RESPECT FOR THE LAW: AN EVALUATION

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Abstract:

The aim of this paper is to try to clarify the nature and justification of respect for the law. In section I, I try to clarify the nature of respect for a legal system and distinguish it from related concepts. In the next section, I consider problems justifying the attitude of respect toward a legal system. In section III, I discuss the extent to which one has duties to behave respectfully toward and to try to adopt an attitude of respect toward a reasonably just legal system. One consequence is that it is difficult to show that one has a duty to obey the law because it is respect-worthy. In the last section, I sketch further consequences of preceding sections and suggest that respect for the law properly understood is neither the boon of oppression nor the bane of conscientious moral agents.
Respect for the Law: An Evaluation

Two motives underlie this paper—one theoretical, one practical. In recent years writers from several different disciplines have paid considerable theoretical attention to compliance with the law. The different kinds of compliance have been investigated conceptually, empirically and normatively. The attitude of respect for the law and compliance out of respect for it and the subtle logical relations between them have not been discussed. Yet these subjects are important, given the attention they receive in political and legal discussions. Respect for the law is much in need of theoretical discussion.

The practical motive is related to the theoretical one. Ordinarily, respect-for-the-law rhetoric is prominent in political contexts. Politicians use such rhetoric to justify

1. An earlier and shorter version of this paper was read at the Eastern Division meetings of the American Philosophical Association held in Atlanta in December 1973. Since then the paper has been rewritten with the guidance of comments by Herbert Morris, Hugo Bedau, John Moore, Craig Ihara, Larry Wright, and Richard Wasserstrom. While absolving them of responsibility for any remaining defects, I gratefully acknowledge their help.


See the following for some specific conceptual discussions of compliance.


obedience to the law, while civil disobedients invoke respect-for-the-law rhetoric to justify disobedience, and anarchists regard such rhetoric as an instrument of oppression. Before we can know whether to praise or condemn such rhetoric and whether to praise or condemn those who obey the law out of respect for it, we need to understand much more clearly what it is to respect the law and when respect for the law is justified, if it ever is. In what follows I try to clarify and to understand some of the conceptual and normative issues concerning respect for the law. This discussion lays the groundwork for more practical concerns, but I leave practical applications to other occasions.

In section I, I try to clarify the concept of respect, to distinguish respect as an attitude of compliance toward a legal system from reverence for and being in awe of a legal system, and to show that the compliance out of respect differs significantly from other kinds of compliance with the law. In section II, I consider the appropriateness of the attitude toward possible objects of respect and suggest that a reasonably just legal system is one morally appropriate object of respect. In section III, I discuss in a preliminary way the extent to which it is morally obligatory for one to behave respectfully.

3. "... [O]ur nation is founded on the principle that observance of the law is the eternal safeguard of liberty and defiance of the law is the surest road to tyranny.

"The law which we obey includes the final rulings of the courts as well as the enactments of our legislative bodies. Even among law-abiding men few laws are universally loved.

"But they are universally respected and not resisted.

"Americans are free, in short, to disagree with the law, but not to disobey it. For in a government of laws and not of men, no man, however prominent or powerful, and no mob, however unruly or boisterous, is entitled to defy a court of law." John F. Kennedy, New York Times, October 1, 1962, p. 22, col. 6; emphasis added.

4. "I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for the law." Martin Luther King, Jr., "Letter from Birmingham City Jail" in Civil Disobedience, ed. Hugo Bedau (New York: The Bobbs-Merrill Co., 1969), p. 79.

5. "Customs absolutely essential to the very being of society, are, in the [legal] code, cleverly intermingled with usages
toward and to try to adopt an attitude of respect toward a legal system. One consequence of the subtle relationship between a legal system's being a morally appropriate object of respect and one's having a duty to behave respectfully toward it is that it is difficult to show that it is obligatory for one to obey the law because it is worthy of respect. Finally in section IV, I sketch some of the consequences of the preceding analysis and justification of respect for the law.

I

In discussing respect for the law I use the term "the law" to refer to a legal system rather than the laws of a legal system, a particular law, or an ideal model of a legal system. The main reason for this restriction is that one is concerned as much with the justice of the administration of the laws as with the justice of the actual laws of the legal system. One is not usually concerned only with the laws (separate from their administration) or an ideal model of a legal system or one particular law.

imposed by the ruling caste, and both claim [wrongly] equal respect from the crowd. 'Do not kill' says the code, and hastens to add 'And pay tithes to the priests.' 'Do not steal' says the code, and immediately after 'He who refuses to pay taxes shall have his hand struck off.'" Peter Kropotkin, "Law and Authority" in Civil Disobedience and Violence, ed. Jeffrie Murphy (Belmont: Wadsworth Publishing Co., 1971) p. 138.

"It is not desirable to cultivate a respect for law, so much as for the right... Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice. A common and natural result of an undue respect for law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys, and all, marching in admirable order over hill and dale to the wars, against their will, ay, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart. They have no doubt that it is a damnable business in which they are concerned; they are all peaceably inclined. Now, what are they? Men at all? or small movable forts and magazines, at the service of some unscrupulous man in power? H.E. Thoreau, "Civil Disobedience" in Bedau, Civil Disobedience, p.79.

In discussing respect for a legal system I analyze the concept of an attitude of respect for a legal system rather than the concept of respectful behavior toward it. For one thing, respectful behavior toward a legal system is usefully analyzed in terms of an attitude of respect toward it. For another, if citizens respecting the law is valued over and above mere obedience, its value lies in part in their positively valuing the legal system (i.e., in their having an attitude of respect toward it)—not merely in their behaving as if they do (while, for example, secretly harboring disobedient or revolutionary thoughts toward it).

My thesis about the attitude of respect is that it is a complex relationship holding between four elements: a person who respects (a respector), a respected object (in this case a legal system), some characteristic in virtue of which the object is respected (the basis of respect), and some evaluative point of view according to which the object is worthy of respect. This complex relationship is summarized in the following formula: A respector, R, E-respects some legal system, L, in virtue of some characteristic, F, or alternatively, R E-respects L in virtue of F, or R E-respects L's F.

I define respect for a legal system as follows:

R E-respects L's F (where L refers to some legal system, F to some trait of L, and E to some evaluative point of view), if and only if:

(1) R believes L has F and that F is a good-making trait (from the E point of view) of legal systems,

(2) R appreciates (has knowledge and understanding of) why F is an E good-making trait of legal systems,

(3) R is disposed to rely upon and have confidence in L's having F and F's manifesting itself, and

(4) R is disposed to acknowledge and recognize, in ways appropriate to the F in question, that F is a good-making trait of legal systems generally and L in particular.

This analysis is similar to an analysis of the notion of the attitude of respect that I have discussed elsewhere. However, I will discuss the necessity of each of these conditions as they apply to a legal system; their joint sufficiency should be clear.

1. If R E-respects L for F, then R believes that L has F and that F is a good-making trait (from the E point of view) of legal systems.

(a) In respecting a legal system one must have a reason or basis for doing so and this reason must be some believed fact or characteristic about it. This requirement rules out several kinds of reasons for respecting a legal system. First, one must have some reason for respecting the law. One cannot respect it for no reason at all. Such respect would be logically inappropriate. Second, the reason for respecting the law must be some believed characteristic about it, not about the attitude, or the consequences of respecting the law. This rules out certain utilitarian reasons for respecting the law. One cannot have as a basal reason for respecting the law that one's respecting it will produce certain results, e.g., that it will make legal officials happy, or produce the greatest happiness for the greatest number.

(b) The basis of respect must be some trait or believed trait of the legal system in question. These traits must be some set of relatively permanent dispositions possessed by L. We do not respect a legal system for performing one act of which we approve, e.g., acquitting a person who is unjustly accused. Typically we need evidence gathered over some period of time that a legal system is worthy of respect, e.g., that it actually is just or actually does protect liberty. This requirement is merely an evidentiary requirement. However, it suggests that what we really respect about the law is not this or that performance, or even a number of performances, but the relatively permanent dispositions of legal officials and the relatively well-entrenched laws. This requirement may explain why lawyers consider legal procedure so important. Procedures are important character-trait of the legal system, as it were. They are often relatively more permanent than particular substantive laws.

In this analysis I attempt to apply our general ordinary notion of the attitude of respect to the problem of respect for the law. I have not attempted an ordinary language analysis of "respect for the law," since it is highly politicized and often means merely "obey the law." As the last section of the paper suggests, this neutral, non-politicized notion of respect helps us distinguish truth from exaggerated insight in respect-for-the-law rhetoric.

(c) Respect is a value term: to respect a legal system implies that one values it. Consequently, the believed characteristic in virtue of which one respects a legal system must be believed to be a good-making characteristic of it or contingently connected to a good-making characteristic of it. For example, if I respect the legal system for protecting liberty or private property, then I must believe that protecting liberty or private property is such a good-making trait.

(d) Since respect for a legal system implies that one believes that it has some good-making characteristic, one must respect it from some evaluative point of view or other. For example, one might respect a legal system from the moral point of view or from some non-moral, e.g., the nationalistic, point of view. One might respect it because it secures justice or because it protects the economic system in the country. In order to characterize these findings I use the expression "R E-respects L" to mean that R respects L from some evaluative point of view, E. The notion of an evaluative point of view will not be formalized or analyzed here, but intuitive examples of an evaluative point of view are the moral and nationalistic points of view.

2. If R respects L for F, then R appreciates (has knowledge and understanding of) why F is an E good-making characteristic of legal systems.

This condition of respect distinguishes it from both reverence for an being in awe of a legal system or legal authority. The object of respect for a legal system is some believed valuable characteristic of the legal system and not some believed dreadful characteristic (as in the case of one sense of "awe") or some sacred, exalted or holy quality of it (as in the case of reverence and one sense of "awe"). Additionally, respect necessarily implies a considered, measured evaluation of the worth of an object, where part of the

9. I do not suggest here that whenever one respects a legal system or says "I respect it" one must be thinking of some evaluative point of view from which to respect it. I merely claim that an evaluative point of view is presupposed by (is a necessary condition of) the attitude of respect. If one has an attitude of respect for a legal system, one must be prepared, when pressed in discussion, to specify what the presupposed evaluative point of view is.

10. See Kurt Baier, The Moral Point of View (Ithaca, New York: Cornell University Press, 1958) for a discussion of some of these distinctions.
considered evaluation is an ability to appreciate why the F is a good-making trait of legal systems. Neither reverence nor awe necessarily implies such an evaluation.

That respect is distinguished from reverence and awe by these conditions suggests that respect does not have the undesirable implications that reverence for and being in awe of a legal system would have. To have reverence for the law implies that one regards it as holy, sacred, exalted, and perhaps beyond reproach. It would be difficult to justify such an attitude of reverence toward a legal system. As we will see, the attitude of respect, lacking these undesirable connotations, is easier to justify.

3. If R respects L for F, then R is disposed to have confidence in and rely upon L's F and F's manifesting itself.

In central cases, the terms "have confidence in" and "rely upon" are used to denote one's disposition to count on the respect-object ranging from an almost faith-like reliance on a respected object to trust in a respected object. If I respect Smith for being a principled person, then I am disposed to rely upon and have confidence in him to continue to be principled. If Smith makes a promise to me, then out of respect for his principled nature, I am disposed to trust implicitly that he will keep the promise. In these central cases, respect implies a trust that the person has some ability or character-trait and that he will bring about the result that is appropriate to one with these characteristics. Similar claims seem true of respect for the law.

One is disposed to rely upon some respected trait, F, of a legal system in two senses. First, one is disposed to act as if the respect-worthy trait, F, e.g., the characteristic of protecting private property, or personal liberty, is relatively enduring, i.e., that the legal system will continue to protect private property, or personal liberty. Second, out of respect for a legal system one is disposed to have legal matters, e.g., with regard to private property, or personal liberty, settled by the legal system and accept the consequences of these decisions. Socrates, who, as portrayed in the Crito, chose to submit to and rely upon the legal system and not to escape from it when he was unjustly condemned by it, is an extreme example of one who relied on a legal system.11

11. Whether Socrates was relying upon the legal system out of respect for it is not entirely clear, for he seems to conflate reverence and respect, which, as argued above, should not be done. See the Crito, 49B-54D, for the Socratic discussion.
One's respect for a legal system (and one's corresponding confidence in it) is not mere faith in it. Nor does one's respect for it imply that one has faith in it. When one has faith in something, one is disposed to believe in it and in some circumstances to support it even in spite of considerable evidence that it is not worth defending, protecting or believing in. However, one's respect for (and corresponding confidence in) a legal system must be based upon evidence that it has the putative respect-worthy trait and that it is a good-making trait of legal systems. Consequently, one's judgment of respect is subject to revision upon the presentation of sufficient evidence that the legal system is not worthy of respect.

4. If R respects L for F, then R is disposed to acknowledge and recognize, in ways appropriate to the F in question, that F is a good-making trait of legal systems generally and L in particular.12

To acknowledge or recognize that some state of affairs exists and is valuable may be merely to know it or perceive that it exists and is valuable. However, it may also mean that one not only perceived the existence and value of the state of affairs, but also expresses or manifests by some sign of behavior that he knows this. It is in this latter sense that I use "acknowledge" and "recognize." Respect for a legal system's F implies, not only that we acknowledge that it has F and that it is valuable, but we must acknowledge it in ways appropriate to the F in question. The "appropriate" here is unavoidably vague, but we are capable of making the required propriety assessments. Consider first the case of persons. If we prespect Smith as a good doctor, we acknowledge her expertise by being disposed to heed and defer to her judgments concerning our health. We do not acknowledge her expertise as a doctor by being disposed to heed and defer to her judgments concerning mathematics or trout fishing. Similar considerations apply to legal systems. If I respect a legal system because it is just, I am especially disposed to uphold and defend its just laws and procedures, but am less disposed to uphold unjust laws and procedures, except, perhaps, as my (and everyone else's) compliance with such laws helps generally to preserve the legal system which I respect.

12. One should notice that these are merely dispositions to act and at any particular time may not result in a particular action, but these dispositions should be among those competing dispositions in one's psychological field, if one has respect for another. The disposition statement "R is disposed to do A" is to be understood as "If R were to be in circumstances, C, then R would do A."
One may acknowledge that $F$ is a good-making property of legal systems in several different ways. (1) One may be disposed to emulate $L$ in regard to $F$, if one is interested in designing a legal system or one is a legislator who can influence the kind of legal system under which one lives. (2) One may be disposed to preserve, protect, and try to improve $L$ in regard to $F$. One of the most important ways in which one can contribute toward preserving the legal system is by obeying its laws. Out of respect for a legal system, one would be disposed to acknowledge the worth of its good-making properties by obeying not only those laws that secure the respected value, e.g., liberty, justice, or equality, but also by obeying other laws, general compliance with which is essential to preserving the legal system.

(3) One may be disposed to take into account, heed, or defer to the advice, commands, etc. of the officials of a respected legal system with regard to legal matters. (4) Finally, one may acknowledge the worth of a respect-worthy legal system by honoring it, its officials and laws in various ways. Honoring a legal system and its officials is mainly a means provided by conventions or customs for acknowledging its value. Such tokens of honor and respect are particularly evident in courtroom decorum where honorific titles are used and rituals honoring officials are followed.

The acknowledgment condition [as well as (3) above] of the analysis of respect for a legal system also enables us to account for respectful behavior toward a legal system. This condition describes the kind of dispositions that would be manifested in respectful behavior toward a legal system. If one behaves respectfully toward legal officials, then one behaves as one would be disposed to behave, if one had an attitude of respect toward them as officials of a respect-worthy legal system.

The acknowledgment condition also explains why some forms of prima facie disrespectful behavior may be appropriate means of manifesting one's respect for a legal system. Disobedience of a particular law, e.g., an extremely unjust one, in some circumstances may be the appropriate means of acknowledging the value of some property of a legal system, e.g., its justness, in virtue of which one respects it. Similarly, exhibiting contempt for cruel or unjust legal officials in certain circumstances may be the appropriate means of acknowledging the value of an otherwise just legal system. (This might, for example, be one explanation of the behavior of the defendants in the "Chicago 7" trials.)
The analysis of respect constituted by conditions (1) - (4) above enables us to distinguish between compliance with the law out of respect for it, and compliance out of other motives. A person's compliance with the law is distinguished by the reason (or attitude) which the person has for (in) complying with a set of commands. Suppose a robber tells me to give him my wallet or he will harm me. I comply with his command by handing over my wallet, but I do it out of fear of the consequences to myself. On the other hand, if a person whom I respect as honest and trustworthy orders me to give him my wallet, I may be puzzled unless there is an explanation forthcoming, but if I hand him my wallet, I have complied with his order. In each case the external behavior is the same, but we distinguish the different types of compliance by the attitude which the agent had in complying or by the reason he would give for complying. Similarly, our evaluation of compliance behavior as desirable or undesirable depends upon the agent's reason for, and attitude in, complying with the command. These facts enable us to distinguish compliance out of respect for the law from compliance out of other motives.

Clearly, compliance with the commands of a legal system out of fear as Austin\(^\text{13}\) suggests is radically different from compliance out of respect for the worth of the legal system. Similarly, respect for the law is distinguished from allegiance to it in Hart's sense and acknowledgment of its authority in Woozley's sense.

H.L.A. Hart says:

\[\ldots\text{persons' allegiance to the system may be based on many different considerations: calculations of long-term interest; disinterested interest in others; an unreflecting inherited or traditional attitude; or the mere wish to do as others do. There is indeed no reason why those who accept the authority of the system should not examine their conscience and decide that, morally, they ought not to accept it, yet for a variety of reasons continue to do so.}\]^\(\text{14}\)

If one respects a legal system from the moral point of view, respect for a legal system is sharply distinguished from allegiance to it. Respect for the law morally speaking logically


requires that one examine one's conscience and decide that the legal system has sufficient moral good-making qualities to be respect-worthy. Yet it is possible for one to have allegiance to a legal system and not believe it has sufficient moral good-making properties to warrant one's accepting its authority. In addition, respect for a legal system implies a kind of allegiance to it, as long as it has certain moral properties. However, one's primary obligation is to promote the moral values and only secondarily to the legal system in so far as allegiance to it promotes these values.

Similarly, respect for a legal system is different from acknowledgment of its authority as Woozley defines it:

... Acknowledging their [the secondary rules of a legal system] authority is not the same as approving of it. It is the same as not challenging it, the reasons for which may be various, with approval as only one of them.\[15\]

Clearly, compliance out of respect for the law is distinguished from compliance out of acknowledgment of the authority of the legal system. Respect for a legal system because it has some good-making property F implies an acknowledgment of its authority as a means to acknowledge the value of L's F, but the commitment is to the value of L's F and not to the authority of the legal system simpliciter.

II

The analysis of respect for the law of section I is only part of a respect-for-the-law theory. To have a complete respect-for-the-law theory, one must show the appropriateness\[16\] of the respected characteristic, F, of the legal system to the attitude of respect and discuss the particular duties of respect and their justification. For example, if one claims to respect,


16. In showing the appropriateness of an object of respect to the attitude of respect, there are two different things one might have in mind. First, in response to the challenge "Why do you respect that particular legal system for, inter alia, protecting private property?" one replies by showing that one has sufficient evidence for the particular case to warrant the judgment that it is worthy of respect. Underlying this demonstration is an assumption that it is appropriate to respect such legal systems. But someone may challenge this assumption.
morally speaking, legal systems that, inter alia, protect private property, then one must show (1) that protecting private property is a moral good-making property of legal systems (which it is not always), and (2) that it is a characteristic of a legal system toward which it is appropriate to have the attitude of respect from the moral point of view. In addition, one must specify the particular duties of respect, if any, toward a legal system which protects private property and the relative strengths of such duties. Is it obligatory or supererogatory to behave respectfully toward such legal systems? I briefly discuss each of these matters in turn.

To show that some feature of a legal system is an appropriate object of respect from some evaluative point of view, one must do the following: (1) Specify both the feature, F, of legal systems that is to be respected, and the evaluative point of view, E, from which they are to be respected. (2) Show that F is indeed an E good-making property of legal systems. (3) Show that F is a sufficiently important good-making property of legal systems from the E point of view to warrant persons to try to adopt the dispositions of respect toward it.

If an object of respect satisfies (1) - (3) I shall say that a person has an attitude of respect toward an appropriate object of respect from the E point of view. This conception of respect is relativized to a certain evaluative point of view and normally the moral point of view would be presupposed. However, we might talk of respecting a legal system from a very narrow technical point of view, e.g., we might think a legal system is a good legal system from the Nazi's nationalistic point of view. One might object that a good Nazi legal system cannot be respected. This seems to me to be a mistake. We can respect Nazi legal systems from some narrow nationalistic point of view, we just cannot respect them from the moral point of view--they are morally offensive. I shall say that a person has an attitude of respect toward a morally appropriate object of respect (or that the object is morally respect-worthy) just in case conditions (1) - (3) are satisfied and the moral point of view is presupposed. A good Nazi legal system may be respect-worthy from a nationalistic point of view, but not morally respect-worthy.

Someone may want to know why a legal system's protecting private property is an appropriate object of respect. The second kind of appropriateness claim one might make about the object of respect is to show that the good-making properties of legal systems that one believes makes them worthy of respect, e.g., their protecting private property, in fact makes them worthy of respect.
It should be clear how the first two conditions of the appropriateness test would be satisfied, but the third needs further comment. The idea is that one must decide among all the properties that are good-making properties of a legal system from some evaluative, e.g., the moral, point of view, which ones are important enough to warrant one in having an attitude of respect toward them. Which ones are important enough to receive the kind of support, honor and encouragement peculiar to respect (as opposed to those typical of other states of mind) as manifested in the dispositions of respect? To illustrate how one justifies appropriateness claims consider the following arguments.

One account of respect for a legal system holds that a legal system which operates in accordance with the rule of law protects the liberty of persons living under it. Operating in accordance with the rule of law is a moral good-making property of legal systems, hence, the legal system is a morally appropriate object of respect. But this argument is unsound.

A legal system which operates in accordance with the rule of law has a great deal to recommend it. In particular it

17. See my "Toward a Theory of Respect for Persons" for further discussion of these issues.

18. A legal system operates according to the rule of law as follows. Given a set of primary rules of the legal system (those rules designed to regulate and guide the conduct of persons), these rules and their enforcement must satisfy several conditions: (1) The rules are publicly announced (rather than being unknown to those whose conduct they regulate and guide). (2) Their meaning is fairly clearly defined, rather than being overly vague, so that persons in the community can understand them and act accordingly. (3) These primary rules must be such that it is possible for persons to obey them, e.g., there must not be rules that make it an offense to be of the Negro race or requiring persons to be born with three arms, etc. It is also part of this requirement that an affirmative defense or partial defense to a charge of an illegal act is that it was impossible to comply with the law. (4) When the rule of law is operative, similar cases must be treated similarly, for otherwise persons could not regulate their actions by means of the rules. (5) There would be no offense without a violation of a law. (6) There must be rules designed to protect the judicial process itself. There must be orderly trials, rules of evidence that guarantee rational rules of inquiry, judges must be independent and impartial. In short, the rules guiding the judicial process must ensure that the legal order is impartially and regularly maintained.
goes a long way toward preserving and protecting a person's personal liberty. If the laws are publicly promulgated, if they are reasonably clear and precise, and if impossibility of compliance is accepted as a defense to a charge, then one can be reasonably certain that as long as one does not knowingly or recklessly violate the law that the legal system is not going to interfere with one's liberty. Furthermore, assuming the laws are rigorously and impartially enforced, and assuming that rigorously and impartially enforced laws go a long way toward deterring others from violating the law, one can be reasonably certain that one's legal rights will be secured and that others will observe any legal obligations they have to one. In short, if the rule of law holds in a legal system, then one can predict reasonably well the ways in which the legal system and other persons will and will not interfere with one's life, depending upon one's own behavior. Such a legal system goes some way toward preserving a person's liberty of action in so far as this is based upon his or her predictions and expectations about the behavior of others. Is such a legal system worthy of respect?

Even if one grants that it is prima facie a moral good-making property of legal systems to operate in accordance with the rule of law, it does not follow that this property is a sufficiently important one for it to be morally respect-worthy. Substantively unjust legal systems, e.g., caste systems or systems of hereditary slavery, can be administered in accordance with the requirements of the rule of law, but are not morally respect-worthy. Consequently, if all one knows about a legal system is that it operates in accordance with the rule of law, this is not a sufficiently important moral good-making property to be a morally appropriate object of respect.

For a legal system to be morally respect-worthy, it seems that it must satisfy certain substantive standards of justice in addition to operating in accordance with the rule of law. Various fundamental liberties and protections must be afforded everyone in the community, for them to have reason to respect the legal system from the moral point of view. What these fundamental liberties and protections are, we cannot pursue, for that would take the discussion far afield, but suitable conditions of substantive justice must be satisfied. For example, requirements of justice similar to those suggested by John Rawls in A Theory of Justice might be adequate in this regard.\footnote{19} If suitable conditions of substantive justice were

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\footnote{For further discussion of some of these points see John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971) pp. 239, 242, and the sources cited at p. 235.}

\footnote{19. Rawls, Theory of Justice, pp. 60-89, 195-391.}
satisfied (or nearly satisfied) by a legal system and the legal system operated in accordance with the rule of law, then I will say that such a legal system is reasonably just.

A reasonably just legal system seems to be morally respect-worthy. It would guarantee to each person a certain threshold level of rights necessary to secure fair hearings, bring about changes in the law and in general give one a fighting chance within the legal system. This threshold level of rights guarantees that even the worst off person living under a legal system has good reasons to try to acquire the dispositions of respect toward it (to try to acquire an attitude of respect toward it).

III

Even if one has shown that some characteristic of a legal system e.g., its being reasonably just, is morally respect-worthy, one must still discuss how one ought to behave toward respect-worthy legal systems, and the strength of such moral duties.

I suggest that the duties of respectful treatment may be defined by reference to the attitude of respect. The duties to treat a legal system respectfully are the duties to treat the legal system as one who had an attitude of respect toward it would be disposed to treat it. For example, if one who had an attitude of respect toward a legal system would be disposed to obey its laws in order to preserve it in its reasonably just state, then one of the duties of respect is the duty to obey the laws to preserve it in its reasonably just state. The duties of respectful treatment include all those dispositions to behavior discussed under the dispositions of the attitude of respect. However, the main duty of respect which interests me is the duty to preserve and protect a legal system in its respect-worthy state. One might fulfill this duty by obeying the law and by supporting the legal system in other ways. Under what circumstances does one have a duty to behave respectfully toward a legal system in order to preserve it in its respect-worthy state? I discuss this issue in a few paragraphs.

Once one has an account of the duties of respect toward a legal system one must discuss whether such "duties" are obligatory or supererogatory. The strength of the duties of respect is not settled by the fact that a legal system is morally respect-worthy. Ordinarily, if one were to show respect toward a reasonably just legal system, the effects of behaving in this way would tend to be good. By behaving respectfully toward
and obeying a reasonably just legal system, one helps to support
and defend a legal system with this virtue. In addition, one
may encourage others to have this attitude toward it, and
reinforce the actions of administrators in their reasonably
just administration of the law. However, simply because an
act has morally good consequences, it does not follow that it
is obligatory for one to perform that act, for the cost to
one's reasonable self-interest may be too great. Such an act
may be merely supererogatory. Consider an analogous case.
Just because one could produce a maximum amount of good by
going to underdeveloped countries to try to eradicate famine
and disease, it does not follow that it is obligatory for one
to do this. It may require too great a sacrifice. This is
typically a case of a supererogatory act—it is praiseworthy to
do and not blameworthy not to do. Similarly, just because
behaving respectfully toward a legal system has good consequences,
it does not follow that it is morally obligatory for one to
behave respectfully toward or to try to acquire an attitude
of respect toward it. More argument needs to be offered to
substantiate this claim.

As a first step, one should note that the good consequences
which result from respectful behavior toward a just legal system
are good because they tend to promote and support a reasonably
just institution and the just actions of its officers. This
suggests that the duty to behave respectfully toward a just
legal system and even the duty to try to acquire an attitude
of respect toward it are both means of fulfilling the duty to
promote and uphold reasonably just institutions. Consequently,
the best case that could be made for one to have a duty to
behave respectfully toward just legal systems as a means to
promote and uphold just institutions is the case in which it
is obligatory for one to uphold and promote just institutions.

20. Rawls, Theory of Justice, pp. 438-439. The notion of
reasonable self-interest needs clarification but the intuitive
idea should be clear enough for my purposes.

21. See R. Chisholm, "Supererogation and Offence: A
Conceptual Schema for Ethics" in Thomson and Dworkin, Ethics,
pp. 412-429, for further discussion of these matters.

22. See Rawls, Theory of Justice, p. 115 who regards the
duty to promote justice as a natural duty (v. obligation) it
is obligatory for one to fulfill.

23. See Immanuel Kant, Groundwork of the Metaphysics of
Morals, trans. H.J. Paton (Harper Torchbooks) p. 89n, and
justice or if it were merely supererogatory for one to promote and uphold just legal institutions, then the case that it is obligatory for one to behave respectfully toward just institutions and their officers as a means to promoting these duties would be correspondingly weaker or non-existent.

Assuming that it is obligatory for one to promote justice and just institutions, under what circumstances is it obligatory for one to behave respectfully toward and to try to acquire an attitude of respect toward reasonably just legal systems? In answering these questions the conscientious moral agent must decide whether such behavior will do more to promote justice than other acts one could perform in such circumstances. Similarly, in deciding whether or not one has a duty to try to acquire an attitude of respect toward a reasonably just legal system, one must take into account the wider social consequences of everyone's trying to acquire such an attitude. Consider each duty in turn.

One can imagine at least some situations in which it would be obligatory for one to behave respectfully toward such a legal system and its administrators in order to fulfill one's duty to promote justice. For example, if there are no other particular means to fulfilling one's duty to promote justice on a particular occasion and one can exhibit respect for the legal system or its administrators without great cost to one's reasonable self-interest, then it is obligatory for one to do so. This hypothetical situation may sound somewhat artificial, but the reason for discussing it is to clarify the logic of the issue. If there are a variety of means of fulfilling one's duty to promote and uphold justice on a particular occasion, then it does not automatically follow that it is obligatory for one to take one particular means to promote justice. It does not even follow that it is obligatory for one to take the best means to promote and uphold just institutions, for taking the best means may require that one perform a supererogatory action. Hence, even if one grants the best case for having a duty to behave respectfully toward a reasonably just legal system in order to preserve it in its reasonably just state, it does not follow that it is obligatory in each and every instance for one to show respect for the institution and its administrators.

It is more difficult to show that it is obligatory for one to try to acquire an attitude of respect toward a reasonably just legal system. To decide the issue, several considerations of justice and utility must be taken into account. Consider several different cases.

(1) If a legal system is an ideally just legal system, then if one were to have an attitude of respect toward it, this may be one of the best means of promoting justice open to a person. If it is one of the best means to promote justice and one can acquire an attitude toward the legal system (if one can do this at all) without too great a cost to one's reasonable self-interest, then it is obligatory for one to try to acquire an attitude of respect toward it. 24  

(2) If a legal system is reasonably just (hence, a morally respect-worthy), but has some pockets of injustice, the decision is more difficult. For example, if everyone were to believe that he or she ought to try to acquire an attitude of respect toward a reasonably just legal system, some may come to have an attitude of reverence or awe for it. Their reverence or awe for the legal system and its authorities may cause them to defend it, pockets of injustice and all. If this were to happen, then the cause of justice might be thwarted. If, on the contrary, everybody's trying to acquire an attitude of respect toward a reasonably just legal system would not have these bad consequences, then it may be that everybody's having or trying to have such an attitude is a good means to fulfilling the duty to promote justice. (3) If, however, a legal system is not even reasonably just, then clearly it is neither obligatory for one to try to develop an attitude of respect toward it nor obligatory for one to behave respectfully toward it as a means to fulfill the duty to promote justice.

Finally, one general point. There is no independent moral duty to behave respectfully toward or to try to acquire an attitude of respect toward a legal system. One has these duties only in so far as the legal system has a property which makes it a morally appropriate object of respect, e.g., it is reasonably just, and in so far as one has a duty to promote some moral state of affairs, e.g., to promote justice, and one chooses to fulfill this duty in certain ways, e.g., by respecting reasonably just legal systems. However, in many circumstances there is no reason (nor is it obligatory) for a person to choose this means to fulfill a duty to promote justice.

24 Although people can not have attitudes on command or by decision, we do say that they can do something to acquire them, and to change or alter them. I think that one can make sense of such talk, but this issue is beyond the scope of this paper.
IV

It is time to summarize results and to draw some further conclusions about the nature and justification of respect for the law. (1) Respect for the law is one kind of attitude of compliance toward a legal system, but it is distinct from other attitudes one may adopt toward a legal system (such as reverence and awe). In addition, obeying out of respect and behaving respectfully toward a legal system are distinct from other forms of compliance: Austin's compliance out of fear, Hart's allegiance to a legal system and Woozley's acknowledgment of the authority of a legal system. (2) To be a justifiable attitude, respect must have an appropriate object. In discussing respect for legal systems there seemed to be reasons for requiring legal systems to be morally appropriate objects of respect. (3) It is not always obligatory for one to behave respectfully toward or to try to acquire an attitude of respect toward reasonably just legal systems to preserve them in their reasonably just states. Both acts are merely one means to fulfill a duty to promote justice. Sometimes the consequences of respecting reasonably just legal systems may make such acts obligatory and sometimes not. (4) Finally, a number of implications for practical matters follow from the analysis and the justification claims made here.

First, respect for a respect-worthy legal system ordinarily entails a disposition to obey the commands of that legal system as a means to acknowledging the value of it. But as some\textsuperscript{25} seem to suggest, respect for a legal system does not require that one always obey its laws. For example, Kennedy over-emphasizes the point that general obedience to the laws of a legal system is required in order for it to exist. Since obedience to the laws of a legal system is merely one means, albeit an important one, of preserving and maintaining a respected legal system, it is possible that there may be circumstances in which disobedience to a particular law will do more to preserve the legal system in its valued and respected, e.g., reasonably just, state, than obedience will. Disobedience which does not damage the legal system, but which brings about a better distribution of benefits and burdens and makes it more just is required by respect for it. Further, one must first establish that it is obligatory to treat a legal system respectfully before it could possibly be obligatory to obey the law out of respect for it. This may be difficult to do.

\textsuperscript{25} Kennedy, from \textit{New York Times}, p.72
Second, one may respect the law (in the sense of a legal system that is reasonably just) yet disobey the law (a particular law of the legal system) in order to preserve a reasonably just distribution of benefits and burdens in the legal system.26 Furthermore, if one disobeys the law in a certain way, by not being offensive to the minions of the law, by relying upon and having confidence in the legal system's adjudication of one's case and by willingly accepting the penalty, if there is one, one expresses to the community one's attitude of respect for the legal system. However, one can not too often or in inappropriate circumstances disobey the laws of a legal system, even while expressing one's respect for it, without risking damage to the legal system one values as respect-worthy.

Third, some, such as Thoreau,27 have suggested that a concern for moral rightness (justice?) is distinct from a concern for respect for the law, but this is problematic. Thoreau is correct if he is suggesting that one might respect a legal system from other non-moral evaluative points of view. And he is correct if he is suggesting that one's behaving respectfully toward a legal system does not imply that one evaluate it and value it from the moral point of view. However, in so far as he suggests that one's attitude of respect toward a legal system can be divorced from one's evaluative judgments about it, this seems to be a mistake. Logically, if one claims to have an attitude of respect toward the law, one must be prepared to claim that there is some good-making property or other which the law has in virtue of which it is respected. Furthermore, I have suggested that this good-making property must be a moral good-making property. In fairness to Thoreau, it should be said that perhaps he was merely expressing a moral disagreement with his contemporaries over the moral defensibility and respect-worthiness of their particular legal system. It is quite possible that Thoreau would not object to the meaning and justification of respect that is clarified here, for I have suggested that one must make judgments about whether the legal system is reasonably just, (hence, worthy of respect) and that one's duty to treat it respectfully stems from one's duty to promote justice. Hence, there are circumstances in which respect for the legal system may require selective civil disobedience, e.g., when one's country is conducting an unjust war. There are also


27. Thoreau, "Civil Disobedience," in Bedau, Civil Disobedience, p.79.
circumstances in which one's obligation to promote justice could not possibly allow one to respect a particular legal system or treat it respectfully.

Fourth, as anarchists such as Kropotkin have claimed, not all laws are good laws, not all laws are just laws and there are no morally good reasons to respect a legal system that is unjust. However, it does not follow from Kropotkin's claim here that there is no legal system worthy of respect. Given appropriate standards of justice, there may be respect-worthy legal systems. If they are reasonably just, and behaving respectfully toward them (or trying to acquire an attitude of respect toward them) would do more to promote justice than not behaving respectfully (or not having an attitude of respect), then one ought to behave respectfully (or try to acquire an attitude of respect) toward them in order to fulfill one's duty to promote justice.

Finally, although the concerns of this paper have been largely theoretical, focusing on conceptual and normative matters, a practical closing comment is in order. There is reason to be skeptical about admonitions to respect the law. They may be self-serving, serving either the interests of a particular economic class, or particular legal officials themselves. Additionally, both the rhetoric and the practice of respect for the law may serve the interests of oppression. However, our discussion of respect for the law should show that, whatever the use and abuse of respect-for-the-law slogans in practice, the logic and justification of respect for a legal system do not commit one to serving the status quo nor to renouncing one's status as a moral agent. Respect for the law properly understood is neither the boon of repression nor the bane of conscientious moral agents.

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