

Following the law because it's the law: obedience, bootstrapping, and practical reason

Paul Schofield*

Department of Philosophy, Bates College, Lewiston, ME, USA

(Received 22 December 2016; final version received 27 November 2017)

Voluntarists in the early modern period speak of an agent's following the law *because she was ordered to do so* or *because it's the law*. Contemporary philosophers tend either to ignore or to dismiss the possibility of justified obedience of this sort – that is, they ignore or dismiss the possibility that something's being the law could *in itself* constitute a good reason to act. In this paper, I suggest that this view isn't taken seriously because of certain widespread beliefs about practical reason – in particular, it's due to the belief that it's impossible for reasons to be “bootstrapped” into existence. I argue, though, that a plausible account of practical reasoning should allow that reasons *can* be bootstrapped into existence, and so there's no reason to be suspicious about the possibility of a person's being justified in following the law because it's the law. I end by suggesting that this conclusion opens up important new avenues of inquiry for philosophers working on topics related to legal obedience.

Keywords: law; obedience; practical reason; bootstrapping

1. Introduction

Voluntarists in the early modern period often speak of an agent's following the law *because she was ordered to do so* or *because it's the law* – in contrast to following it for some other reason. Hobbes, for instance, tells us that law takes the form of command, which is “where a man says, ‘Do this’ or ‘Do not this,’ without expecting other reason than the will of him who says it” (Hobbes 1991, 166). Pufendorf similarly characterizes a law as “a decree by which a superior obliges a subject to conform his acts to his own prescription” and says that the normative force of the law “by no means flows from the common condition of human nature, but proceeds from the decision of the lawgiver alone” (Pufendorf 2002, 160–161). And more recently, philosophical anarchist Robert Paul Wolff discusses (albeit skeptically) what looks to be a voluntarist conception of legal obedience, which he says consists not just in “doing what someone tells you to do” but rather in “doing what [someone] tells you to do *because he tells you to do it*” (Wolff 1998, 9). The voluntarist thought, then, is this: the fact that the law enjoins an agent to perform an action can *in itself* constitute a reason for her to perform that action.

Contemporary philosophers, even when arguing that we have reason to act according to the law, typically do not claim that the law itself constitutes a reason in the sense specified above. Rather, they employ what might be called a normative buck-passing strategy, which says that following the law can be rational insofar as it enables a person to act on *other*

*Email: pschofie@bates.edu

reasons or to promote *other* values that exist independently of the law's being instated. To give the most prominent example of such a view, Joseph Raz writes:

[T]he normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him ... 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. (1986, 53)

So the lawmaker might possess special expertise, or have the ability to solve coordination problems, or be best positioned to make impartial judgments. And as a result, a subject will have a reason to follow the lawmaker's laws, as doing so makes it likely that she'll do the things that she independently has most reason to do. To give another example of the buck-passing strategy, Ronald Dworkin talks about following law that is enacted democratically as a way of discharging what he calls our "associative obligations" – obligations that we have to others in society grounded in values such as respect, fairness, equality, love, community, and so on (Dworkin 1986, 196–216). Such obligations exist independently of any law being enacted, and the proper reason for following the law is that one fulfills these other obligations by doing so. Relatedly, Scott Hershovitz argues that democratic practices embody a kind of mutual respect, and Thomas Christiano argues that democratic decision-making embodies a kind of fairness. Both think that values embodied in democracy are realized when persons follow the law, and so the values themselves serve to justify legal obedience (Hershovitz 2003; Christiano 2004). These strategies differ from Raz's in their focus on procedure – they emphasize that the way in which a law is generated can give us reason to follow it independently of the quality of its substance. But the strategy is a buck-passing one nonetheless, as the normative buck is passed on to the values that are realized when the law is followed.

Now, there is nothing necessarily wrongheaded about the normative buck-passing strategy. Accounts that make use of it undoubtedly pick out *some* justificatory reasons for following the law. But the buck-passer and the voluntarist focus on different kinds of reasons we can have for being obedient. If I'm a buck-passer, I think a person has reason to follow the law because, as Hobbes puts it, it's good counsel – it directs a person to act in ways that benefit her, or that satisfy her desires, or that promote certain values that she has reason to promote (Hobbes 1991, 176–177). If I'm a voluntarist, I think a person has reason to follow the law whether or not it is good counsel – the fact that a directive is the law constitutes a reason in its own right.

In this paper, I wish to consider whether an account of legal obedience more in line with the voluntarist view might be promising. Most contemporary philosophers dismiss or simply ignore the possibility of such an account, but I will urge that it ought to be considered a live one, informing and influencing philosophical discussions about law-following. My plan is as follows: first, I'll offer a hypothesis as to why so few contemporary philosophers take seriously the voluntarist view. Here, I will highlight a parallel between the voluntarist view and the much-discussed idea from the practical reasoning literature that reasons may be "bootstrapped" into existence. Since most philosophers think it impossible for reasons to be bootstrapped into existence, it's only natural, I contend, for them to be suspicious of the suggestion that lawmakers can generate reasons in the way voluntarists suggest they do (Sections 2–3). Next, I'll argue that it's a mistake to be suspicious of bootstrapping, as a plausible theory of practical reasoning will make a place for bootstrapped reasons (Section 4). This, I'll suggest, opens the door for an account of practical rationality on which following the law simply because it's the law is rationally permissible. And once

this point is fully appreciated, it should significantly impact our approach to philosophical questions about law-following. Or so I will argue (Sections 5–6).

2. Practical reason and bootstrapping

To say that reasons can be bootstrapped into existence, as I'll understand the phrase here, is to say that an agent's practical judgment – that is, her judgment that she has most reason to perform a particular action – *in itself* constitutes a reason for her to perform that action.¹ In this section, I'll explain the appeal of this view before raising what most philosophers nowadays take to be a devastating objection to it. Then I will turn, in Section 3, to issues about law-following.

Rational agents are beings capable of deliberating about and acting for reasons. The process of deliberation, in paradigmatic instances, involves carrying out a decision procedure in the agent's mind. While an agent might not consciously represent each step to herself, she will generally attempt to identify relevant considerations, discern each consideration's normative weight, balance the considerations against each other, and arrive at a judgment about what her weightiest reasons recommend she do. Or, if not this particular decision procedure, a different one will play a similar role in the operation of her agency. The considerations that the agent identifies and then feeds into the procedure are *reasons*, in the sense we mean when we talk of the "balance of reasons." So if an agent is deciding whether to travel to Brazil or to New Zealand instead, the reasons of the sort I'm alluding to might include cost of the flights, whether she's visited either location previously, whether she has friends or family in either area, and so forth.

To say that an agent can bootstrap a reason into existence is to say that a judgment formed as a result of such a procedure itself constitutes a reason for action. That is, the fact that an agent judges that she should ϕ *in itself* constitutes a reason for her to ϕ . This is a claim that is central to many philosophical traditions. For instance, those writing in the tradition of St. Thomas follow him in the view that conscience "binds," even when it errs (Aquinas 1920, 1–2.19.5–6). That is, a person is required to act according to her judgment about how best to pursue the good, and thus sins when violating her conscience *even when her conscience is ill-formed*. To give another example, Kantian moral philosophers typically hold that the will, through which an agent directs herself to perform actions, is a source of normativity. Normative pressure, we might say, springs not simply from the considerations that feed into the balance of reasons, but also from the agent's own judgment – a judgment which possesses authority for her. As Christine Korsgaard writes, "[I]f an agent tells himself to do something, there *really* is a sense in which he ought to do it, even if he should have told himself to do something else" (Korsgaard 2009, 28–29). To cite one last example, political philosophers working in the traditions of Rousseau and Kant sometimes claim that individuals have moral reasons to act according to their own judgments. Wolff, for instance, claims that there exists a duty to be autonomous, and that this amounts to a duty to perform the actions that one judges one should – a duty that remains in force even when one's judgment fails to track successfully the reasons that there are (Wolff 1998, 12–18). These philosophers are, each in their own way, united in the belief that the output of a procedure through which an agent judges what she should do is, in itself, normatively binding.

To clarify the view's appeal, consider cases in which an agent judges that she should ϕ despite the fact that the balance of reasons actually recommends that she not ϕ . In such cases, though the agent errs in judging that she should ϕ , it nevertheless seems correct to say that she *also* errs if she fails to ϕ , given the content of her judgment. So imagine that

Achilles is deciding whether to go into battle or to flee instead. Suppose that the strongest reasons favor fleeing, but that Achilles erroneously judges that the balance of reasons favors going into battle. When the moment for action arrives, Achilles nevertheless flees the battlefield without any change in his judgment. Suppose that he isn't compelled by external forces (like a hurricane), or by a medical condition (like somnambulism), but is instead engaged in full-blown action, fleeing because he fixates on the danger. Exhibitions of weakness of will, as witnessed in cases like this, are typically considered paradigmatic examples of irrationality – they are, in themselves, agential errors. But if an agential error has occurred, then there must be some justificatory reason, or some normative requirement, upon which the agent has failed to act. Now, since Achilles acts consistently with what the balance of reasons recommends, we know that his mistake doesn't consist in going against this recommendation. So wherein lies his mistake? The natural answer is that Achilles's error consists in acting against a reason or in violating a normative requirement enjoining him to act according to his best judgment – a reason, or normative requirement, distinct from the balance of reasons that formed the basis for the judgment to begin with.²

Crucial for our purposes: this reason's normative force seems to be generated simply by virtue of the fact that the decision procedure delivers a judgment, and not by virtue of the fact that following the judgment promotes some *other* values or enables Achilles to act on some *other* reasons. This becomes apparent if we imagine that Achilles is, as a general matter, a poor reasoner about issues pertaining to war. If he is, then he probably shouldn't decide for himself what to do, but should defer to someone else. Nevertheless, if Achilles *does* judge that he should go into battle, then regardless of whether he should have rendered a judgment in the first place, he'll be committing an act of irrationality if he flees. The fact that he shouldn't have rendered a judgment in the first place doesn't seem to affect our verdict about whether he exhibits some irrationality by ignoring the judgment insofar as he does make one. The normative requirement to act according to one's best judgment thus appears to apply to an agent simply by virtue of the fact that he reasons, and not by virtue of the fact that he reasons *well*.

Despite its intuitiveness and historical importance, the thesis that reasons can be bootstrapped into existence has come under attack. Niko Kolodny pithily articulates the objection endorsed, these days, by a majority of authors writing on practical rationality:

[S]uppose I believe that I have conclusive reason to $[\phi]$. In some sense, I ought to $[\phi]$; it would be irrational of me not to $[\text{do so}]$. Now suppose that "ought" here means "have a reason." Then we get the bootstrapping result that if I believe that I have conclusive reason to $[\phi]$, then I in fact have reason to $[\phi]$. This is absurd. (2005, 512)³

The idea is something like this: practical judgments are simply supposed to reflect reasons that exist independently of those judgments. The reasons that ground the judgments have normative force. But the judgments themselves, whose role it is simply to reflect the normativity of these reasons, do not supply normative force of their own. It is simply absurd to suggest that a judgment, which is simply supposed to reflect reasons that there are, in itself makes it the case that she has reason to perform an action.

3. Following the law because it's the law and bootstrapping

In this section, I'll relate the above discussion to concerns about the viability of voluntarism. According to the voluntarist, certain individuals or collective bodies possess the status of a legitimate lawmaker, endowing them with the ability enact genuine laws. So not just any individual or group that institutes a rule backed by force successfully enacts

a genuine law. Rather, the view is that some duly constituted governments possess the ability to issue genuine laws, or some legislative procedures have the ability to generate genuine laws, and that when such laws are generated, they count *in themselves* in favor of action. Now, laws are outputs of decision procedures, just as we said an individual's practical judgments are. Considerations are fed into the procedures – considerations about the pros and cons of enacting legislation – the procedures are run, and then a decision is made. Of course, the procedure itself differs greatly in character from the one an individual agent employs in her own mind when making decisions for herself. But the parallel I'm highlighting is simply that individual practical judgments and laws are both outputs of formal procedures.

A buck-passing account of the law's normative grip will seem necessary if we're skeptical that the output of a formal collective decision procedure could in itself count as a reason for action. And such skepticism is, I think, understandable. It seems reasonable to query how the fact that the procedure delivered some output, as opposed to the substantive considerations that were fed into the procedure, could give a person a reason to act. To illustrate, it seems reasonable to ask how the fact that a democratically elected government implemented a tax could give a person a reason to pay. After all, if there are substantive reasons in favor of enacting the tax, then it seems like *those* might be the reasons to pay, and the procedure is just accurately reflecting that fact. But if there are no substantive reasons in favor of enacting the tax, then it's not clear how a formal collective decision procedure itself can create some. In fact, without a willingness to pass the normative buck and appeal to some *other* value that is promoted through obedience, it can seem positively absurd to suggest that the procedure's output constitutes a reason to act. At this point, one might begin to wonder how the voluntarist view could be at all viable. Indeed, one might begin to suspect that even a thinker like Hobbes – who obviously purports to embrace voluntarism – will ultimately be forced to pass the normative buck to the reasons we have to honor a contract or to seek security.⁴

There is, I wish to suggest, a close link between the concerns about voluntarism mooted above and the worries about bootstrapping canvassed in the previous section. Both are worries about the claim that the outcome of a formal decision procedure could in itself constitute a reason. That is, they are worries about the suggestion that a formal decision procedure could generate its own normative force irrespective of whether it reflected correctly the normativity of the substantive considerations fed into it, and independently of any other value that might be promoted through use of the procedure. Someone might even wish to re-appropriate Kolodny's argument in something like the following way:

[S]uppose a democratic body enacts a law enjoining me to $[\phi]$. In some sense, then, I ought to $[\phi]$. Now suppose that "ought" here means "have a reason." Then we get the bootstrapping result that if the democratic body tell me to $[\phi]$, simply because it judges that I ought to ϕ , then I in fact have reason to $[\phi]$. This is absurd.

My hope, then, is to have clarified opposition to voluntarism by linking it to a supposedly discredited theory of practical reason. One thing to underscore here: this objection, if successful, doesn't show merely that the world as currently constituted contains no laws that in themselves count as reasons for action – it shows that it's *not possible* for a government to generate such laws. It suggests that the very idea is absurd. Countering the argument, then, will involve demonstrating that a plausible theory of practical reason could indeed countenance voluntarist obedience. In the remainder of this paper, I hope to supply such a demonstration.

4. In defense of bootstrapping

Most authors writing about bootstrapping attempt to show that an agent doesn't actually bootstrap reasons into existence. They do this, in most cases, by attempting to reinterpret or explain away the requirement that an agent do what she judges herself to have most reason to do.⁵ While I have doubts about the plausibility of these attempts, my purpose here isn't to engage with them. Instead, I will argue in this section that bootstrapping isn't necessarily problematic. I will do so in hopes of eventually showing that the voluntarist conception of legal obedience isn't problematic either – a task that I shall take up in Section 5.

My argumentative strategy, here, will be to suggest that there are two distinct ways of understanding the claim that a reason can be bootstrapped into existence, and that on only one of them is the claim rendered absurd. On the first, an agent's judgment itself constitutes a reason that may then be factored back into the overall balance of reasons – the same balance of reasons that served as the basis for the judgment in the first place. So if the balance of reasons counsels against ϕ -ing, an agent could tip the balance in favor of ϕ -ing simply by judging that she should ϕ . Returning to our travel example, an agent might have weightier reasons to travel to New Zealand than to Brazil. But simply by judging that her weightiest reasons favor the Brazil trip, she could add to the reasons she has for going to Brazil, making it the case that her reasons for traveling to Brazil ultimately outweigh her reasons for traveling to New Zealand. Then, were she to make the trip to Brazil, she'd be acting consistently with her weightiest reasons, committing no error at all in traveling there. Or, more harrowingly, a person might judge herself to have most reason to commit a heinous act of violence against multiple people, and in so doing tip the balance of reasons in favor of committing the act, making it the case that she's in no way mistaken when she ultimately carries out the deed. Insofar as we allow that an agent can bootstrap reasons into existence, and we understand what it means to bootstrap reasons in the way just described, it seems that we are indeed at risk of being led into absurdity – or worse.

Consider, however, a second way of understanding the bootstrapping view. According to it, insofar as an agent judges that she should ϕ , she generates a reason to ϕ , but *not* one that can be subsequently factored back into the balance of reasons. Rather, the agent generates a reason, or generates a kind of normative force, that stands apart from the considerations that initially inform her judgment about what to do. What we have, on a view like this, are two distinct types of reasons, or two distinct types of normative force, that correspond to two independent types of agential errors. On the one hand, an agent might go wrong by performing an action that conflicts with the weightiest reasons within the balance of reasons. On the other hand, she might go wrong – in an entirely separate way – by performing an action that conflicts with her judgment. If all of this is right, and these two types of errors correspond to genuinely independent sorts of normative items, then we can allow that an agent bootstraps into existence reasons for traveling to Brazil without worrying that she adds to the balance of reasons that favors traveling to Brazil over New Zealand. If the weightiest reasons initially favor the trip to the South Pacific, the agent will necessarily commit one sort of an error if she travels to Brazil *even if she judges that she should travel there*. But this is entirely consistent with the claim that she commits a distinct sort of practical error by not traveling to Brazil, insofar as she judges that Brazil is where she ought to go. It's not an error that involves acting against her weightiest reasons. But it's a distinct way that she can go wrong in the exercise of her agential capacities.

But how, one might ask, could a normative item be a reason without thereby being the sort of thing that could be factored back into the balance of reasons? If an agent's judgment constitutes a genuine reason for action, then what's the justification for denying that it could be factored in alongside the other reasons? Isn't this all a bit *ad hoc*? To see why it isn't, consider that an agent's practical judgment remains in force only insofar as she's settled the question for herself about what the balance of reasons favors. So in the travel case, the agent's judgment that she should travel to Brazil generates whatever normative force that it generates only when she's brought the reason-balancing to an end. If she takes her judgment to be a reason, but then tries to weigh that reason against the reasons that formed the basis for the judgment (such as ticket cost, family considerations, and so forth), she will have re-opened the deliberations. But if she re-opens deliberations, then she in essence suspends her judgment about which trip to take. And if the judgment is suspended, then it no longer generates any normative force – it no longer constitutes a reason for action. Thus, anyone who endorses the claim that reasons can be bootstrapped into existence through an agent's judgment should deny that those reasons can be factored back into the balance of reasons, and in turn deny that an agent's judgment could tip the balance of reasons in favor of an action that otherwise would have been ruled out. In other words, a proponent of bootstrapping can understand the view in a way that renders otiose the charge of absurdity.

5. Following the law because it's the law: a defense

In Section 4, I argued for the possibility of reasons of a distinctive kind: ones bootstrapped into existence through a formal decision procedure. This discussion focused on a particular species of such reasons – namely, reasons generated when an agent identifies relevant considerations, discerns the normative weight of each, and balances the considerations against each other. Having noted this, however, we might now sensibly ask whether there exist *other* species of reasons within this wider genus. It is here that an opening for the defender of voluntarist obedience presents itself. Like an individual's judgment, laws are products of formal decision procedures. Democratic theorists, for instance, hold that genuine laws are enacted through public deliberation and voting procedures, wherein each individual is afforded an equal voice. Such procedures differ in obvious ways from the one by which an individual arrives at a practical judgment – they are not, for instance, carried out within the confines of an individual's mind, and they include steps (like voting) that aren't part of an individual's personal deliberations. Nevertheless, one plausible version of voluntarism could maintain that certain governmental decision procedures are among those that are reason-generating. That is, the voluntarist could say that with regard to certain issues – those pertaining specifically to matters falling within the public sphere, perhaps – the output of a particular collective decision procedure carried out by an agent's society constitutes a reason for acting, just as the output of the reason-weighting procedure carried out in her own head would. Now, it might be tempting to assume that whatever reason a person has to abide the outputs of the procedure must derive its normative force from some other value or reason – it might be tempting to assume that normative buck-passing is necessary. After all, don't the many values associated with democracy give us some reason to obey? While I don't wish to deny that they could, my claim here is that if we take seriously the possibility of an analogy between first-person deliberation that produces practical judgments and collective deliberation that produces laws, then it seems possible that the law could count *in itself* as a reason for acting. For as I've argued, in the case of first-person practical judgments we don't need some additional reason to justify acting from our practical judgments. Such judgments are themselves

reasons, full stop, for rational creatures like us. So whatever else one thinks about voluntarism, it appears that it's not ultimately undermined by the worries laid out and developed in Section 3 – there's nothing particularly absurd about the idea that a formal procedure could bootstrap reasons for action into existence. And this means that it is perhaps unnecessary to justify obedience through normative buck-passing.

I wish now to clarify this claim with an illustration. Consider a democratic society that has instituted an income tax. A citizen, we can imagine, weighs considerations for and against spending her money in particular ways, and concludes that absent any law being enacted, she'd have most reason to give a sizable donation to a particular charity. Now, what impact might the fact that an income tax has been enacted have on her normative situation? One possibility, of course, is that the law will be backed by a threat, and that the prospect of being punished will constitute a reason for her to pay the tax. But suppose, as is often the case, that her chances of being audited are so minute as to be insubstantial. How then might the law bear on her normative situation? Well, perhaps she'll have reason to comply because the government is epistemically better placed to know how to spend her money. Or perhaps adhering to collectively made decisions constitutes a valuable gesture of respect for her fellow citizens, and will help realize a society in which people live with one another on good terms. These would be normative buck-passing considerations for following the law. And while there will be instances in which the buck can be passed, no doubt, there will also be many times when a citizen would do more good with her money than the government would, and when an act of obedience wouldn't constitute a significant enough gesture of respect to make a normative difference. When this is the case, ought we simply admit that the law constitutes no reason at all for paying the tax? Is there nothing left to be said on the law's behalf? The voluntarist view that I've sketched holds that there is, indeed, another possibility. The possibility is that because the tax was an output of a democratic decision procedure – that is, because it is a genuine law – the output itself constitutes a reason to pay, placing normative pressure upon the citizen without the normative buck having to be passed. So a citizen who responds correctly to her normative situation will take the democratic body to have bootstrapped into existence a reason for action. This is the sort of possibility that I'm suggesting we ought to take more seriously.

Now, a perhaps obvious but nevertheless important point to make here is that what the law commands can come apart from what an individual agent judges the balance of reasons to favor. Unlike an individual judgment, the law is based not on a single person's assessment of the balance of reasons, but on the deliberations and votes of multiple people, and so there's no guarantee that the law's content will line up with the agent's best judgment. But I've argued that an individual's own practical judgment can itself constitute a reason for action. So what happens when the law goes against the individual's judgment? Will one always override the other? The most plausible answer, I think, is that there are domains within which the normative force of the law is in effect and there are other domains within which a person's own judgment about what to do supplies normative pressure, and that these two domains are separate. This might sound overly complicated, but I think it actually comports well with our everyday thought and practice. There are, after all, large swathes of our personal lives within which the choices we confront are to be made through an individual's own judgment. But there are also social and public spheres where, despite having a personal opinion about what it would be best to do, many of us think that the collective judgment of the people should determine what we do.

I don't have anything specific to say about how we demarcate these domains. My argument in this paper is, in a way, prior to these sorts of considerations. I've been arguing for the possibility of domains and situations in which the law itself makes it the case that

someone should act in a way she would otherwise have reason not to. I've been arguing that it's possible for a perfectly rational agent to say something like, "I paid the tax because it's the law, and that's sufficient reason to pay in this instance." And once I've shown this – once I've demonstrated the possibility of a rational voluntarism – it then becomes sensible to ask when, where, and in what domains of life the law really does possess this kind of normative status.

6. The possibility of a source of normativity outside the self

I've argued for the possibility of voluntarism by drawing a parallel between first-personal practical reasoning and the operation of governmental decision procedures. But one might object that a certain disanalogy between the two cuts sharply against the case I have been making. The disanalogy is that when a person makes a practical judgment, she herself is the source of the judgment, whereas when the government enacts a policy, the law has a source outside the person herself. And while it might seem unproblematic or even straightforwardly obvious that a person's own judgments can be normative for her, it's much more problematic to suggest that decisions with a source outside the self can be normative for a person. Simply put, the thought that a procedure conducted outside of the confines of a person's own mind is normative for her might seem to require more justification than does the claim that the person's own judgment is normative for her. Worse still, it might seem that the voluntarist position, as I've understood it, denies us the resources to make an argument that a procedure conducted outside of the confines of a person's own mind could be normative for her. After all, the possibility I've noted is one in which a person has reason to follow the law, full stop, without any need to appeal to further reasons. But if we can't, when considering whether we ought to follow the law, appeal to further reasons, then on what basis could we possibly think we ought to follow the law? I will conclude the paper by sketching an answer to this question, and in so doing will point to a new direction that the philosophy of legal obedience might begin to take once it takes seriously the possibility of justified voluntarist obedience.

In *The Possibility of Altruism*, Thomas Nagel identifies two distinct methods for defending normative claims, which he calls "interpretation" and "justification." When we use justification to argue in favor of acting in a particular way, we "proceed within the context of a system of reasons, by showing that certain conditions are met which provide sufficient reason for that [action] which is being justified" (Nagel 1970, 18). For instance, if you wanted to justify obedience to the traffic code, you might claim that an individual has reason to contribute to a city's being easy and safe to navigate, and then point out that obeying the traffic code is a way of doing this efficiently. The justification here proceeds within a system of reasons already in place – it begins with the premise that there exist particular reasons, and a reason to make the transportation system work efficiently is one of them. Nagelian justification, in other words, is a form of normative buck-passing.

Interpretation, on the other hand:

is an attempt to link ... practical principles to ... basic features of the conception which each person has of himself and of his relation to the world, and to link the two in such a way that adherence to the principles can be seen as a practical expression of the conception. (Nagel 1970, 18)

Nagel's idea is that offering an interpretation involves arguing that an individual must conceive of herself in a particular way, and that this way of conceiving of herself requires that

she acknowledge the normative force of certain principles or reasons. Nagel himself argues that a person ought to be prudent *not* by appealing to other reasons she has, but by arguing that a person's self-conception as a temporally extended being entails a requirement to be prudent. Along similar lines, Nagel argues that a person ought to be altruistic *not* by appealing to other reasons she has, but by arguing that a person's conception of herself as one person among other equally real people entails a requirement to be altruistic. Efforts to argue through interpretation, or something like it, appear in the works of other philosophers as well. Philippa Foot, for instance, argues that we ought to behave virtuously *not* by appealing to other reasons that we have for acting according to the virtues, but by appealing to the fact that we are necessarily human and that our humanness subjects us to the norms of virtue (Foot 2001). And similarly, Korsgaard argues that we ought to respect humanity *not* by appealing to other reasons that we have for exhibiting respect, but by appealing to the fact that our identity as self-reflective agents places us under a requirement to do so (Korsgaard 1996).

In the method of interpretation, then, we find a way of arguing for normative claims that doesn't require passing the normative buck – a way of arguing that an agent ought to act in some particular way without appealing to some other reason or value, but instead by showing that a normative requirement is entailed by her self-conception or by her nature. It thus supplies, I believe, a promising method for advancing voluntarist arguments for obedience – one with the potential to explain how a law with a source outside of the self might nevertheless gain a normative grip on a person. So we might, for instance, argue like this: X is a kind of government that enacts laws through a particular procedure. Y is a subject. That a law is enacted by X constitutes a reason for Y to act, because Y is a Z, and to be a Z involves being normatively bound to take the fact that certain decisions were made collectively through certain procedures as a reason. Then, when Y follows the law, she does so not because she has reason to act as a Z would, but because she *is* a Z or inescapably identifies as a Z, and following the law is a practical expression of her Z-hood. To be a little less abstract, we can imagine someone arguing that democratic governments are those that enact laws through procedures that give each an equal voice. Subjects of a democratic government are humans, humans are social animals, and part of what it is to be a social animal is to accept that a decision about public matters was made in such a way that each had an equal voice in itself counts as a reason for acting. In other words, to be a social animal involves being subject to decisions that come from outside the self. Or we might note that subjects of a democratic government are persons, agree with Nagel that persons inescapably conceive of themselves as one person among many equally real people, and then argue that part of what it is to conceive of oneself in this way is to accept that the fact that a decision about public matters was made in such a way that each got equal voice in itself counts as a reason for acting. Again, the idea would be to link the notion of a person with the idea of recognizing a source of normativity outside the self.

Pursuing the details of this strategy would take us far beyond the scope of this paper. However, what I've said points to a new direction for political philosophers concerned with topics related to law-following. If I'm right, philosophers should look to the metaphysics of agency and human nature for insight about whether and under what conditions we should follow the law – they should look, that is, to the kinds of investigations carried out in the works of Aristotle, Rousseau, Hegel, Marx, and others. For it is there that we're likely, through the method of interpretation, to learn whether rightful voluntarist obedience is merely a theoretical possibility, or if instead our nature is such that some laws generated outside our own individual minds *in themselves* count as reasons for us to act.

Acknowledgements

For comments and conversation on earlier versions of this paper, I thank David Cummiskey, Christine Korsgaard, Dave Langlois, Mark Okrent, Bill Porter, and T. M. Scanlon. I also thank two anonymous referees for helpful comments.

Disclosure statement

No potential conflict of interest was reported by the author.

Notes

1. For the original use of the term “bootstrapping,” see Bratman (1987, 24–27).
2. Some working in the philosophy of action argue that there exists a faculty called “the will,” which the agent exercises in order to determine whether she will act on her judgment about the balance of reasons (Wallace 2001, 10). This faculty is posited in order to make sense of instances in which an agent judges herself to have most reason to ϕ , but then refrains from ϕ -ing. My point is simply that in order for us to claim that the agent exercises her will *correctly* when she chooses to act on her best judgment, and *incorrectly* when she chooses to act against her best judgment, we need to acknowledge the existence of a reason or normative requirement compelling her to exercise her will in such a way as to conform to her judgment.
3. I’ve altered the quotation to make it about action, rather than belief. Kolodny thinks the worry applies to both.
4. This does raise an interpretive question about how Hobbes thinks his social contract theory relates to his view that law is a command, which we are to act upon for no reason other than that it was willed by the commander. I think this issue gets far too little attention in the Hobbes literature. Unfortunately, I cannot pursue it here.
5. John Broome offers the most famous reinterpretation of the requirement, suggesting that it be given what he calls a “wide-scope” reading wherein an agent is enjoined *either* to do what she judges herself to have most reason to do *or* to revise her judgment and intention (Broome 2004, 28–55). Kolodny (2005) argues that the requirement cannot be given a wide-scope reading, and goes on to argue that the requirement isn’t actually normative, but is only *apparently* normative. From here, the literature on this topic balloons. Suffice it to say that no consensus has emerged as to which, if any, of these reinterpretations of the requirement are plausible. My working assumption is that the most plausible view would be one that showed that the intuition was right all along and that reasons *can* be bootstrapped.

Notes on contributor

Paul Schofield is Visiting Assistant Professor of Philosophy at Bates College. His interests include moral philosophy, political philosophy, action theory, and film-philosophy. His recent publications include “On the Existence of Duties to the Self,” *Philosophy and Phenomenological Research* 90 (3) (2015) 505–528; “Practical Identity and Duties to the Self,” *American Philosophical Quarterly* (forthcoming); and “Paternalism and Right,” *The Journal of Political Philosophy* (forthcoming).

References

- Aquinas, Thomas. 1920. *Summa Theologica*. London: Burns Oats.
- Bratman, Michael. 1987. *Intention, Plans, and Practical Reason*. Cambridge, MA: Harvard University Press.
- Broome, John. 2004. “Reasons.” In *Reasons and Value: Themes from the Moral Philosophy of Joseph Raz*, edited by R. J. Wallace, P. Pettit, S. Scheffler, and M. Smith, 28–55. Oxford: Oxford University Press.
- Christiano, Thomas. 2004. “The Authority of Democracy.” *The Journal of Political Philosophy* 12 (3): 266–290.
- Dworkin, Ronald. 1986. *Law’s Empire*. Cambridge, MA: Harvard University Press.
- Foot, Philippa. 2001. *Natural Goodness*. Oxford: Oxford University Press.

- Hershovitz, Scott. 2003. "Legitimacy, Democracy, and Razian Authority." *Legal Theory* 9 (3): 201–220.
- Hobbes, Thomas. 1991. *Leviathan*, edited by R. Tuck. Cambridge: Cambridge University Press.
- Kolodny, Niko. 2005. "Why Be Rational?" *Mind* 114 (455): 509–563.
- Korsgaard, Christine. 1996. *The Sources of Normativity*. Cambridge: Cambridge University Press.
- Korsgaard, Christine. 2009. "The Activity of Reason." *Proceedings and Addresses of the APA* 83 (2): 23–43.
- Nagel, Thomas. 1970. *The Possibility of Altruism*. Princeton, NJ: Princeton University Press.
- Pufendorf, Samuel. 2002. "On the Duty of Man and Citizen." In *Moral Philosophy from Montaigne to Kant*, edited by J. B. Schneewind, 158–170. Cambridge: Cambridge University Press.
- Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.
- Wallace, R. Jay. 2001. "Normativity, Commitment, and Instrumental Reason." *Philosopher's Imprint* 1 (3): 1–26.
- Wolff, Robert Paul. 1998. *In Defense of Anarchism*. Berkeley: University of California Press.