

PROBLEMA

Anuario de Filosofía y Teoría del Derecho **7**

“BECAUSE I SAID SO”

William A. EDMUNDSON

Resumen:

La autoridad política es el poder moral para imponer deberes morales a una ciudadanía poco dispuesta. David Enoch ha propuesto que la autoridad sea entendida como una cuestión de otorgamiento “robusto” de deberes. Este artículo sostiene que tanto las condiciones de Enoch para las pretensiones de otorgar deberes o razones robustos, así como sus condiciones de éxito no-normativas, son inverosímilmente fuertes. El problema es que la tesis de Enoch ignora dos hechos: El primero consiste en que el éxito requiere que los ciudadanos toleren errores modestos de la autoridad, lo cual significa que, bajo las condiciones de un error modesto, el actuar como es ordenado debe tener un valor intrínseco no-instrumental. El segundo es que los intentos de ejercitar la autoridad involucran una intención de detonar un principio moral que a su vez otorgue un valor intrínseco a las acciones que se ajustan al mismo. El misterio de la autoridad política es el misterio de cómo las directrices de las autoridades posiblemente podrían bastar para otorgarle dicho valor intrínseco.

Palabras clave:

Autoridad del derecho, autoridad política, razón práctica, obligación moral de obedecer el derecho, autoridades legítimas, normas.

WILLIAM A. EDMUNDSON

Abstract:

Political authority is the moral power to impose moral duties upon a perhaps unwilling citizenry. David Enoch has proposed that authority be understood as a matter of “robust” duty-giving. This paper argues that Enoch’s conditions for attempted robust duty- or reason-giving are, along with his non-normative success condition, implausibly strong. Moreover, Enoch’s attempt and normative-success conditions ignore two facts. The first is that success requires that citizens be tolerant of modest errors by the authority, which means that, in conditions of modest error, performing as directed must have a non-instrumental, intrinsic value. The second is that an attempt to exercise authority involves an intention to trigger a moral principle endowing conforming performances with intrinsic value. The mystery of political authority is the mystery of how official directives could possibly suffice to endow conforming performances with intrinsic value.

Keywords:

Authority of Law, Political Authority, Practical Reason, Moral Obligations to Obey the Law, Legitimate Authorities, Norms.

“BECAUSE I SAID SO”

SUMMARY: I. *Introduction* II. *Robust Reason-Giving*. III. *Self-Effacingly, or Robustly Given, Reasons?* IV. *Given Duties and the Intrinsic Value of Performance* V. *Conclusion*.

I. INTRODUCTION

The orthodox view of political *authority* represents it as claiming to possess, and perhaps potentially or even actually possessing, a moral power to impose moral duties on citizens by mere say-so. The orthodox view of *legitimacy* holds that a state possesses legitimate authority just in case it in fact possesses the moral power that it claims to possess. The orthodox view of political *obligation* depicts it as consisting in large part of non-voluntary duties borne by citizens that are the product of the state’s exercise of its distinctive moral power.

The state’s possession of such a moral power is thus the central feature of the orthodox picture of legitimate authority and political obligation, as Stephen Perry (2012) has emphasized. Skepticism about any actual or possible state’s possessing such a power leads directly to philosophical anarchism, a position that is espoused by Simmons, Green, Raz, and many others.

As we see vividly in the case of promises, the exercise of a genuine moral power not only imposes a duty upon a duty-bearer, it endows a performance of that duty with intrinsic value. The keeping of a promise has value as such, even if there was no good reason to make the promise in the first place, and even if the performance is not instrumentally valuable, or valuable in any other way. Of course, the performance of a promise that was invalidly made has no value as such, as in the case of promises to commit crimes or do wrongs. Of course the value of a promise-keeping may be modest, and even if not modest it can be outweighed by competing values. And, in any case, a promise-keeping may lose its value if the point of it has been

defeated, or if the promisee has released the promisor. But normally a promise-keeping has intrinsic value. So also, as I show later, there is intrinsic value to any performance that conforms to what a legitimate authority directs. David Enoch's generally insightful analysis of authority leaves out of account the intrinsic value a conforming performance would normally acquire —if there are any legitimate political authorities.

Separately, Enoch's analysis of what he calls "robust reason-giving" mistakenly overstates the significance of a "do it because I asked" or "do it because I said so" aspect of some requests and commands. Enoch applies his robustness analysis to duty-giving as well as reason-giving, and the overstatement persists —thus inviting (further) skepticism about the possibility of legitimate authority. Enoch has nonetheless made possible an important advance in our understanding of a range of normative phenomena. To make use of his insights, it is necessary to make certain corrections and extensions, along the lines proposed below.

II. ROBUST REASON-GIVING

The land of reason-giving divides into three parts, on a first look. One is the realm of "epistemic reason-giving," by which someone indicates to another facts that are reasons for the other to act. As when Roadrunner points out to Wiley E. Coyote that he is standing on thin air. The pointing-out "gives" Wiley a reason to brace himself for an impact with the ground below. Don Regan's term, "indicator reasons", expresses the idea perfectly. The second part is the realm of what David Estlund has called "side-effect" reasons, which arise when one person acts in a way that happens to generate facts that give another a reason to respond to the alteration in circumstances. If Roadrunner runs toward the edge of a precipice, he "gives" the pursuing Wiley a reason to slow down. What happens here is that one's actions "trigger" a rational principle by satisfying its

“BECAUSE I SAID SO”

antecedent: if you are speeding toward a precipice, there is a reason to slow down. The resulting reason may have been a mere side-effect or, in Enoch’s term, a merely triggered reason. The third and final realm is that of “robust reason-giving” —a realm in which Enoch locates practices like requesting, promising, and exercising authority. If Wiley asks Roadrunner, nicely, for a match with which to light a fuse, he gives Roadrunner a reason —a weak one, and a defeasible one— to give him a match. If Wiley sincerely promises not to use the match to light a fuse, he gives himself a reason not to light it.

Examples of authority as a capacity to give reasons robustly will come in a moment. First, here is Enoch’s analysis of *robust* reason-giving:

One person *A* attempts to robustly give another person *B* a reason to ϕ just in case (and because):

(i) *A* intends to give *B* a reason to ϕ , and *A* communicates this intention to *B*;

(ii) *A* intends *B* to recognize this intention;

(iii) *A* intends *B*’s given reason to ϕ to depend in an appropriate way on *B*’s recognition of *A*’s communicated intention to give *B* a reason to ϕ .

(2011, 15)

This is only the attempt. Person *A* succeeds in the attempt just in case two success conditions are met. The first is this:

For *A*’s attempt to robustly give *B* a reason to ϕ to succeed, *B* must recognize *A*’s above specified intentions, and furthermore *B* must allow these intentions to play an appropriate role in his practical reasoning. (2011a, 61)

This is meant to be a non-normative condition of success in bringing about what *A* wants to bring about in the world. Enoch acknowledges the similarity between attempt conditions (i)-(iii) to Paul Grice’s analysis (1951) of speaker’s

meaning; but satisfying these non-normative, Gricean conditions isn't sufficient to assure that the reason was robustly given. As Enoch has it, for a reason to be robustly given it must, so to speak, make the intended *normative* difference in the world, which can happen only if there exists the right kind of normative background:

the attempt must make it the case that a reason to really does emerge (in the appropriate way). And ... whether this procedure will result in there being a reason to here will depend on there being an independent reason that is triggered by this procedure — roughly, a reason (for *B*) to do as *A* intends that *B* have a reason to do (2011a, 16).

So, in brief, robustly giving a reason succeeds only if a) the intended reason operates in the intended and appropriate way in the psychology of the reason-receiver; and b) there is in the normative background a principle whose antecedent refers to an attempt to give a reason robustly and whose consequent is that *B* has the reason that *A* intended. Robust reason-giving succeeds only if, and because, it is also a triggering reason-giving.

Similarly, attempts to impose *duties* robustly succeed just in case there is a moral principle whose antecedent refers to an attempt to impose a duty robustly, and whose consequent is that *B* indeed has the intended duty. (The antecedent will of course have also to include a conjunct that sets the stage for the attempt, for it is implausible that any true moral principle would endow any mortal *A* with unconditioned moral power). The attempt succeeds only if it triggers a moral principle whose consequent is that *B* has a duty that *B* would not have had otherwise. What is distinctive of authority is that it attempts robustly to impose duties, rather than merely to give reasons; and to succeed in doing so not only must the attempt trigger a moral principle, the non-normative condition must be satisfied (Enoch 2012, 11).

Robust duty-imposing is better known as the exercise of a moral power, a term that Enoch does not use. Nonetheless, Enoch’s analysis has been received as applicable to moral powers (Perry, 2012, 33 n47) and I will so regard it as well. Enoch’s thesis is that “authority —real, legitimate authority— is the power to robustly give duties” (2012, 6); and my question is twofold: 1) is authority really an instance of robust duty-giving, as Enoch defines it; and 2) does regarding it as such tell us what we need to understand about authority.

Even if Enoch were correct that the exercise of authority is an instance of robust duty-giving, how far would that get us? Classifying an authority as a robust duty-giver does not, in itself, dispel the air of mystery that surrounds authority and moral powers generally —nor does he so claim. The mystery has, at least, been located where it should be. Robustness-conditions aside, authority is merely an instance of triggering duty-giving. But, as I will show, the central mystery remains. That mystery is: how could robust or quasi-robust givings endow actions of a certain kind with an intrinsic value that they would otherwise lack? For that is the distinctive trait of moral powers, accurately understood. The fact that their exercise involves a mechanism of intentions is not mysterious, and neither is it totally surprising. Stating precisely what that mechanism *is*, is difficult —but even a hundred difficulties do not make a mystery. Nor is it surprising that moral powers work by triggering normative principles. What is mysterious —and may also come as a surprise— is that the concept of intrinsic value is essential to the concept of a moral power. Or, to put it differently, the mystery is that the needed triggering principles are principles that endow conforming performances with intrinsic value.

To put the point another way, the normative success-condition of robustly given duties is that the attempt robustly to give a duty trigger a moral principle whose consequent entails that performing a certain act has intrinsic

value (even if it lacks any other value). This is where the normative magic lies, and calling attention to the network of intentions that is packed into the antecedent does nothing to dispel *that* magic. Enoch acknowledges as much when he writes:

there is no cause for metaphysical concern about robust reason-giving—at least, that is, if a phenomenon close enough to the pre-theoretical one of robust reason-giving can be accommodated as an instance of triggering reason-giving. Can this be done? (2012, 7)

It can readily be done in the case of requests. By making a request I make it the case that anyone who complies pleases me. Here is a plausible general principle that is triggered by any request: “If an occasion arises to give another a specific pleasure then, *ceteris paribus*, there is a reason to do what will give that specific pleasure.” I admit that this principle may not be precisely what is needed: but the point is that reasons are easy. Most reasons are weak, and that’s why reason giving is easy. But duty-making is nowhere nearly as easy: duty-giving is hard. We are not expected to respond to all the reasons that apply to us, much less to weigh them, as Raz has pointed out. But we are expected to do what duty requires. If we fail, we do wrong, and are subject to sanctions ranging from expressions of disapproval and resentment to physical punishment.

Robust *duty*-giving succeeds only if it can be accommodated as an instance of triggering duty-giving. Can *this* be done? This is harder. As I am about to show, this can be done only if there is some plausible, non-metaphysically-worrying explanation of how one person *A* can, merely by communicating an intention to do so, endow the performance of an action by another person, *B*, with intrinsic value. Those who are uncomfortable with intrinsic value may take this as a reason to be uncomfortable with the notion of a moral power. And those who were already uncomfortable with the notion of a moral power may take its asso-

“BECAUSE I SAID SO”

ciation with intrinsic value as a reason to make the move from discomfort to outright rejection. I have to show why intrinsic value has to come into the story. But first I will make some observations about Enoch’s formulation of the attempt conditions for robust giving. If they are misstated, they could send us looking for the wrong kind of triggering principle.

III. SELF-EFFACINGLY, OR ROBUSTLY GIVEN, REASONS?

It is important not to overstate the “because I said to” aspect of requesting, commanding, and so forth. Otherwise, some perfectly presentable instances of requesting, commanding, etc. will implausibly be ruled out, or condescendingly treated as non-standard. Enoch is of a different mind; for he writes:

The third condition can be understood as a generalization of such natural thoughts as that when I ask you to ϕ , I intend that your reason for ϕ ing be that I asked you to; that when I command that you ϕ , I intend that your reason for ϕ ing be that I said so, etc. (2012, 8)

Thus, if I ask you to read my draft, and you agree —not because I ask you, but because the department chair overheard me ask you— my request “misfires” if you read my draft to impress the chair (or because it might be interesting, etc.) rather than because I asked.

I disagree. Some “natural thoughts” are best not generalized —for a conspicuous case of something may be a poor paradigm (think: albino elephant). It is notoriously hard to pick and choose among our reasons to do something. If we have reasons a , b , and c to ϕ , and want to act on a and b but not c , there is very little assurance —even merely phenomenological assurance— that we can in fact fine-tune or pick and choose among our “reasons in acting” (to borrow Rodriguez-Blanco’s term: and in this context I agree

with her that “we need to focus... on the phenomenology of legal directives, commands and rule-following in light of moral psychology and philosophy of action” (23-24)). Much less are we able to choose to act upon reason *a* in some yet-to-be-specified “appropriate way”.¹ The point is not to deny that it can be true that *B* acted for *a* and not *b* or *c*. It is rather that if *B* has reasons *a*, *b*, and *c* to , *B* cannot easily choose which of them to act upon. Psychological studies have been run in which subjects were told, “Don’t think of a white bear!” They were then asked to free-associate into the microphone of a tape recorder, and to hold down a button each time they did think of a white bear (Wegner et al. 1986). Most subjects indicated both by word and deed that they could not stop thinking of white bears.² One might reasonably conjecture that a similar psychological disposition operates when the challenge is to avoid acting on a reason. This is why no one can seriously believe

¹ Marušić (2012) discusses what might appear to be a related problem with belief. Often we decide to do and promise to do what we think will be hard to achieve. But how can we sincerely decide to do, or promise to do, what we believe we are unlikely to achieve, unless we somehow act on a belief that runs contrary to the evidence we have? Marušić concludes that when we decide to do or promise to do the difficult thing, we ought to believe, against the evidence, that we will achieve the unlikely. I have doubts, but suppose this is right. Ought we, then, also believe against the evidence that *another* will achieve the unlikely, when we sincerely request or command something, *even if that something is not itself especially difficult?* Surely not, if we can help it. Of course, if the thing we request or command to be done *is already* difficult, Marušić’s so-called “Epistemological Problem of Difficult Action” may be present. But we should not multiply problems—or their solutions—unnecessarily. What may be easy to do can always be made difficult by stipulating a difficult way in which it is to be achieved. But there has to be a compelling case for insisting upon the stipulation, and Enoch has not made one out.

² Uncorroborated self-reports are always a questionable source of data. Wegner and his fellow researchers had no choice but to rely on them. Any study of the phenomenon of picking and choosing among reasons to act upon would be further handicapped by the fact that our motives in acting are notoriously less transparent to us than our occurrent mental imagery.

the fiction that a judge’s “curative” instructions to a jury not to credit improper evidence do what they purport to do (*cf.* Simon 2012, 176-80).

This is what we know, more or less intuitively, about what can be expected on the addressee’s end of a request or a command. On the requester’s or commander’s end of the Gricean see-saw: Just as one cannot intend to accomplish what one believes is impossible, one cannot intend that *another* accomplish what one believes to be impossible. Furthermore, it is unlikely that one standardly will intend that another do the possible but hellishly difficult, if that other has easier means to do as one wants. In most cases, askers and commanders are indifferent to the mechanism, and often even would *prefer* that the request or the command not be the operative reason.

This is more obvious in the case of requests, due to the not atypical desire of a requester not to become indebted to the requestee. Marcel Mauss (1954) catalogued the ways, under the conventions of a variety of cultures, that even unsought and unwelcome gifts impose obligations (Nozick’s book-throwees, beware!). Requests, even more obviously to us, trigger expectations and even duties of reciprocity. These expectations and duties are proportioned to the imposition on the requestee. It is easy to understand why the requester might prefer to avoid making it the case that the requestee acts on a reason the requestee did not have apart from the request.³ Note also that there is something *aggres-*

³ In intimate relationships, there is a fine line between a “hint” and a request. The most successful hints are self-effacing. A hint gives a reason, and does so communicatively, but its success depends upon the hintee not recognizing the hint-giver’s intention to give a reason. If the hintee regards the hint as a request, the hint “misfires”. But the hint-giver’s interest in concealing her (or his!) intention can lead to frustration. “What am I, a mind-reader?” is the obtuse hintee’s stereotypical excuse. But the hintee was not expected mind-read, that is, to recognize the concealed intention. A too-perceptive but discreet hintee takes the hint: he recognizes the imperfectly concealed intention and gallantly pretends not to regard it as amounting to a request. This makes it possible for the hint-giver to ex-

sive about reason-giving anyway (Kornblith 1999); and there is reason not to depict reason-giving as any *pushier* than it already is, particularly in its epistemic and robust forms, which by definition have a communicative aspect. Isn't it enough that *B* *s*? For *A*'s request not to misfire, according to Enoch, *B* has not only to *s* but to *s because A* says so. That seems extravagant. It unrealistically assumes that *B* has a kind of command over *B*'s psychology that there is no good reason to think any of us possess. And it humiliatingly micromanages *B*'s compliance, as though *B* could not be left to *B*'s own devices. For, if success is what *A* intends to achieve by the attempt, and success consists—as Enoch says—in *B*'s allowing *A*'s intentions to “play an appropriate role” in *B*'s further reasoning, then if *A* intends that *B* *s* (and in nonstandard cases *A* may not) then what *A* intends is that *B* *s* for the reason *A* fathered if for no other. On Enoch's analysis, if *A* makes a request of *B* intending only to arouse, by indirection, reasons to *s* that *A* knows *B* already has, then *A* has not made a request at all. *A*'s robustly giving a reason requires that *A* *intend* that it play an “appropriate role” in *B*'s practical psychology. Succeeding at this is consistent with over-determination (as where *B* has other, sufficient reasons to *s*) but not with causal inertness (as where *B* ignores *A*'s request but *s* anyway).

All this applies a fortiori when what is given is not merely a reason but a duty. Legal authorities do not demand so much: “Do as the law says, and never mind why” could mean, “Do it because we say so”, but more typically it means, “Do it, and we don't care why, as long as you do”. True, one could insist that the former case is the paradigm and the latter derivative. But to do so, I suggest, would confuse a dramatic case with the paradigm case.

press quasi-genuine surprise when the hintee does as the hint-giver wished. “It's just what I wanted/needed!” Surprise, surprise.

“BECAUSE I SAID SO”

The case of giving commands can be similarly analyzed in a way that need not satisfy Enoch’s conditions for robust reason-giving. This is less obviously so because we tend to think of parental authority as our central case. Parents want respect, but have only a finite reserve of patience. When we want to get small children to do as they ought, we ideally explain to them why they ought. We, as parents, aspire to be epistemic reason-givers. But sometimes matters are too exigent or we’re tired and the “Do it because I say so!” slips out, to cut off an impertinent tattoo of little “Whys?”. If we have to deal with a dog rather than a child, we are content if the dog acts on our say-so. I doubt that an enlightened parent would want a child to respond in this way habitually—but maybe, on occasion, just this once, after (say) a fifteen-hour road trip with the dog strapped to the roof. The dramatic, just-this-once case sticks in our minds, and it is a “natural thought” that this is how authority always works. But it isn’t.

There is something undeniably correct about Enoch’s approach, however. Genuine exercises of authority cannot be merely triggering or merely epistemic. But they needn’t be *fully* robust in Enoch’s sense, as I have just shown. A fully successful exercise of authority is one that makes it the case not only that B has a duty to ϕ , but also that B ϕ s. A significant if partial success is achieved if B comes to have the duty that A intended—whether or not B goes on to ϕ . But in either case a successful exercise of authority can’t be merely inadvertent: it has to be directed toward the consequent of the moral principle it triggers. Reading this back into the attempt conditions, we would say that to attempt to exercise authority is to intend to trigger a moral principle that endows conformity to a directive with intrinsic value. What is crucial to success is that the performance be, at a minimum, non-instrumentally valuable, period. It is not essential to success that anyone subject to the directive perform for any particular motivating reason (and here I agree with Rodriguez-Blanco). The necessary conditions for at-

tempting this kind of reason-giving ought not to be over-loaded. What is minimally required for the attempt—duty-giving done “self-effacingly”, one could call it—ought not to run much beyond intending what will count for (at least partial) success.⁴ It is not essential to success that anyone subject to the directive recognize the directive as an intrinsic reason to obey, or to recognize that the performance has intrinsic value. But an authority must intend to endow a performance with intrinsic value; and for an authority to succeed, that intention must be fulfilled.

IV. GIVEN DUTIES AND THE INTRINSIC VALUE OF PERFORMANCE

Authorities give duties. Duty-triggering is of course one aspect of authoritative duty-giving. But authority is more than mere duty-triggering. Enoch locates that “more” in the robustness conditions he defines. A successful exercise of authority is one that makes it the case that those subject to that authority recognize that authority’s intention to trigger a duty, and allow that recognition to affect them in the appropriate way (whatever that turns out to be). Enoch is aware of the difficulty that this “recognition” condition invites. Leave aside the troubles that will attend any working out of the “appropriate way” condition. For one thing, actual recognition can’t be required, for many successful ex-

⁴ I hesitate to say that an attempt to exercise authority necessarily involves the additional intention that *B*. Although that intention could be part of a paradigm case, I would prefer to leave some space between the *A* commanded and a perhaps significantly different *B* that *A* actually intended. A 55 mph speed limit might, for example, be commanded without the intention that it be generally observed. Space should also be left for cases in which a generally effective authority hopes but does not expect to bring about an innovation. As confidence in the result diminishes, the possibility of intention does too, and if confidence in achieving a result drops too far, intending it is not possible (– one can intend to enter the lottery, but one cannot intend to win it). An effective authority may have sufficient confidence that its command endows conforming behavior with intrinsic value, while lacking that level of confidence with respect to the hoped-for result.

ercises of authority do not depend upon it. *Ignorantia legis neminem excusat*. This is additional to the point of the last section, which was that attempts to exercise authority do not typically involve an intention to micromanage the psychology of subjects. Typically, in fact, they do not. There is a kind of authoritative command that is directly communicative, as for example when a police officer enforces a warrant or makes an arrest, or a judge denies a motion or issues an order—a kind that is in a sense retail, in contrast to the wholesale business of enacting legislation that typically is general and prospective. These retail operations often do involve robust reason- and duty-giving. But they are only a part, and not the whole, of the domain of legal and political authority, although this part is crucial to the legitimacy of authority.

It might be that Enoch’s non-normative robustness conditions could be rescued by counterfactualizing them. For example, an Enochian might say that an authority would intend that the recognition and appropriate-way conditions be satisfied were circumstances such that the authority’s ultimate purpose—to get subjects to act in certain ways—was otherwise unachievable. But I will not conjecture how this move could be worked out in detail. The project of representing authority as an instance of robust duty-giving does not connect with—or even notice—the key success-condition, which has to do with imparting intrinsic value to a performance that that performance otherwise would lack, and which it acquires even if it lacks any other value.

To repeat, the central success condition of the exercise of authority consists in or includes the triggering of a moral principle whose consequent states that a certain performance possesses intrinsic value. The “intrinsic value” at issue could just as easily be assigned to *obedience* (Edmundson 2010), but in the present discussion I will refer it to the performance of a duty that has been at least self-effacingly (and perhaps robustly) given. The role of in-

trinsic value is readily seen at work in an example of David Estlund's.

Flight Attendant: After an airplane crash, a flight attendant, *X*, to help the injured, says to passenger *Y*, "You! You need to do as I say!" *Y* refuses. It is wrong for *Y* to refuse. *Y*'s refusal is null: *X* has authority to put *Y* under a duty to by saying "*Y*, !"—precisely as *X* would had *Y* actually consented (2008, 124).

In the example, *X* orders *Y* to get bandages but *Y* happens to know that getting water is more important in the circumstances. Getting water better achieves *X*'s purpose, but in Estlund's view, if *X* has made only a "modest" error in ordering bandages rather than water, it would be wrong of *Y* to get water.⁵ The exercise of authority by *X* puts *Y* in much the same moral situation *Y* would be in had *Y* consented to do *X*'s bidding. What situation is that? Had *Y* consented, then *Y*'s getting bandages would have acquired a *duty-grade* value even if getting bandages would do less for the injured than getting water would. In this case, there is no instrumental reason to tolerate small errors so, if there is any reason here at all to be tolerant it is a non-instrumental one. To say that in circumstances *C* there is a non-instrumental reason to is simply to say that ing, in *C*, has intrinsic value, in some degree—even duty-grade value is a matter of degree.⁶ To say that something is in-

⁵ Raz writes, "It is not the case that the legitimate power of authorities is generally limited by the condition that it is defeated by significant mistakes which are not clear" (1986, 62). Elsewhere, Raz has it that those more expert than political authorities are not, within their area of expertise, bound by insignificant mistakes, presumably even if the mistake is not immediately clear to them. In any case, Estlund presumably would not count a significant error, clear only to one who detected it, as "modest".

⁶ David Enoch has asked, in correspondence, "Why can't reasons explain [modest error-tolerance] without value (unless you think that in general reasons are based on values; this is possible, but I think your ar-

variably of value is not to say that it is of some invariable value (*cf.* Raz 2012).

Nothing in Enoch’s account captures this feature, for it does not specify that the normative success condition must invoke moral principles that endow a complying performance with intrinsic value. Unless modest-error-tolerance is built into *Y*’s resulting duty, then the account fails to distinguish authority from what Estlund calls “mere leadership” (2008, 125). If a booming-voiced child, rather than flight attendant, had called out for bandages, there might well be a coordination reason to fall in behind the lead of a salient coordinating signal. But there would be no reason to be tolerant of modest errors. Why should one tolerate modest errors unless there was some value to doing so? In the absence of any instrumental reason to tolerate a modest error, there is no reason to, unless there is a non-instrumental reason for doing so, which is to say that doing so in the circumstances is intrinsically valuable.

We should not doubt that speech acts are capable of imparting intrinsic value to prospective performances by others. If, for example, *Y*’s mother had asked *Y* with her last breath to visit her grave every Easter, *Y*’s doing so has intrinsic value (*cf.* Feinberg 1984, 79-95). It is of course true that the value of complying with a particular wish is also a function of the independent value of the type of performance it requires, as well as on contingent consequences a performance will have (*cf.* Raz 2012). But here, we are to suppose that there is no independent instrumental value to making the annual visit. Of course, a performance may possess more than one kind of intrinsic value. Honoring a deceased loved one has intrinsic value, and the annual visit has that value, too. But I think it is clear that *Y*’s mother’s

argument will be somewhat disappointing if it rests on such an assumption, no?” To the contrary, I think it would be disappointing if reasons for action were not based on values. But, in any case, “intrinsic reason” could be substituted throughout for “intrinsic value” without altering the substance of my argument.

request imparted additional intrinsic value to *Y*'s future graveside visits at Easter. There are many ways to honor someone's memory, but this one has become special. It matters that she asked, and it would matter even if it mattered in no other way.

In the booming-voiced-child variation of Estlund's flight-attendant example, the child imparts no intrinsic value to doing as he says. (Unless it is taken as a request, in which case the granting of it might have intrinsic value, but not duty-grade intrinsic value.) Adding that it is the child's intention to manipulate the other passengers' motivating reasons would not cure this deficit. In Estlund's flight-attendant example as originally stated, though, it is not preposterous to think that the command *does* impart duty-grade intrinsic value to *Y*'s getting the bandages instead of getting the water, even though *Y* knows that the water is needed more. Modest-error tolerance and intrinsic value go together. But it is also not preposterous to think, to the contrary, that it would be contemptibly sycophantic of *Y* to get the bandages rather than the known-to-be-more-needed water, and perhaps even more so if *Y* were to act upon the consoling thought, "At least I'm doing something intrinsically valuable!" The issue turns on whether or not there is a moral principle, of the right kind, that the flight attendant's command triggers. If there is not, then so much the worse for putative authorities generally. But all that would show is that there are no authorities, not that the very idea of there being moral powers of the kind they need is incoherent.

Authorities are normally thought of not only as retail order-issuers but also as wholesale rule-givers;⁷ and in that latter aspect the mystery of authority is mixed up with the mystery of rules. Not all practical rules are ones issued by

⁷ Hart (1994, 93-95) goes so far as to indicate that the step from retail ("official agencies to determine authoritatively the fact of violation of the [customary] rules" to wholesale ("rules of change") is what marks the passage from the pre-legal to the legal.

an authority: setting aside *Euthyphro* worries, moral rules are a conspicuous example. Are practical rules ever worth following for their own sake, rather than for the sake of achieving a further purpose of some kind? Some rules, at least, are valuable only instrumentally, if at all. Larry Alexander and Emily Sherwin (2001) distinguish what they call “serious rules” from “mere rules of thumb”, in roughly this way: a serious rule is one that ought to be followed even when it fails to achieve or even undermines its purpose, whereas mere rules of thumb are recognized and treated as rough guides that may be dispensed with whenever the occasion allows finer discriminations. Rules of thumb don’t even pretend to be worth following for their own sake. But serious rules—insofar as they serve some purpose or other—are inescapably overbroad; and therefore, Alexander and Sherwin say, there is always a gap between the reasons justifying rules and reasons that bear upon actors when acting. Thus, “either deception or delusion is an inevitable feature of successful rules”—successful *serious* rules—that are laid down by an authority (91; *cf.* Schauer 1991). (Presumably they would say the same about successful reason-giving generally, insofar as it seeks to impose rules). It is not easy to imagine what might be intrinsically valuable about deceiving or being deluded. As I suggested earlier, the elusive bearer of intrinsic value is likelier to be found in the retail rather than the wholesale department. Perhaps there is intrinsic value in being sociably disposed, and perhaps being disposed to cooperate in face-to-face encounters with officials could plausibly be tied to that.

V. CONCLUSION

The normative condition of success in exercising authority has non-normative roots. If political authority—as opposed to mere leadership—makes any sense at all, there has to be something non-normative about people and their relationships that makes it the case that certain actions by

WILLIAM A. EDMUNDSON

the official sub-set of a group suffice to endow certain performances with intrinsic value, duty-grade intrinsic value. Intrinsic value supervenes upon certain non-normative facts about people, their social nature, and their social circumstances. How this could possibly be remains a mystery. But Enoch has advanced our understanding of what is involved in trying to harness this mysterious power.⁸

REFERENCES

- ALEXANDER, Larry, and SHERWIN, Emily, 2001, *The Rule of Rules: Morality, Rules, and the Dilemmas of Law*, Durham, NC: Duke University Press.
- BIX, Brian, 2011, "The Nature of Law and reasons for Action", *Problema* 5, 399-415, e-journal Available at <http://www.juridicas.unam.mx/publica/rev/cont.htm?r=filotder&n=5>.
- EDMUNDSON, William A., 2010, Political Authority, Moral Powers, and the Intrinsic Value of Obedience, *Oxford Journal of Legal Studies* 30: 179-91.
- , 2011, Consent and Its Cousins, *Ethics* 121: 335-53.
- ENOCH, David, 2011a, Giving Practical Reasons, *Philosopher's Imprint* 11: 1-22.
- , 2011b, "Reason-Giving and the Law", in Green, L. and Leiter, B. (eds.), *Oxford Studies in Philosophy of Law, Vol. I*. Oxford: Oxford University Press.
- , 2012, Authority and Reason-Giving, *Philosophy and Phenomenological Research*: 1-37.
- ESTLUND, David, 2008, *Democratic Authority: A Philosophical Framework*, Princeton, Princeton University Press.

⁸ I thank David Enoch, Bas van der Vossen, and Brian Bix for insightful comments, challenges, and corrections. Remaining errors are mine alone.

“BECAUSE I SAID SO”

- FEINBERG, Joel, 1984, *Harm to Others*, Oxford: Oxford University Press.
- GRICE, H. P., 1957, Meaning. *The Philosophical Review* 66: 377-88.
- HART, H. L. A., 1994, *The Concept of Law*, 2nd. ed., Oxford: Clarendon Press.
- KORNBLITH, Hilary, 1999, Distrusting Reason, *Midwest Studies in Philosophy* 23:181-96.
- Marušić, Berislav, 2012, Belief and Difficult Action. *Philosophers' Imprint* 12, 18: 1-30 <http://hdl.handle.net/2027/spo.3521354.0012.018>.
- PERRY, Stephen R., 2012, Political Authority and Political Obligation, forthcoming, in Green, L. and Leiter, B. (eds.), *Oxford Studies in Philosophy of Law*, Vol. II. Oxford: Oxford University Press.
- RAZ, Joseph, 1986, *The Morality of Freedom*, Oxford: Clarendon Press.
- , 2012, *Is there a reason to keep a promise?* Electronic copy available at: <http://ssrn.com/abstract=2162656>.
- RODRIGUEZ-BLANCO, Veronica, 2012, “Reasons in Action *v.* Triggering-Reasons: A Reply to Enoch on Reason-Giving and Legal Normativity”, *Problema*, this issue.
- SCHAUER, Fred, 1991, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and Life*, Oxford: Clarendon Press.
- SIMON, Dan, 2012, More Problems with Criminal Trials: the Limited Effectiveness of Legal Mechanisms, *Law and Contemporary Problems* 75: 167-209.
- WEGNER, D. M., D. J. Schneider, S. Carter, and T. White. 1987, “Paradoxical Effects of Thought Suppression”, *Journal of Personality and Social Psychology* 53: 5-13.