this sense, generally secures peace and stability.

duty; (2) a formulation of what defines a state; (3) an explanation of the insufficiency of Wellman's justification for Samaritan duty; (4) a supplementation of social institutions to justify Samaritan duty.

1. An Overview of Samaritan Duty

Let us examine Wellman's claim. Samaritan duty can be illuminated by the utilitarian principle that one is obligated to protect another from peril when the relative cost to oneself is not exceedingly burdensome. For example, if a person's friend has a heart attack and the only way to get the friend to the hospital is to drive him and miss a day of work, the person should miss the day of work. The cost to the person could be significant – lost wages, a frustrated boss, etc. – but the enormous benefit of saving his friend's life requires him to act. In general, Samaritan duty operates under this principle. Relative to the benefit of protecting others from the state of nature, the cost of maintaining the state is negligible and therefore we are obligated to maintain the political state.³ Here, we can perhaps describe the cost of maintaining the state as having to vote, engaging in civic duties, etc. Of particular relevance to this thesis, however, is the cost incurred by subjecting oneself to the law. Maintaining the state entails obeying the law because law establishes the order of the state and protects against aberrations to the order. Law sets the rules of society, and if everyone were to reject law then society would suffer from disorder (Wellman 17). The cost of law, and therefore political stability, is the forfeiture of a certain degree of liberty. This cost, Wellman argues, is considerable and not to be taken lightly. It is acceptable, however, because the associated benefit of political stability far exceeds its cost (Wellman 18).

³ This is how we will understand "not unreasonably burdensome." Something is not unreasonably burdensome when the cost is negligible relative to the benefit.

Though I find this strictly utilitarian calculus to compellingly justify the imposition of law, some may find it to lead to unwanted consequences. Specifically, one could possibly use a similar cost-benefit analysis to justify chattel slavery. Slavery is maintained by the law and it can be used to yield great benefits. If a factory could work with zero labor costs then it could divert more funds to production, for example. The added revenue from increased production could be used for greater employee dental plans or protective equipment or other benefits. Wellman's response, and one that I find plausible, is that slavery not only fails to develop the same crucial benefits of the state but also any benefits that it does secure are negated by the means of acquisition. Further, and more importantly, uniform political coercion over the whole state is necessary to secure its vital benefits whereas slavery is not required to gain the benefits it creates (Wellman 19).

But what are the benefits of the state? The state creates such vital benefits as rules to adjudicate disputes, the protection of people's rights, the acquisition and production of resources, etc. (Wellman 6-8). Paramount among these benefits, however, is the stability gained through centralized authority.⁴ Wellman argues for the importance of centralized authority by asserting that the fundamental problem in the state of nature is a coordination problem, that without deference to a single uniform authority there is no way to secure stability and peace (Wellman 45). On this account, chaos would ensue in the absence of some impartial third party authority to mediate disputes. This follows, according to Wellman, because without a mediating body, dispute resolution falls on the involved parties. The primary benefit of the state, then, is the coordination of social interactions to prevent the chaos of the state of nature.

⁴ Centralized authority can be considered as that which produces and mediates the governing rules of a social system, such as a federal government. Subsystems, such as towns and cities, often also exhibit this, but these are nested within the greater centralized authority of the state.

Consider, for example, disputes over property. If one were to produce a certain good and keep it as one's own, what would ensure the proprietorship of that good? If Jack steals the widgets that John created, then without an adjudicating body it falls on John to catch Jack, reacquire his widgets, determine if punishment is required, and, if necessary, mete out the punishment. This presents a series of complications. Primarily, assuming John seeks to exact some form of punishment in response to the theft, he is necessarily unbiased in creating the punishment and so is liable to over-punish (Wellman 9). Further, without definitive evidence that Jack stole the widgets, John may wrongly punish an innocent person. Though Jack may be the culprit, John may mistakenly believe James to be the thief and so wrongly punish him. Finally, even if John correctly punishes Jack and does so more mildly than he feels appropriate, Jack may still justifiably feel that the punishment was too severe. No matter the case, Wellman maintains that dispute resolution undertaken by directly involved parties "is likely to inspire retaliation" (Wellman 9).

The retaliation inference appears plausible. If Jack feels over-punished, why would he not seek retribution? This revenge also would possibly inspire a secondary retaliation by John, starting a cycle of revenge. Despite the exaggerated snowballing of scenarios here, the types of problems that would result from victims enacting their own forms of justice are easy to conceive. Wellman argues that an impartial authority resolves the problems of "civilian justice" because judges and juries are not personally invested in the events of a case but rather in promoting and securing justice. As such, they are less likely to erroneously convict or punish innocent people (Wellman 9). But clearly courts still make mistakes and wrongly sentence innocent people or otherwise deliver punishments that offenders feel are unjustified. Though Wellman somewhat

glosses over this point, it is important to discuss why deference to a central authority is more valuable than “civilian justice” when such an authority may still fail in some cases.

2. A Sociological Analysis of Legal Compliance

The primary value of centralized authority over civilian justice is its capacity to establish a standard set of laws and thus help solve the coordination problem. To understand the coordinating power of law, we must consider its relationship to morality. Sociological analyses of law typically consider the decision to obey the law as either a rational cost-benefit calculation or the result of a normative decision-making model, with the current trend favoring the latter. This normative model considers the decision to obey the law as a function of one’s perception of the relation between law and morality. This relationship then breaks down into three models: direct effects, indirect effects, and mediating effects (Levitsky). These models demonstrate how law institutionalizes and reinforces social norms while simultaneously being shaped by those social norms. Understanding the nature of this feedback cycle will then support the effectiveness of centralized authority in resolving disputes by explaining how deference to centralized authority positively influences the perception that a dispute was handled justly.

Let us begin with the direct effects model. This model explains that compliance with the law results from the content of the law according with one’s personal moral code. As Tom Tyler asserts in his empirical study of legal compliance, the accordancy of a legal code with one’s moral code corresponds with an increased rate of voluntary compliance (Tyler 476). This can be illustrated conceptually through drug laws. For instance, if one holds a moral reservation against smoking marijuana then it would follow that one would comply more with a law prohibiting marijuana use rather than a law requiring marijuana use. Tyler’s evidence supports this general

relationship. In a study gauging the likelihood of breaking certain laws (such as drunk driving, parking violations, shoplifting, speeding, etc.), respondents were asked to indicate their likelihood of breaking the law and then later asked to indicate the degree to which they felt that breaking such laws was morally wrong or right. The results indicated a distinct relationship between the incidence of breaking the law and whether breaking that law was felt to be morally wrong. The more one felt it was morally wrong to break a given law, the less likely it was for that law to be broken (Tyler 482-484). Schwartz & Orleans' 1967 study on tax compliance echoes the effect of morality on legal compliance found in Tyler. Their study used three groups with randomly assigned members and asked them about their declared income. One group was prompted first with questions about attitudes on political issues, one was prompted with the legal sanctions for failing to report income, and the last was prompted with the moral implications of not paying taxes. The results indicated a significant rise in compliance with the morality group over the other two (Schwartz & Orleans). But this does not entirely explain the relation between law and morality.

The indirect effects model explains compliance not in terms of a law's accordance with one's personal moral code, but rather with an individual's assessment of whether it is morally right to follow the law. This model finds compliance to be content-independent and instead predicated on the belief that it is generally right to obey authority. Tyler's study demonstrates the significant influence of one's assessment of authority on compliance with that authority. 82% of respondents believed that one should obey the law regardless of their own sentiments and 79% of respondents agreed that disobeying the law is seldom justified (Tyler 485). These responses alone do not necessarily indicate that those respondents actually would follow the law, however; these responses only show that the respondents felt that breaking the law was morally wrong. To

demonstrate the indirect effects model in action, we can look to Stanley Milgram's infamous 1962 study at Yale. In brief, the study required participants to administer what they believed to be a real shock to another man whom they believed to also be a voluntary participant when he would answer questions incorrectly. Instead, the shocks were fake and the man was a paid actor. The actor would scream in pain when the shocks were delivered and would ask to leave, and any hesitation or protest on the part of the participants would be met with reassurance by the lead scientist that they should continue with the study. The study resulted in a disquieting 65% of participants administering the highest level shock (Milgram 376). Milgram's experiment compellingly demonstrated how much influence individuals give to positions of authority with regards to compliance.

Having looked at the direct and indirect effects models, we can now turn to the mediating effects model to help illuminate how centralized authority promotes coordination. The mediating effects model identifies the law as bearing significant influence on one's moral assessment of behaviors. An appeal to drug laws will once again provide a useful demonstration. The direct effects model posited that those with moral reservations against marijuana usage would likely comply with laws restricting its use; the mediating effects model instead posits that the illegality of marijuana usage aids in the formation of moral reservations against it. Essentially, declarations of legality or illegality can facilitate the development of individual and societal values (Levitsky). This model is supported by the work of Berkowitz & Walker. Similar to the Schwartz & Orleans setup, Berkowitz & Walker first asked students for a preliminary moral assessment of several behaviors and then asked for a reassessment subject to three possible prompts: (1) no new information was given; (2) information about peer opinion was given; (3) information about legality was given. The results indicated that information about legality

significantly affected students' moral reassessments (Berkowitz & Walker). This is importantly distinct from the conclusions relating to the direct and indirect effects models. Instead of one's moral code influencing one's compliance with the law or with the authority behind the law, the mediating effects model purports that the law can actually shape the composition of those moral principles.

If morality plays such an important role in compliance with the law, and it is evident that this is the case, then we can start to see why the ability of centralized authority to establish law is so imperative to promoting coordination. In a system where disputes are only handled by the directly involved parties it is difficult to conceive of anything short of direct physical coercion producing compliance with one's dictums. If Jack genuinely believes that he is entitled to John's widgets, John can only punish Jack for the theft by forcing Jack to capitulate. Having a standard set of laws to defer to can dramatically reduce the number of cases where individuals enact their own forms of justice. Through the mediating effects model we can conceive of the law playing an influential part in developing and reinforcing certain social norms. By marking certain behaviors illegal, such as theft, the law helps shape moral sentiments against theft. These sentiments then feed back into individuals' compliance with the law by according with the laws against theft. This compliance is then further bolstered by the general compliance with authority figures. Instead of being subjected to an arbitrary individual, law can elicit general compliance from all members of a state.

This may at first sound somewhat circular, that people want to comply with the law because the law makes them want to comply, but this is to misunderstand the influence of law entailed by the mediating effects model. Law may not produce moral sentiments *ex nihilo*, but it certainly helps to legitimize any preexisting sentiments. We may see laws restricting theft as the

result of the general societal desire to retain one's possessions, for example. The mediating effects model helps to explain law's capacity to codify existing social norms. It is clear, then, how these three models help to explain the value of law, and by extension centralized authority, in protecting against the perils of the state of nature. Though Wellman compellingly argues for the problems that would result in the absence of law, these models illuminate why law overcomes these problems.

3. A Definition of State⁵

Our discussion of Samaritan duty next will turn to the importance of the state. Wellman maintains that only through the coordination gained through the state can we overcome the problems of the state of nature, but he does not provide an explicit conception of the state. This presents an issue because without a stable sense of what constitutes a state, we cannot accurately apply Samaritan duty to it. We must be able to distinguish the state from other social units such as tribes and bands and towns. If we are to fully assess and apply Samaritan duty in the state, first we must develop a concept of state.

In characterizing the state, it is important to note that we will not develop a rigorous definition that sharply delineates between what is and is not a state. Such a project is beyond the scope of our present issue and unnecessary for the argument as a whole. Instead, it will suffice to develop a set of general elements that roughly describe the state.

Let us begin with a set of basic definitions already present in the literature. Per the *Stanford Encyclopedia of Philosophy*, "The state is the political institution in which sovereignty is embodied," where sovereignty refers to supreme authority within a given territory (Philpott).

⁵ It is worth noting that unless specifically referenced, "state" does not refer to those structures such as Illinois or Michigan, but instead to something more akin to a nation-state

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This definition moves us to the first crucial element of states – centralized authority. Second, in Robert Carneiro’s anthropological text examining the theoretical formation patterns of states, he considers the state as “an autonomous political unit, encompassing many communities within its territory and having a centralized government” (Carneiro 733). Echoing the need for centralized authority, this definition adds the need for autonomy and the aggregation of smaller social units. Third, Chandran Kukathas argues that the state is a political association not incorporated into any other political association (but perhaps incorporating others) and maintaining an independent structure of political authority within a given territory (Kukathas 358). We once again find the need for independence and authority, but Kukathas employs a somewhat hierarchical understanding of the state, that it cannot be incorporated wholly into any other body. In addition to these definitions, I also will argue that membership is a vital aspect of the state. Using the above definitions, we can begin to develop a more comprehensive concept of the state.

These definitions utilize many different terms to describe several common facets of the state. For our purposes, however, I have distilled these terms to produce the argument that the state, while constituent of many elements, relies primarily on four characteristics: (1) superordinate autonomy; (2) centralized authority; (3) territory; (4) identifying membership. These four characteristics can be understood to minimally define the state. Further, each on its own is insufficient for statehood; a state must incorporate all four elements.

Let us begin with superordinate autonomy. The state’s autonomy builds on Kukathas’ hierarchy argument, that a state cannot be incorporated wholly into any other body. The state is the “highest” independently functioning social unit, so to speak. It is a superordinate entity. Consider a set of social units ranging from towns to cities to counties to townships to states, etc. These units can be arranged in terms of subordination to one another, that the town is

subordinate to the township is subordinate to the county and so on. In this series of subordination, the state is the only unit not totally subordinate to some other unit. Instead, all other units are ultimately subordinate to the state. This is not to deny that the state can be partially subordinate to another body. Consider the UN or the EU, for instance. They hold a degree of authority over many other states but do not wield complete authority. Their member states still retain superordinate autonomous function.

This subordination concept then closely relates to the need for centralized authority. The value of centralized authority in dispute resolution has already been established, but its importance in defining the state warrants further elaboration. Most fundamentally, centralized authority is essential to the state because the state cannot be superordinate without centralized authority, without a single set of authoritative rules. While we can then characterize centralized authority as just another facet of superordinate autonomy, it is still worth examining its critical role in defining the state. Consider again the hierarchy of social units (towns, cities, etc.). What would these units look like if not bound by a central authority? In the absence of a binding force the various social units would be free to act on their own. Further, they would all be equally able to assert their own independent authority. If this were the case, then interactions between the units would inevitably result in the same type of issues already covered in the widget scenario but on a larger scale. Additionally, it is important to note that centralized authority plays only a necessary, not a sufficient, role in this relationship. A social unit can have centralized authority without being superordinate. In fact, this is a common structure in contemporary states. Cities, towns, and so on have their own local governments that act as a centralized authority for that unit. This authority defers to the greater centralized authority of the state, but it nonetheless

functions as a centralized authority in its own right. Ultimately, centralized authority provides cohesion and coordination among the various units.

Cohesion and coordination bring us to the next characteristic: territory. Wellman briefly discusses the need for exerting uniform authority over a set geographic area. He maintains that if those in close proximity to each other were not to subordinate under one unified authority then the same problems of coordination already enumerated would persist (Wellman 14). Intuitively, this makes sense. Multiple sets of authority are bound to overlap and contradict one another. Further, if state authority was to hold not over geographic areas but rather something like physical traits or religion, coordination would be nearly impossible (Wellman 14). Non-geographic binders are simply too complex to effectively coordinate people under a single authority. If all of the brown eyed people in a city were subject to different rules than the blue eyed people, there would be an absolute coordination failure. Territory plays a crucial role in defining the state.

This is also evident in Carneiro's state formation theories. Carneiro posits that states rose in response to environmental circumscription, that because populations were geographically bound they necessarily formed into states as populations grew (Carneiro 734-736). As the populations of small villages continued to grow, available land decreased and so when villages would war against each other, there eventually came a point where there was no land to retreat to. The losers of a war would have no choice but to subordinate under the victor. In an area like the great plains of North America, this was not an issue. There was always land to fall back on. There was no reason for multiple villages to coalesce under one chiefdom (Carneiro 735). This highlights the importance of territory in state formation. Not until territory was established under one unified authority could states develop because there was no other binding force. No village

had any reason to value the authority of another because they did not have to interact with each other. Authority instead had to be focused around territory.

States must have superordinate autonomy, a centralized authority, and a territory over which to exercise that authority. The final component is membership. This is perhaps the least controversial characteristic of the four and so requires the least defense. A state, in its most fundamental sense, is a social organization, a way of structuring social interactions. It is a group of people. A state cannot exist without people. People exert authority; people set territorial boundaries; a state cannot function without people because a state is a way that people function. Despite its intuitive role in statehood, membership is important to discuss as a distinct characteristic because it entails not just people being in a state's territory but people identifying with the state. Identification with the state is a critical component. For instance, if an individual decides to claim sovereignty over a set territory, his claim will mean nothing without recognition from members. If the people that the man is attempting to claim sovereignty over do not identify with his claimed state, then he is merely making an empty claim. No state is formed. The state requires an identifying membership.

Now that we have a viable characterization of what constitutes the state, we can return to Wellman's argument for the Samaritan duty to maintain the state.

4. The Insufficiency of Solving the Coordination Problem

Thus far, we have seen that Wellman's theory asserts an obligation to maintain the state in virtue of it providing the essential benefit of coordination and doing so in a way that does not overly burden those coordinated. Again, coordination here is meant to apply more broadly than just behavioral coordination; this also applies to structural coordination such as the creation and

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facilitation of towns, cities, etc. As we will see, coordination alone is insufficient to justify Samaritan duty but nonetheless remains an important aspect of the argument. This section will further discuss the strengths of coordination and then detail why the Samaritan duty claim requires additional justification.

Without the benefits of coordination, without a state, people would be subject to the perils of the state of nature. In the state of nature, there would be no structure or system to maintain peace and security. Individuals would be held accountable only to themselves. No police would investigate murder, no schools would educate the masses, no courts would hear the pleas of victims of violence and oppression. The state facilitates agencies and other regulatory bodies, like police and the judiciary, in a way that cannot be achieved in the state of nature. This dichotomy of political state and state of nature is central to the Samaritan duty claim, so to proceed we must first closely examine this split.

Wellman argues that only the state can resolve the coordination problem characteristic of the state of nature. To support this, he raises two common anarchist positions against the state and exposes their failings. First, Wellman moves against the anarchist claim that the perils of the state of nature could simply be overcome through the development of small, close-knit communities. The close-knit community argument posits that sufficiently close-knit communities could not only provide the resources to maintain stable order but also that the intense feelings of kinship necessary to this setup would deter disruption and encourage the protection of individuals' rights (Wellman 12). This argument has merit, in theory. Sufficiently close communities could develop the kind of infrastructure to function autonomously and stably in the absence of a state. In fact, many nascent states may take on the form of a close-knit community. Wellman's contention, however, and one that I share, is that in the contemporary world it is

implausible to believe that enough people live in sufficiently close-knit communities and have the means to procure the necessary resources to survive if the state were to collapse (Wellman 13). A number of communities could survive, but innumerable more would suffer immensely were the state to go out of existence. Not enough people have the kind of diversified skillset required to live without the state. If the state collapsed and a group of dentists were one of the groups left on their own, that group would not survive. In the contemporary world, this objection merely fails in practicality.

Secondly, Wellman considers the objection that the benefits of the state could be procured instead through privately contracted companies. Institutionalized coordination remains essential, but this view denies that the state is the only means of procuring this benefit (Wellman 13). Again, there is initial merit in this argument. Private companies could become highly specialized and thus highly effective at protecting one's rights but we nonetheless run into the same problem that we began with: coordination. The private company argument simply elevates the basic problem of individual's taking on dispute resolution responsibilities for themselves to the level of private companies (Wellman 14). Instead of John enacting civilian justice on Jack, this anarchist position essentially has John's private company enact civilian justice on Jack's private company. The same problems of impartiality persist. Without an impartial third party to defer to, without a centralized authority, this scenario devolves into private companies fighting against each other on behalf of their clients.

Though Wellman effectively refutes these two anarchist objections, it still does not seem entirely clear why only the state can solve the coordination problem. Consider a small nomadic tribe of a couple hundred people. They forage and hunt and as such are not a wholly self-sustaining system. Further, rather than utilize a centralized authority they rely on strong social

pressures to deter violence and encourage collaborative work. Essentially, they are one of the close-knit communities from the first anarchist objection. While they do not conform to the conditions of “state” previously described – and indeed intuition may deny this setup the name of state – it would be incorrect to deny that this system could achieve coordination in the way that Wellman finds only possible in the state.

To illustrate how coordination can occur here without the state, we can look to the shaming tactics employed by the Eskimo. The Eskimo utilized shaming tactics to promote communal sharing because it was the most effective method of keeping everyone alive in their harsh living conditions. If an individual began to hoard, it would put the entire group at risk so mechanisms like ridicule would be utilized to deter such behavior (Flannery & Marcus 24). Further, let us examine the !Kung people. The !Kung, a hunter-gatherer society, practice arrow sharing among its hunters to prevent a meritocracy from forming (Flannery & Marcus 33). The hunters exchange their arrows with each other so that none will have any arrow that they made. When someone then kills an animal, the glory goes to not just the hunter who made the kill but also the hunter who made the arrow, consequently inhibiting any single hunter from holding dominance over the others. In this way, a sense of egalitarianism develops and so acts as an internal pressure against violent disputes. Our theoretical nomadic tribe could operate under these same systems. The coordination problem here could be solved through strategic use of strong social pressures.

But what does this make of Wellman’s response to the close-knit community anarchist objection? Wellman’s response still holds, I would argue, because his contention is that in the contemporary world it would not be plausible for *all* states to dissolve and have close-knit communities take their place. This is a reason why we currently have an obligation to maintain

the current state. Nonetheless, we cannot ignore the fact that the state is not the sole vessel for coordination. This does not, however, defeat Samaritan duty. Instead, it indicates a weakness in Wellman's account of the vital benefits of the state. Coordination is undeniably a critical component of the justification of Samaritan duty, but coordination cannot be the sole justifying component.

5. Beyond Coordination

Accepting both that coordination alone is insufficient and that we have a Samaritan duty to maintain the state requires that we add to the account of the vital benefits of the state. This section will rely on the concept of social institutions to not only articulate how state's establish stability, but also how state's develop a quality of life unattainable in the non-state. I will then conclude that Samaritan duty holds in the state due to the advanced degree of stability and quality of life afforded by the state facilitating the development of complex social institutions.

Let us begin with a consideration of what social institutions are. Social institutions are "complex social forms that reproduce themselves... 'a complex of positions, roles, norms, and values lodged in particular types of social structures and organizing relatively stable patterns of human activity'" (Miller). These are those structures such as the educational system, the legal system, the government, etc. Social institutions, as aggregates of roles and norms, act as a certain social infrastructure through which these roles and norms become codified. Consider the educational system, for instance. Education as a social institution allows for the development of infrastructure like schools and districts that also contain the sharply defined roles that function within the infrastructure like teachers and students and superintendents. Without the developed institution, the roles of teacher and student can still exist but they will lack the strength of

recognition and definition afforded by the constant social reproduction resultant of the institution.

The importance, then, of social institutions is in their development of stable infrastructure. This is the main split from the non-state, that instead of having to rely on general social pressures or other informal means, the state can utilize the strong functions developed through complex social institutions. As coordination has been a prevalent theme throughout this chapter, let us consider the difference between coordination at the state and non-state level through the lens of social institutions. In coordinating members and resolving disputes, the non-state essentially has two options: utilize direct coercion or utilize strong social pressures. These pressures can manifest as the arrow sharing in the !Kung or the shaming tactics with the Eskimo or a myriad of other examples. These pressures, however, are informal. The state also has the options of direct coercion and social pressure, but the social pressures in a state differ vastly from the non-state in their manifestation. The social pressures become expressed through social institutions – the legal system, in this case. Different from shaming or arrow sharing, a codified legal system has a much higher degree of formality. The legal system, as a social institution, allows for the development of such infrastructure as courts, strict processes, predefined adjudicators, etc. This is robust in a way that informal measures simply cannot be. Additionally, a stable institution like the legal system can be assessed and strengthened; it can be modified when necessary. Informal social pressures lack this reflective capacity. They are malleable, certainly, but there again is a distinct qualitative difference between the modifications of informal pressures and formal institutions.

Regarding Wellman's emphasis on the role of coordination in fostering stability, we can perhaps use the concept of social institutions to articulate how stability is established. That the

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state can more effectively establish stability than the non-state largely results from the capacity of social institutions to develop stable infrastructure such as schools, hospitals, and courts. Recalling that our understanding of coordination extended to the state's ability to create and facilitate structures in addition to normalizing certain behaviors like traffic patterns, social institutions provide a mechanism through which many structures develop. But, again, the object of this section is to demonstrate the additional benefits of social institutions, not just their reinforcement of coordination. We must look not at how the structures come into being, but rather what the structures do. In this regard, we can consider social institutions to generally improve quality of life. The institutional production of hospitals leads to better treatment of illness and injury; the institutional production of economic processes leads to greater resources; the institutional production of centers for learning leads to an educated populace that can more effectively build on other existing structures. While not all social institutions in all states may exhibit these types of outcomes, the underlying value here is that social institutions allow for the production and reproduction of beneficial structures. Social institutions improve the well-being of the state.

We come now to the same issue as before: if we accept that social institutions create a qualitatively distinct set of benefits from that available in a non-state setup, is it the case that the state is the only system conducive to social institutions? Yes. While we have seen that the coordination solution was not unique to the state, the development of complex social institutions requires a certain precondition that only the state can offer. This precondition is specialization. Members in a non-state must rely on foraging or hunting and gathering and therefore cannot devote substantial time to the acquisition of other skills. Without the means to produce a stable source of sustenance, members must constantly involve themselves with acquiring food and

other resources. Consequently, they lack the time to specialize in other fields. This is not to say that the sole activity of all members of nomadic tribes is finding food, but rather that these systems are extremely limited in their capacity to excel in functions beyond those associated with the sustenance of the system. In a state, however, things like agriculture or trade and storage create a surplus. This surplus then allows for some members to focus on tasks not related to sustenance without fearing that they will not eat. The state creates conditions such that some members are able to not participate in the acquisition of resources and their lives will not be imperiled. This ability to engage in non-essential functions then allows for more complex roles and interactions to develop within the system, ultimately leading to the aggregation of these roles and norms into social institutions. This is not to say that all states necessarily develop strong social institutions or permit a high level of specialization. In fact, it could be the case that the most highly developed non-state has a greater degree of stability than the most resource-poor state. Instead, the key factor here is that while conditions in a state may not always be conducive to high specialization and complex social institutions, non-states can never foster the degree of specialization possible in a state.

Now that we have evaluated the Samaritan duty claim, let us conclude with a summary of our analysis. Wellman's conception of Samaritan duty held that we are obligated to maintain the state primarily because it protects us from the state of nature by providing the essential benefit of coordination. This obligation only holds, however, when the cost of maintaining the state is not unreasonably burdensome. We then built on this claim to argue that the Samaritan duty to maintain the state hinges not just on the capacity of the state to provide stability through basic coordination, but also on the capacity to develop strong social institutions that provide a degree of stability and quality of life unattainable in the non-state. Institutions lead to the development

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of robust infrastructures such as courts or schools or research centers or hospitals and this type of development cannot be achieved without the specialization possible in the state. The state does not eliminate all sources of conflict nor does it solve every problem associated with social units, but it severely mitigates these issues. It is also worthy to note that Samaritan duty holds in all states at all points of development. Even if the state has not developed complex social institutions, for instance, it is able to facilitate their development at a later point. Finally, this argument does not necessarily deny the presence of a Samaritan duty holding in non-states; rather, the preceding argument is built to describe the particular content of the Samaritan duty that holds in a state. Ultimately, the non-state cannot approach the challenges of society as effectively as the state, and it is this divisive gap that produces the Samaritan duty to maintain the state.

Chapter III:
Legitimate Rule and the
Obligation to Obey the Law

Recall:

1. If the cost is not unreasonably burdensome, then we have a moral obligation to maintain the state
 2. If we have an obligation to maintain the state, then we have an obligation to obey the law
 3. **If law is a manifestation of legitimate rule, then obeying the law is not unreasonably burdensome**
-
- C. Therefore, if law is a manifestation of legitimate rule, then we have an obligation to obey the law

Now that we have established why Samaritan duty produces a moral obligation to maintain the state, we can move to develop the argument that the obligation to obey the law only holds so long as law functions as a manifestation of legitimate rule. This chapter will explicate this claim by first covering legitimate rule and then detailing the Argument from Legitimacy. Sections 1 and 2 will detail the definition of legitimate rule – the legitimate exercise of authority by a state – by (1) developing a conception of authority, (2) creating a set of qualifications for legitimacy, and then (3) linking legitimacy to the centralized authority of the state. Sections 3-5 will then proceed through the Argument from Legitimacy by (1) explicating our broad understanding of law through structural equivalents, (2) linking legitimate rule to Samaritan duty, and (3) detailing the applications of this obligation.

1. Legitimate Rule – Authority

Let us begin our development of what defines authority with Robert Paul Wolff's *In Defense of Anarchism*. Wolff identifies authority as “the right to command [and] be obeyed” (Wolff 4). This definition imbues authority with an inherent binding power, that people follow authority not only because it is in their interest or some other extraneous factor; authority is

obeyed because the one giving the command has a right to be obeyed. But this does not illuminate from where authority derives or why it is binding. To address these questions, we can turn to Leslie Green's *The Authority of the State*. Green's position posits three distinct facets of authority that form a comprehensive definition:

Someone claims authority when he makes requirements of another which he intends to be taken as binding, content-independent reasons for action; his authority is recognized when another so treats the requirements; and, in the standard case, authority exists when its claims are generally recognized (Green 60).

Green addresses the binding nature of authority differently than Wolff. For Green, the binding force is posited in the claim of authority but only made real upon recognition by those being commanded. More specifically, the authority figure only retains a binding power when his commands are generally treated as authoritative.

Green's definition is superior to Wolff's because it avoids many of the problematic implications of understanding authority as fundamentally involving a "right" to be obeyed. Primarily, describing the binding nature of authority as flowing from a right seems to ascribe a certain permanence to authority. The incorporation of recognition overcomes this by allowing for subjects to disengage from and, when necessary, dismantle authority. Green's conditions reduce or eliminate the types of consequences entailed by Wolff. Green provides a more tenable, or at least comprehensive, view of authority than those prior.

Let us further break down Green's conditions: essentially, they require that one has authority only when one issues commands that are (1) intended to be recognized as binding, (2) intended to be recognized on a content-independent basis, and then (3) generally recognized as binding and on a content-independent basis. But it is not yet clear what constitutes "generally," "binding," and "content-independent."

I must preface these clarifications first with a discussion of context-dependency. One reason that Wolff's permanence consequence is problematic is that it makes authority too broadly applicable, and Green's conditions do not adequately defend against this. Wolff's "right" to be obeyed and Green's recognition conditions fail to fully limit authority to particular contexts and so allow authority to extend over all contexts. No individual or entity is or should be considered an authority in every possible context, however, so we must modify our conditions to include context-dependency. Consider: "Trust me, I'm a doctor" is a standard comedic line given to indicate – often falsely – that the speaker's credentials qualify his authority on a certain subject. When this line is used for comedic purposes, the humor is based on the incorrect application of the "doctor" credentials to some non-medical situation. The humor plays on the commonsense notion that authority is context-dependent. Based purely on credentials, we would not recognize a doctor's authority on architecture; we would not recognize a grade-school teacher's authority on bomb-diffusion; we would not recognize a lawyer's authority on what wild berries can be safely consumed. Authority can only be applied in a specific context.⁶

This now brings us back to our terminological clarifications of generality, binding, and content-independence. An appeal to example will perhaps be most effective. First, consider the case of a mugger holding someone at gunpoint. Here, the victim complies with the mugger not because the mugger has authority but instead because he imposes a coercive condition through the gun. The decision to comply is predicated on the threat of violence. Further, if the victim could get away without fear of harm, he would. This is a case where a figure (the mugger) has no authority. In contrast, take the relationship between a doctor and a patient. When a doctor

⁶ Context-dependency is meant here to refer to thematic context, not just physical context. A doctor's authority is not constrained to the physical space of a hospital, for instance. Even outside of the hospital, the doctor has authority over medical matters.

prescribes a certain medication to a patient, he is not imposing any coercive conditions. Nonetheless, when the patient goes home and is away from the doctor, he will still take the medication. Further, his decision is predicated on the directive of the doctor as an authority figure. Distinct from the mugger case, the doctor can be said to have authority.

Let us now apply these examples to our terms. Considering when one can be said to have binding authority, take the contrast between the actions of the patient while not in the presence of the doctor and the victim were the mugger not to have any coercive means. The patient still complies in the doctor's absence, but the victim would surely not comply with the mugger if he could get away with no harm. This is a way that we can conceptualize binding authority, that the authority is not predicated purely on physical presence or force. Even if the subject of a command could get away, he might not. Regarding content-independence, consider the rationale behind the patient's decision to act and the victim's. For the victim, the decision to act is predicated on the threat of violence. The mugger has no inherent power over the victim; he simply has a lethal weapon. With the patient, however, the decision to act is predicated on the authority of the doctor as a medical professional. He complies because the doctor told him to. In this way we can conceptualize the split between content-dependence and -independence: a directive is taken as content-dependent reason for action when the reason is based on what the directive actually is; a directive is taken as content-independent reason for action when the reason is based on from whom the directive is issued. Finally, we can understand one to generally recognize an authority when one generally recognizes the set of an authority's commands. Given these clarifications, we can then understand one to have authority when one's commands are generally recognized in the binding and content-independent manners previously defined.

Green provides a compelling model of authority, but there is still a lingering question implicit in this conception – how does an authority gain recognition? As already discussed, coercion cannot suffice in eliciting recognition, so we must consider alternative routes. Considered one of the fathers of sociology, Max Weber in his *The Pure Types of Legitimate Authority* purported three distinct sources of authority: rational, traditional, and charismatic. Rational authority refers to legal authority, or that authority based in predefined rules, procedures, and structures; traditional authority refers to authority based in established beliefs and the cultural status afforded to certain positions or roles; charismatic authority refers to authority based in the exceptional charisma of an individual (Weber 46). I find it effective to combine Weber and Green by using Weber's three ideal types as sources of recognition in Green's paradigm. This perhaps helps to explain why children recognize parents as an authority. As the child becomes socialized, it learns the attributes of the roles of child and parent and begins to understand the super-/subordination interaction between the two. The traditional authority associated with the parent causes the child to recognize the parent's authority. Additionally, the parent holds legal authority over the child, further reinforcing the recognition of the parent's authority. Traditional authority can also be seen as the impetus behind recognizing the authority of most kinds of professionals. A patient likely does not have a thorough knowledge of a doctor's schooling and training and experience, but the patient does generally understand what the status of "doctor" entails. The legitimacy of the status as it is understood in the culture elicits the recognition of the doctor's authority. I do not intend Weber's three types to be taken as the only sources of recognition, but rather as a possible set of sources. One could argue, for example, that the authority of a professional gained through credibility is

actually distinct from traditional authority. Let us use the discussion of Weber as a further elaboration and reinforcement of the paradigm asserted by Green.

It is worthy to briefly address one final point regarding Weber's types and Green's predication on recognition: how should we evaluate cult behavior? Consider the incident of the Branch Davidians in Waco, Texas in 1993 wherein over 70 people died (Wessinger 26). There was a charismatic leader, David Koresh, that gained the love and respect of many followers who in turn recognized his authority, presumably in accordance with Green's model. People were willing to die for their religious movement, for their leader, because of their extreme conviction in their actions (Wessinger 32). Waco is an example of authority gone awry and leading to extremely negative outcomes. If our model permits this kind of authority to exist, does this not severely undermine the model's validity? I would argue no. Though it is a reasonable reaction to want to modify the model to protect against these kinds of outcomes, the consequences of doing so are too great. To deny Waco as an instance of authority is to deny the ability of charismatic leadership to elicit authority, but charismatic leadership is at the heart of nearly every new religious movement or new political movement or any other social organization. Examples such as Waco, while tragic, should not be seen as problematic for our model of authority, but rather as unfortunate byproducts.

Given our thorough assessment of the constituent elements of authority, let us now move to develop an idea of what constitutes legitimacy.

2. Legitimate Rule – Legitimacy and State Authority

For Green, the move from claimed authority to legitimate authority is simple. As he states, "to recognize a relation as one of authority would be to impute to it legitimacy" (Green

60). The mere fact of recognizing authority legitimizes it under this view. But this does not seem to differentiate much from the previous discussion of Green's three principles. Nothing substantive is added to make the authority legitimate. This is problematic primarily because it does not allow us to distinguish between legitimate and illegitimate authority. If, based on Green's three principles, authority is held when an individual or entity is generally recognized as an authority and, based on this definition, authority becomes legitimate when it is recognized, then it would follow that all authority is legitimate. For Green, it seems to be the case that illegitimate authority would not even be authority. Perhaps, however, this is a useful conception. If all authority is legitimate, then what would commonly be characterized as illegitimate authority could instead be seen more fundamentally as a form of coercion or some other attempted form of subordination.

But this is too easy an escape. There are intensely problematic scenarios that cannot be accurately assessed if dismissed as an instance of coercion or other subordination. To consider a culturally relevant example, take the case of molestation in the Catholic church. Priests are considered authority figures, they are divine conduits between the parish and God. In many cases where the molestation occurred, it was not simply an instance of priests forcing themselves on children but rather a gross abuse of the authority of the priestly role (Frawley-O'Dea 131, 134). To take a more disturbing example, cases where parents or older relatives sexually abuse their children or nieces or nephews are not always just instances of direct physical coercion. Similar to the priests, gross abuse of authority can create a scenario where the child thinks that they are playing or engaging in some other benign activity instead of being sexually abused. Disguising the abuse inhibits the child from understanding the horror experienced (Chan et al. 166). Clearly, these are not cases of legitimacy, but to deny that these types of abuse are exercises of authority

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inhibits us from understanding what really is taking place and how best to address the root issues. If we are to account for abuse of authority, for illegitimate exercises of authority, we must depart from Green's account of legitimacy.

Alternatively, Joseph Raz in *Authority and Justification* makes a useful distinction between justified and unjustified authority that will help us construct conditions for legitimacy.

For Raz, justification must accord with his Normal Justification Thesis:

...the normal and primary way to establish that a person should be acknowledged to have authority over another person involves showing that the alleged subject is likely better to comply with the reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly (Raz 129).

Raz later simplifies this by positing that authority is justified in cases where a directive accords with the preexisting reasons one has to judge the merits of a case and so the directive takes the place of those preexisting reasons (Raz 135). The replacement is important because it allows for coordination to occur. The *Stanford Encyclopedia of Philosophy* article, "Authority," helps to establish how the Normal Justification Thesis leads to coordination. Essentially, if authority accords with the NJT then it will issue directives that people already have reason to comply with. Consider the common interest in self-preservation – this interest could be interpreted to allow that there is reason and interest to defend one's country, so a justified authoritative directive would help the people comply with their reasons for defense by setting up an efficient and fair system equipped for defense: the military (Christiano).

Further, Raz's conception reveals an important aspect of the relationship between authority and legitimacy. I would argue that rather than delineating between legitimate and illegitimate authority, it is more accurate to first characterize the exercise of authority as

legitimate or illegitimate. Green's conditions constitute authority, and this framework allows when one can be said to have authority. Whereas Green's conditions center around subjects recognizing one's authority, Raz's conditions for legitimacy predicate on how that authority is used. Though Raz phrases the Normal Justification Thesis in terms of one "having" authority, the conditions of the NJT center on the exercise of authority. As such, our conception of authority and legitimacy moving forward will consider legitimacy to only apply to the exercise of authority.

For an exercise of authority to be legitimate, I argue that accordance with the NJT is a vital component. For an exercise of authority to accord with the NJT, it must accord with the subject's interests in such a way that the subject is more likely to comply with his reasons for action than if no command was made. If a command does not fully accord with the subject's interests, it may still satisfy the conditions of the NJT if the subject is still more likely to comply with his reasons for action.⁷ Violations of the NJT, then, are those exercises that, whether or not they accord with a subject's interests, cause the subject to be less likely to comply with his reasons for action. In application, consider the doctor issuing a command to a patient to take a certain prescription and follow a certain dietary regimen in order to overcome a sickness. The doctor has authority, and his command in this instance accords with the patient's interest in getting healthy. For this exercise of authority to fully meet the conditions of the NJT, it must also be the case that the doctor's command makes the patient more likely to comply with the interest in getting healthy. In contrast, if the patient was of such a temperament that he would react

⁷ Note the use of "fully" in this qualification. This is meant to refer to the fact that a command may not accord with all of a subject's interests, but for it to meet the NJT it must at least accord with the directly relevant interest. If, for example, a sick patient's main interest is getting healthy but he is afraid of needles and requires an IV, the doctor's command to use the IV would still accord with the NJT. Though the command contravened the interest in not having an IV, the command helped the patient better comply with the interest in getting healthy.

negatively to the doctor's command and consequently refuse to act in the interest of getting healthy, this would violate the NJT. Further, the sexual abuse cases demonstrate exercises of authority not in accordance with the NJT. Though the priests and parents have authority, it is surely reasonable to claim that being sexually abused is not within the set of interests of the children being abused. This exceedingly harms the children both in the moment and, considering the psychological damage typically resultant of such experiences, in the future (Widom & Morris 35). By no means would this exercise of authority accord with the Normal Justification Thesis.

To fully capture the distinction between legitimate and illegitimate exercises of authority, however, we cannot simply assess whether the NJT is violated. Instead, we must assess the manner in which the NJT is violated. Specifically, we must consider the degree to which violating the NJT burdens the individual. The abuse cases serve as overt examples of how contravening the Normal Justification Thesis can lead to unreasonable burden, but a consideration of less obvious instances will reinforce the need for modifying our legitimacy conditions. Consider again the example of a parent commanding a child to do chores. We have already established that the parent has authority, but how are we to evaluate the legitimacy of the authority? More specifically, how are we to reconcile the commands of the parent that contravene the interests of the child and so violate the NJT? It is entirely probable that it is against a child's interests to clean his room or pick up his toys or perform some other chore. Strictly speaking, this would violate the NJT and if this was our only criteria for legitimacy, such commands would be illegitimate exercises of authority. I find this problematic. One response would be that even though the child does not recognize an interest in doing chores, it actually is in his interest because of the development of a work ethic or some other beneficial result. But

applying this line of reasoning to the level of the state leaves the state liable to act on purely paternalistic motives, a consequence that, while sometimes acceptable, I would like to minimize.

I would instead argue that this is still a legitimate exercise of authority because violating the Normal Justification Thesis does not unreasonably burden the child in this scenario.

Assessing the burden associated with violating the NJT allows our conception of legitimacy to account for the fact that some exercises of authority that should be obeyed will still impart a degree of burden. This helps to explain how the parent may still legitimately exercise authority even when some commands contravene the direct interests of the child. Further, laws that set speed limits, for instance, may technically burden someone who is running late to a meeting. Local ordinances prohibiting skateboarding on sidewalks may burden skateboarders by forcing them to travel to a skate park. Conservation laws may burden hunters who wish to hunt certain protected species. Nonetheless, while these cases may violate the NJT by making certain groups less likely to comply with their reasons for action, they do not impose unreasonable burdens. Therefore, these are acceptable cases.

Though the appeals to the NJT and burden standards create an effective account of legitimacy, there is one final caveat that we must address. Sometimes, authority necessarily imposes not just a minor degree of burden, but severe burden. If our account of legitimacy is to effectively evaluate state authority, it must be able to handle cases where the state necessarily imposes unreasonable burden. This is most prominently exhibited in cases of punishment and prisons. In the United States, when a crime is committed, the state is responsible for administering any punishment if deemed necessary. Barring cases of wrongful conviction, we acknowledge this as an acceptable exercise of authority. I argue that in certain cases – punishment being one – it is not just acceptable for an exercise of state authority to impose

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unreasonable burden, but it is a legitimate exercise of authority. To understand how this can be the case, we can perhaps employ something akin to a compelling state interest standard. That is, if an exercise of state authority imposes unreasonable burden, it may still be legitimate provided that the exercise is critical to the state maintaining its provision of otherwise unattainable vital benefits. In application to punishment for crimes, the state may legitimately enact punishment because addressing crimes is critical to maintaining the stability of the state. If there was no enforcement of law, if criminals faced no repercussions, then the state would lose the essential coordinating power of law. This is not to say that all prison sentences are in accordance with legitimacy, for certainly there may be cases of the punishment not fitting the crime, but this at least allows for the state to legitimately impose unreasonable burden in some necessary cases.⁸

Given these modifications, let us now conclude that legitimate exercises of authority are those that (1) accord or mostly accord with the Normal Justification Thesis and (2) do not impose unreasonable burden. Further, if an exercise of state authority violates (1) or (2), it may still be legitimate provided that the exercise is critical to maintaining the vital benefits of the state. Understanding what constitutes authority and what qualifies it as legitimate now allows us to discuss legitimate rule.

Legitimate rule can be very basically understood as the legitimate exercise of authority by a state. Conceptually, it meets the same standards of authority and legitimacy discussed throughout this chapter, but it differs terminologically in order to denote the special kind of authority exercised by the state. Recall that centralized authority was one of the four fundamental characteristics of the state. It is this centralized authority to which legitimacy is attached. Where

⁸ This compelling state interest standard is dangerous if unchecked. It is not my intention to allow the state to impose whatever law it pleases and claim state interest. In Sections 4 and 5 we will develop an argument for an obligation to challenge certain laws, and this argument will help set limits on the state's use of the compelling interest standard.

this all becomes relevant to the argument for the obligation to obey the law is that law is a manifestation of centralized authority.⁹ Given that the concept of legitimate rule allows us to evaluate the authority of a state, we can therefore use legitimate rule as a tool to evaluate when the obligation to obey the law holds. I argue that if law, understood as a manifestation of centralized authority, is also a manifestation of legitimate rule, understood as the legitimate exercise of state authority, then there is an obligation to obey the law.¹⁰

In closing this section, let us briefly recap the preceding arguments. The purpose of the preceding sections was to define legitimate rule, and this required a thorough examination of what constitutes authority and what qualifies it as legitimate. Authority, it was argued, obtains when, within a given context, one's commands are generally recognized as binding and on a content-independent basis. Legitimacy was then built out of Raz's Normal Justification Thesis, the idea that authority must accord with the preexisting reasons one has for acting and make the subject more likely to comply with those reasons. Provided an authority makes commands in accordance with the NJT and does not unnecessarily burden the expression of their other interests, that authority is exercised legitimately. Legitimate rule, then, is the legitimate exercise of authority by a state. Finally, understanding both that legitimacy controls for burden and that law is a manifestation of the centralized authority of the state, if law is a manifestation of legitimate rule, then obeying the law is not unreasonably burdensome. The next sections will

⁹ Law as a manifestation of centralized authority applies not just to centralized authority creating law, but also to the facilitation of law. Ex. Some systems may consider law to derive from an alternative source to the centralized authority of the state, such as could be argued with English common law, but I would argue that the centralized authority still facilitates – or at least articulates – those laws.

¹⁰ As we are discussing law being a manifestation of centralized authority, it is important to clarify that not all manifestations of centralized authority are law. The state's centralized authority can manifest in multiple ways, not all related to law. Though legitimate rule is a tool to evaluate the authority of the state, this thesis will only employ it in consideration of those manifestations of centralized authority that are law.

apply the legitimate rule concept to argue for the obligation to obey the law, concluding that our obligation only holds when law acts as a manifestation of legitimate rule.

3. Obligation – Structural Equivalents and Law

Recall:

1. If the cost is not unreasonably burdensome, then we have a moral obligation to maintain the state
2. If we have an obligation to maintain the state, then we have an obligation to obey the law
3. If law is a manifestation of legitimate rule, then obeying the law is not unreasonably burdensome

C. Therefore, if law is a manifestation of legitimate rule, then we have an obligation to obey the law

With the definitions of Samaritan duty, state, authority, and legitimate rule thoroughly examined, let us now proceed with the primary argument of this thesis, that the obligation to obey the law only holds when law is a manifestation of legitimate rule. In order to establish this claim, the remainder of this chapter will (1) explicate our broad understanding of law through structural equivalents, (2) build the Argument from Legitimacy by linking legitimate rule and Samaritan duty, and (3) detail the applications of this obligation.

In beginning our argument for the obligation to obey the law, it is now important that we clarify exactly what is meant by “law.” We have made reference to the fact that formal legal institutions are not the only way that law can manifest, but we have yet to explore how or why. In order to illustrate how (1) it can be the case that formal legal institutions are not always necessary in a state, (2) a state can satisfy the needs met by formal legal institutions without employing them, and consequently (3) why we must instead evaluate the authoritative mechanism behind them, let us once again turn to sociology.

Within the sociology of law, analyses of how law forms and functions tend to adhere to either the structural, cultural, or conflict models. Of particular relevance to our discussion is the structuralist concept of structural equivalents. Briefly, this is the idea that societal needs do not necessitate one specific response, but rather can be satisfied through multiple varying structures. After examining the structuralist position and the concept of structural equivalents, I will reinforce the concept through an explanation of the culturalist position. This analysis will then reinforce my argument that formal legal institutions are not necessary in all states.

Structuralism refers to the “analysis of society as a system with systematically structured needs for the preservation of organized activity” (Kidder 59). Essentially, the structuralist approach treats the state as an organic cell. Every part of the cell plays an important role in maintaining cellular health or growth or division etc.; there is no superfluous structure in a cell. In application to the state, consider the various social institutions and the needs that they regard: people need education so schools are built; commerce and trade requires regulation so an economy is formed; people need to stay healthy so healthcare comes into being. As it relates to law, structuralist accounts tend to consider law as a force that maintains and structures social interactions and otherwise protects against destabilizing conflict (Kidder 59, 79).

To understand the structuralist view of law as a coordinator of interactions, we must consider the roles of simplex and multiplex relationships. In general, simplex relations refer to those with only a single dimension of interaction, such as one would have with a cashier or car salesman (Kidder 71). The interactions are limited to simple exchange and carry no extra levels of relation. Simplex relationships are just that – simple. These types of relations typically form in large, complex, industrialized states where interactions are limited and specialized. Multiplex relationships, however, involve two or more dimensions of interaction (Kidder 71). Multiplex

relations typically form in smaller, more intimate systems where many individuals satisfy multiple roles. A man's godfather might also be his business partner as well as his banker, for instance. Distinct from the simplex relationship, multiplex relationships are complex. As they relate to law, multiplex relationships are more conducive to producing avenues for informal dispute resolution. When one dimension of a multiplex relation is threatened, the various other ways in which the two parties interact act as pressures to resolve whatever issue is at hand (Kidder 72).¹¹ Simplex relations, however, offer no supplemental levels of interaction to provide recourse for disputes. This therefore puts the two parties in a position where they must rely on legal action instead of informal measures (Kidder 71).

The simplex/multiplex distinction helps to illuminate how structuralism works in relation to law and how law can effectively structure social interactions. Further, it allows us to conceive of a small state wherein all relations are multiplex and members develop sufficiently robust informal means of dispute resolution. While this provides a theoretical basis for why formalized legal institutions are not always necessary, we can look to Richard Schwartz's study of two Israeli settlements to provide a practical basis. These settlements, the kibbutz and moshav, which we can consider as small nascent states, bore many similarities in size, religion, and several other aspects (Schwartz 471). The structuralist account would assume, based on the multitude of similarities, that the two would then develop similar legal systems because similar needs would have to be addressed. Instead, the kibbutz never developed a formalized legal system while the moshav did. Schwartz determined that the difference in legal development was based in one important distinction between the two settlements: the kibbutz was an economic collective that

¹¹ It is important to clarify that multiplex relations do not necessarily preclude any need for law. Though they are conducive to producing informal means of dispute resolution, it may still be necessary to have a standard set of laws to appeal to when the informal means do not sufficiently resolve an issue.

did not recognize private property while the moshav considered families as the “unit of production and distribution” and so formed semi-private property (Schwartz 474). The difference in property recognition changed the way that the members of each settlement interacted with each other and therefore altered the way that disputes were handled. Schwartz argues that this economic distinction provides at least a partial explanation of why informal dispute resolution processes developed more robustly in the kibbutz while the moshav focused more on formalized law (Schwartz 491).

Schwartz’s study clearly shows a situation where a functioning state did not require legal institutions. This is not to say that the kibbutz did not have needs that could be met through legal recourse, but instead that it was able to satisfy those needs through alternative methods.

Bronislaw Malinowski, a forerunner of the structuralist tradition, came to a similar conclusion in his work *Man’s Culture and Man’s Behavior*. He claims that in all states, there must exist mechanisms to regulate and enforce “law”, but this does not always entail the presence of formal legal institutions; instead, a state may have structural equivalents that serve the same purpose as formalized law (Malinowski 193). In all states, Malinowski claims, “the equivalents of codification, of adjudication, and enforcement are never absent” (Malinowski 193). As a preliminary example, recall the Eskimo shaming tactics discussed in the previous chapter. The Eskimo used public shaming as a deterrent to hoarding because communal sharing was the most effective method of keeping everyone alive in their harsh living conditions. Hoarding would put the whole group at risk. Rigorous social customs prevail in this scenario as structural equivalents to formal legal institutions and effectively establish order. The Eskimo do not require formalized law because their cultural values provide enough positive pressure to meet the same needs as law.

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An explanation of the culturalist position will help to further clarify the effectiveness of strong social pressures. The culturalist approach understands law as a restatement and institutionalization of social customs so as to further reinforce and strengthen them (Kidder 37-38). Consider the following example of Cheyenne customs. In Cheyenne culture, borrowing without notice or permission is an accepted practice with no formal regulation. Often people will only borrow minor items or things that otherwise would not significantly impact the owner in their absence. One day, however, a member borrowed another man's horse and the owner felt that this was an overextension of the borrowing norm. The horse was essential to the man's livelihood and so he asked the chief to settle the dispute. Recognizing that such an act was inconsistent with the spirit of the borrowing custom, the chief decreed that taking a man's horse was no longer allowed (Kidder 37-38). This example demonstrates how strong social customs can act as structural equivalents to formalized legal systems. The borrowing custom is an unwritten rule, an acknowledged practice. The practice ultimately led to conflict, and so required the utilization of another practice – appealing to the chief. The appeal to the chief then allowed for the modification of the borrowing practice to more comprehensively address the needs of the community. While these practices are not part of a formalized legal system or adherent to a strict codified set of rules, they still fulfill the same needs.

Cultural norms and values significantly shape both the formal legal doctrines of a state as well as the enforcement of those doctrines. To further illustrate the relationship between custom and law, we can consider prohibition in the US. The pervasive use of alcohol in American culture led to massive evasion of prohibition policies by the public and also resulted in weakened enforcement by authorities (Kidder 38). Law did not accord with custom and so custom overcame law. This also applies in the more recent example of same-sex marriage. The growing

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social consensus towards accepting gay marriage – over the past decade especially – was not reflected in the legal system until very recently. The legal system was steeped in precedent against same-sex marriage that hindered its ability to “catch-up” with the changing social arena. The main reason that the legal system ever can sync back up with custom is precisely because custom heavily influences law. This is the critical point for our discussion of structural equivalents – if formal legal institutions are the codification and reproduction of standing social norms, then those same social norms in a different society could manifest as an entirely different method of meeting the structural needs that formal legal institutions satisfy.

It is important to note that I am not proposing that a society with a formal legal institution could spontaneously move to a system purely utilizing strong social pressures. It seems entirely plausible that once a society reaches a threshold of complexity, social pressure can no longer suffice in establishing stability. Rather, the previous discussion is meant to show that when considering the broad range of possible social setups in a state, formal legal institutions do not necessarily develop in each scenario.

In building our argument for the obligation to obey the law, the concept of structural equivalents compellingly illustrates why this thesis adopts such a broad understanding of law. Law, as a manifestation of centralized authority, can manifest in a myriad of forms. Regarding legitimate rule, using legitimate rule as a tool to evaluate exercises of state authority allows us to evaluate all exercises of authority that are law, even when law does not look like the familiar Western formal legal institution. In the following section, we will explore the essential role of legitimate rule in building on Samaritan duty to describe the obligation to obey the law.

4. Obligation – Legitimate Rule and Samaritan Duty

The obligation to obey the law is not absolute. Instead, I argue that Samaritan duty produces an obligation to maintain the state when the cost is not unreasonably burdensome, and this entails an obligation to obey the law under certain conditions. Legitimate rule, then, is a tool to evaluate when the cost becomes unreasonably burdensome. Let us examine this claim in detail.

Recall again that Samaritan duty obligates one to maintain a state's centralized authority because Samaritan duty obligates one to maintain the state and centralized authority is a necessary characteristic of the state. Recall also that Wellman included the important caveat that Samaritan duty only holds when maintaining the state is not unreasonably burdensome. This leads us, then, to the conclusion that Samaritan duty entails an obligation to maintain the centralized authority of the state when it is not unreasonably burdensome to do so.

Understanding law as a manifestation of centralized authority, we can then conclude that the obligation to obey the law holds when it is not unreasonably burdensome to do so. While this is compelling on a basic level, my contention is that Samaritan duty alone provides too vague a conception of obligation. Under this model, what constitutes an unreasonably burdensome scenario? Do we only consider the burden to ourselves or the burden of the whole membership of the state? How should we react when the situation has become unreasonably burdensome? In order to address questions such as these, we must rely on legitimate rule.

Legitimate rule provides a stronger model to evaluate the conditions which may override the obligation to maintain the centralized authority of the state. Though it is still important to consider the burden of maintaining the state, legitimate rule also allows us to more accurately identify why certain scenarios are problematic. For instance, many clear cases where the law

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imposes unreasonable costs can be traced to an illegitimate exercise of authority and therefore a failure to manifest as legitimate rule. Slavery in the US was a legally sanctioned system; it was maintained by the state through centralized authority. Slavery flagrantly violates the Normal Justification Thesis and therefore does not accord with the conditions of legitimate rule. As such, the obligation to obey the law would not hold in this case. This is not to say, however, that there are no other good reasons to comply. If disobeying the law leads to intense beatings or death, one may still comply with the law even though there is no obligation to do so. These types of scenarios will be covered more extensively in the applications section.

But not all cases are clear, and this is where legitimate rule becomes a powerful evaluative model. Consider cases where we have a legitimate exercise of authority, we have legitimate rule, but we still have burdensome outcomes. This could be something like a law that for the most part functions in a just and fair manner, but ends up unintentionally imposing severe burdens on one particular group. This is a common occurrence in religious freedom cases. Consider the 1990 case *Employment Division v. Smith*, wherein a peyote restriction in Oregon resulted in two Native Americans being denied unemployment benefits after being fired for using peyote in a religious ritual (Justia Law). I would argue that the peyote restriction was a legitimate exercise of authority even though it imposed unreasonable burden on the members of the Native American Church that ritually used peyote. The restriction reflected the state interest in deterring harmful drug use, much like restrictions for marijuana or other drugs, and, presumably, was not enacted to intentionally burden the Native American Church. Though the restriction imposes unreasonable burden, it meets the compelling interest standard and so is a legitimate exercise of authority. Were we to only use the standard of unreasonable burden, we

would evaluate the *Smith* case as not resulting in an obligation to obey the law. Evaluating with regard to legitimate rule, however, does result in an obligation to obey the law.

Smith raises another interesting facet of our obligation to obey the law: though the case revolved around an instance of legitimate rule, the fact that a law accords with legitimate rule does not mean that it should not be modified. Instead, applying the composite approach of Samaritan duty and legitimate rule to the *Smith* case results in a secondary obligation: the obligation to reform the law. This is the critical element of our obligation to obey the law, that the primary obligation to obey the law can in certain cases produce a secondary obligation for subsequent action.

5. Obligation – Applications

In order to explain the content and consequences of this secondary obligation, we must consider how it stems from Samaritan duty and how we can apply it in the real world. This section will (1) explain how the secondary obligation rises from Samaritan duty and then (2) apply our model of obligation to instances of both illegitimate and legitimate exercises of authority that produce unreasonably burdensome outcomes in order to demonstrate the implications of the secondary obligation.

First, let us examine how our model of obligation entails a secondary obligation to challenge the law. This secondary obligation primarily proceeds from the basic motivations behind Samaritan duty, that we must maintain the state in order to save ourselves and others from the state of nature. It would seem plausible that in order to maintain the state, members would have to actively defend the state from external threats such as war that could inhibit the provision of the vital benefits of the state. But what about internal threats? I argue that when the state's exercise of authority unreasonably burdens its members or otherwise inhibits the

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provision of the vital benefits of the state, there is an obligation to challenge and reform the authority. Additionally, if we have a case of compelling interest that results in unreasonable burden, there may be an obligation to challenge and reform the law if the imposed burden conflicts with other interests. It is not enough to simply ignore illegitimate exercises of authority, for instance, because ignoring the illegitimacy does not necessarily stop the state from its practices. Instead, there must be active challenging of the authority with the intention of reform.

There are two important limitations on this secondary obligation. First, consistent with our obligation to obey the law, the secondary obligation is not absolute but rather conditional on the cost of action not being exceedingly burdensome. It would be untenable to hold that all acts of illegitimacy must be overthrown. The cost of doing so may completely outweigh the benefit. Overthrowing a state may introduce more instability to the society than the illegitimate regime facilitated, for instance. As such, we must allow that this secondary obligation can be overridden. Secondly, this obligation should not be construed as requiring the elimination of burden, for this too would be untenable. Burden is too nebulous and subjective a concept to require people to completely eradicate it. Instead, this is a mitigation principle, that we are aiming to alleviate cases of clear and excessive burden. Given a general framework for this secondary obligation, let us now test it in application.

We will begin with a clear case of excessive burden resulting from the illegitimate exercise of authority – segregation laws in the US. This type of institutionalized racism overtly violates the conditions for legitimate rule and imposes severe burden on a targeted group of people. Segregation was not an unintended byproduct of a generally applicable law, but rather a focused and intentional reducing of a specific set of people to a lower class status. Additionally, not only did these laws impose severe burden, but they did so in a way that flagrantly violated

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the Normal Justification Thesis. This was not a necessary burden that preserved the interests of African Americans; this was an unnecessary assault on those interests. Regarding our models of obligation, the violation of legitimate rule would override the obligation to obey the law and therefore result in the disengagement from these laws. Further, the blatant violation of the conditions for Samaritan duty coupled with the ability to challenge these laws without further destabilizing the state would result in an obligation to actively challenge segregation.

But this is too easy a case to fully illustrate our secondary obligation. Let us return to the more complex case of *Employment Division v. Smith*. Here, we have an instance of legitimate rule that nonetheless had excessively burdensome outcomes. As already noted, our model of obligation would favor the court's ruling against the ritual use of peyote because the restriction was made in accordance with legitimate rule. This, however, is where we must consider the secondary obligation. Beyond simply accepting the court's ruling, there is an obligation to fight for reform in the law to include an exception for religious use. The practitioners in *Smith* were burdened in a way that they could not easily escape. Their use of peyote was not a recreational habit from which they could abstain; it was an essential part of their religious experience. Though there was a compelling interest in restricting drug use, the resulting burden both disproportionately affected members of the Native American Church and conflicted with the interest in securing religious freedom. Further, this type of legal reform would not destabilize the state and could be accomplished without significantly burdening other parties. Consequently, the secondary obligation would hold in this scenario. Though the obligation to obey the law may produce initially unfavorable instances, such as having to interrupt religious practice, it importantly allows for and encourages the active challenge of those exercises of authority that produce unreasonably burdensome outcomes.

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We have now addressed cases of both legitimate and illegitimate exercises of authority producing unreasonably burdensome outcomes, but there is one final case that we must consider in applying our model of obligation. How are we to evaluate illegitimate exercises of authority that nonetheless produce relatively stable states? North Korea, for instance, presents a case of despotic authority producing terrible outcomes for the people. The government completely controls the flow of information, imposes harsh laws, and conditions are such that a warning of famine was recently issued (Jenkins). Despite these conditions, I am not entirely convinced that the North Korean people would be entirely better off were the state to collapse. There is a sense in which North Korea maintains a degree of stability.

Regarding the obligation to obey the law, such egregious violations of legitimate rule would ordinarily result in the obligation to actively disobey but in this case, our evaluation is more complex. What would it mean for a North Korean to disobey the law? What are the consequences? In January, a US student travelling in North Korea was detained after stealing a banner and nearly 2 months passed before any proof of life was given (Ripley). Further, he currently faces a sentence of 15 years of hard labor (Keneally). If this is the punishment for the relatively innocuous crime of stealing a banner, one can only imagine the repercussions of more serious transgressions. If our model of obligation were to require North Koreans to disobey the law, we would be sentencing them to jail and perhaps even death. But perhaps the obligation is not to just disobey the laws, but to topple the government in order to institute an entirely new set of laws. Perhaps our model of obligation entails revolution. This is a dangerous assertion, but given the right conditions, it is not implausible. One of the many difficulties of revolution is that there needs to be a plan for what happens afterwards. If the people topple the government but have no plan for how to replace the government, then it is possible, if not likely, that they will

end up worse than had they maintained the state. This is the critical element for our evaluation: if the state post-revolution is a significant improvement, then there is room to argue for the obligation to revolt. I hesitate to claim with certainty that this model of obligation entails revolution, but I concede that it may hold in some extreme cases.

This is perhaps the limit of our argument. While it effectively handles situations where disobeying and reforming the law does not necessarily produce worse outcomes, it is difficult to apply when this is not the case. The US civil rights movement in the 1960s saw people badly beaten, jailed, and indeed killed, but the movement did not threaten to rend the state. The movement was able to operate in a largely legitimate system, so the fight to reform only served to make the system better. In a situation like North Korea, however, there is seemingly very little room to reform the system. People may be badly beaten, jailed, and indeed killed, but it all may mean nothing if the government stays in power. As such, applying our model becomes substantially more complex. Only when maintaining the state becomes more burdensome than living in anarchy can we say with any certainty that there is an obligation for revolution. Otherwise, the question remains open.

In conclusion, let us now summarize our findings. Our argument began with the development of the Samaritan duty to maintain the state. This argued that because the state provides otherwise unattainable vital benefits and does so without imposing unreasonable burden, there is a moral obligation to maintain the state. We also found that due to law being a function of the centralized authority of the state, the obligation to maintain the state entailed an obligation to obey the law. We then modified the Samaritan duty claim to assert that there is a moral obligation to maintain the state because the state allows for the development of complex social institutions and therefore affords a significant degree of stability and quality of life not

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attainable in the non-state. From here, we moved to address the conditions under which obeying the law was unreasonably burdensome. This was accomplished through developing the concept of legitimate rule, which we characterized as the legitimate exercise of authority by a state. We then determined that if law is not a manifestation of legitimate rule, then obeying the law becomes unreasonably burdensome. Finally, we applied our argument for the obligation to obey the law to several real-world examples. This led us to the critical result that Samaritan duty in certain cases entails a secondary obligation to challenge laws resultant of both illegitimate and legitimate exercises of authority.

Establishing these principles then allowed for the following important inferences: if obeying the law is part of maintaining the state, then when law becomes unreasonably burdensome due to a violation of legitimate rule, maintaining the state becomes unreasonably burdensome. This then nullifies the Samaritan duty to maintain the state and so nullifies the obligation to obey the law. Therefore, the obligation to obey the law is predicated on law acting as a manifestation of legitimate rule.

In closing this thesis, let us once more recall:

1. If the cost is not unreasonably burdensome, then we have a moral obligation to maintain the state
 2. If we have an obligation to maintain the state, then we have an obligation to obey the law
 3. If law is a manifestation of legitimate rule, then obeying the law is not unreasonably burdensome
-
- C. Therefore, if law is a manifestation of legitimate rule, then we have an obligation to obey the law

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