Legal philosophers tend to talk about the normativity of law as if it is a central aspect of law that we need to explain, often assuming that there a single underlying question about it. I think that this is a mistake. Part of what I want to show in this paper is that there isn't really anything unique to the normativity of law. But this will follow from something more fundamental that I want to explore here, which is the nature of norm following. I want to show that different kinds of norms provide reasons for action in different ways. And those different kinds of norms are present in law as well, suggesting that the normativity of law is both complex and multifarious, yet not, I will argue, essentially different from normativity in other domains.

It is, actually, quite remarkable how many social, legal, and other institutional norms we follow, literally obey sometimes, on a daily basis. Before going to work you dress up in conformity with some norms of fashion or, at least, of propriety. On your way to work you obey traffic regulations, perhaps you greet an acquaintance you meet in some conventional manner; at work you follow norms and regulations of your institution, you probably follow some norms of etiquette and civility in dealing with your colleagues, and then, perhaps in the evening you go out to a restaurant, and there follow some conventions of dining in public, tipping the waiter, etc. And in the background of all this there are more fundamental norms we follow, such as various norms constituting juridical relations that we encounter on a daily basis, determining, for example, what is mine and what is yours, what I need permission to use and what I can use without asking anyone, etc. Life is norm governed through and through. But what is it to be governed by a norm?

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1 I do not intend to exempt myself from this mistake; in some of my previous writings I may have given the impression that there is a central question about the normativity of law.

2 Of course in using language we follow norms of various kinds, but I will not be concerned with linguistic norms in this paper. I have done that elsewhere, see my Social Conventions: from language to law, (Princeton, 2009) chapters 4 and 5.
or to follow a norm? Is it something like taking the norm to be a reason for your action? How can we make sense of that?

Let me begin by saying a few words about what I mean by "norms". We can think of norms as a subset of rules of conduct. There are all sorts of ways in which rules can figure in our practical and moral deliberation, without those rules being norms. Rules, in other words, can be abstract deontic quantifications over action types. I will stipulate here, however, that norms are the kind of rules which have some social or institutional reality to them. A norm can be a rule enacted or directed by some person or institution in a position of authority; or it can be a social rule, one which is followed, and considered to be binding in some respects, by a certain population in a given context. Many social norms are conventions, others may not be. But all social norms reflect the collective attitudes of a certain population to some rule following behavior they exhibit. Whether institutional or social, I assume here that norms are the kind of rules which have a social reality to them; that if we talk about a norm, or say that "there is a norm that so and so....", we should be able to answer the question: Whose norm is it, when, and where? And then my question is going to be: how can norms, social or institutional, give us reasons for action?

Let us assume that a reason for an action to $\phi$, is a fact that counts in favor of $\phi$-ing. This is not saying much, of course, but I will not try to say here much more than that. For our purposes it is enough to accept the common view that reasons for action can be understood in causal terms, as the kind of facts that figure in a causal explanation of someone's action (often called motivational reasons), but that they can also be understood normatively. That is, in terms of facts that actually count in favor of an action, the kind of facts that would be needed to respond to the question of why one should or ought to do it, not why one actually did. Thus, unless otherwise indicated explicitly, I will use reason for

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3 I am not suggesting that there is uniformity of usage in the literature about this. Norms of rationality, for example, would not be norms in the sense I use the word here. And some philosophers use the concepts of norms and normativity very broadly, aiming to cover the domain of practical reasons quite generally. See, for example, R. Wedgwood, The Nature of Normativity, (Oxford, 2007).
action in this second, normative sense. So what is it for a norm to be a reason for action? Obviously, it has to be a fact of some kind, and it has to count in favor of doing (or not doing) something. Now, given the narrow understanding I assume here about what norms are, they are clearly facts of social or institutional kind. We can say, for example, that there is a norm to do such and such here, but not there; or that there used to be a norm but it is no longer in force, and things like that. Thus, intuitively, we can regard a norm as a reason for action when the fact that there is a norm inevitably figures in an explanation of why one ought to do something. Before I cash this out a bit, we should note another familiar distinction. Something can be a reason for action without being the complete reason. The fact that it is raining outside is a reason for me to take the umbrella when I go out; but it is not the complete reason to take the umbrella. The complete reason would need to list more facts, as it were, such as my desire not to get wet, perhaps the fact that it is not too windy outside, and so on and so forth.

Now let us return to the idea that a norm is a reason for action if and only if it inevitably figures in an explanation of why one ought to do something. This is a fairly robust condition. It is meant to capture the intuitive idea that a norm is a reason for action for an agent when the agent must refer to the existence and content of the norm as part of their complete reason for action. The relevant practical reasoning must contain as one of its premises something like: I ought/have reason to do it because it is the norm that __ . Let me call this the condition of normativity. It is a robust condition because it actually fails with respect to a certain type of norms, namely, it fails when the norm in question summarizes or formulates reasons for action that exist independently of the norm. Saying that I do something (partly) because there is a norm that ___ is sometimes the wrong kind of normative explanation for your action.

Suppose, for example, that your friend tells you that they don't cheat on their spouse because there is a norm against it. You might think that your friend is a faithful spouse, perhaps, but for the wrong kind of reasons. You are not supposed to cheat on your spouse because cheating is wrong, not because there is a norm to avoid cheating.

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4 On the distinction between normative and motivational reasons, for example, J. Dancy, Practical Reality, (Oxford, 200) Note, however, that I take no sides here in the debate between internalists and externalists about reasons for action.
The norm, if there is one, only summarizes or formulates reasons that are there anyways, so to speak, regardless of the norm in question. So it may well turn out that most moral norms actually fail the condition of normativity.\(^5\) In giving an account of the complete reasons against, say, murder, rape, physical assault, deceit, etc., there is no need to refer to norms. If there are any norms in play, they only summarize or formulate reasons for action that are there anyway. Now compare this to cases in which the condition of normativity clearly obtains. For example, suppose you account for your reasons to stop your car at a red light; your complete account of the reasons for action is impossible to give without referring to the traffic norm in play here. Or think about your reasons to move the bishop diagonally playing chess. Surely a reference to the rules of chess is an essential part of it. If the rule was different you'd have a different reason.

The idea that basic moral norms fail the condition of normativity may sound more exciting than it should. Perhaps rule consequentialists would have us believe, or act as if we believe, that moral rules meet the condition of normativity. I'm not a fan of this idea, but my thesis here is not meant to rule it out. Remember that we are talking about the kind of rules of conduct that have a certain social reality to them, not about abstract rules we can formulate on any grounds whatsoever. Now of course, this does not exclude moral rules from also being norms. If there is a population that exhibits widely shared pro-attitudes towards a moral rule, then of course the moral rule is also a norm, a social norm, and it would be a social norm regardless of the truth or soundness of the norm's content. In any case, my arguments in this paper are focused on social and institutional norms, not on moral rules or moral principles. I want to show that there are four main kinds of norms, and that there are some interesting differences between them in the ways in which they can contribute to the subjects' reasons for action. I turn to this taxonomy now.

\(a. \text{Codifying norms}\)

Countless social norms we follow in our everyday lives, many of them legally codified norms, are essentially formulations of beliefs about the kind of things that ought

\(^5\) Not necessarily all, some social conventions may have a limited role to play in our moral reasons for action. See my *Social Conventions*, chapter 6
to be (or not to be) done. Norms against murder, rape, theft, corruption, etc., are all the kind of norms that purport to generalize (perhaps sometimes simplify) and subsume under rule like formulations sets of reasons for action that apply to us, regardless of their normative codification. Of course nothing guarantees that such norms get the reasons right; they may or may not. But either way, their function is to summarize or codify in rule-like formulations reasons that are there anyway. The codification, legal or social, is not meant to add anything to the reasons that apply to the subjects regardless of the codification. Legal rules and social norms codifying prohibitions on murder, rape, and theft, for example, are meant to capture and formulate exactly the moral reasons that count against murder, rape, theft etc. Such rules aim to get things right, as it were. And the interesting conclusion is that the more such norms get things right -- the more accurately they capture the reasons in play -- the more they fail the condition of normativity, that is, the less difference they can make to the subjects' reasons for action. As noted earlier, when a given norm aims to capture reasons that apply to you anyway, referring to the norm as your reason for action would be a case of acting on the wrong kind of reason. We should avoid murder, rape and theft, etc., because it is wrong to do those things, not because there is a norm prohibiting them. The norm itself plays no reason-giving role in such practical deliberations.

The fact that countless legal and social norms fail the condition of normativity does not mean that they are pointless or have no useful functions. There is a variety of functions such norms can serve. Consider, for example, a legal norm codifying the prohibition on theft. And assume it gets the reasons against theft right, that is, assume that the norm captures accurately the relevant reasons against theft, their circumstances of application, their limits, etc. The first and foremost social-political function of such a norm is to form an antecedent to the justification of penal reaction. Punishment is conditional on doing wrong; by formulating the wrong in a codified manner, we make it easier to justify, and publically more transparent, that the penal reaction, when applied, is applied properly, in reaction to a wrong committed. Generally speaking, and this goes beyond legal codification, one of the functions of norms codifying preexisting reasons is to render social and legal reaction to violation of the norm easier to justify publicly. Such norms serve functions of transparency and publicity. Codifying norms may also serve
educational functions, perhaps facilitate certain forms of social cohesion, and they may even serve epistemic functions in making reasons easier to keep in mind and internalize. The one function such norms cannot serve, however, is to give us reasons for action. At best, they just remind us of reasons we have anyway.\textsuperscript{6}

The interesting cases, however, are those in which the social or legal norm that purports to codify preexisting reasons gets those reasons only partially right. Then the question is whether the wrong part of the norm, as it were, can have any normative import. And I think that the answer is that sometimes it can. Let's take a very schematic example: Suppose there is norm that purports to capture an obligation to avoid actions of type X. Assume that there is a moral obligation to avoid actions of type X, that is, assume that X is a category of actions one ought to avoid. But now suppose that the relevant social or legal norm gets the definition of X only partially right. It defines X as "Y", and assume the truth is that Y overlaps substantially with X but includes some action types that are not X, and excludes some that are. Suppose X\textsubscript{1} is not included in Y. It stands to reason that notwithstanding the omission of X\textsubscript{1} from Y, one should not do X\textsubscript{1}. But now suppose that Y\textsubscript{2} is an action type included in Y but not in X. In other words, according to the relevant reasons in play, there is no reason to avoid Y\textsubscript{2}. Does it mean that social or legal norm notwithstanding, one has no reason to avoid Y\textsubscript{2}? That is far from clear and would hugely depend on the circumstances. Since social and legal norms serve many functions beyond the direct-reason-giving one, there may well be reasons to comply with the norm even if it misidentifies the right reasons for action. Setting a bad example for others is a familiar type of consideration that might be in play; erring on the side of caution, saving deliberation time, etc., are other familiar considerations. I am not suggesting that any of these kinds of considerations can give you a reason to do something that you would otherwise have good reasons to avoid. But in marginal cases, when the reasons in play are not all that clear cut, such considerations may tilt the balance in favor of norm following.

b. Reason-instantiating norms.

One of the most familiar types of social norms we follow in our everyday lives are those that instantiate or concretize preexisting reasons for action, when those reasons underdetermine the particular modes of conduct that would be properly responsive to the reasons. Let me call them reason-instantiating norms. In previous work I argued that all social conventions are of this nature. Conventions are norms underdetermined by their underlying reasons.\(^7\) Examples are abundant. Consider, for example, our greeting conventions. Greeting is supported by reasons for manifesting respect to others by signaling some form of recognition. How to signal such recognition and how to express the relevant kind of respect in this context is hugely underdetermined by the reasons for doing so. The greeting convention fills out this gap; it gives us a reason to do it this way rather than another (e.g. saying "Hi" instead of jumping up and down or whatever).

Needless to say, underdetermination by reasons, by itself, does not explain the need for a norm, social or institutional. There has to be another practical reason to have some normative regulation in place. The fact that the reasons for greeting an acquaintance underdetermine particular modes of greeting does not explain why we have a convention about it. There has to be some additional practical need for some uniformity of conduct. The need to resolve a recurring coordination problem is certainly one such type or reason. But I doubt that coordination is the only type of practical need that explains normative regulations of this kind. Perhaps there is some need for coordination that explains the greeting conventions we have. However, I doubt that the convention to bring a bottle of wine (or something similar) to the host of a dinner party is the kind of norm that is called for by the need for coordination; there is not much to coordinate here. You are expected to bring something for the dinner party as a token of appreciation to the host. The reason in play here clearly underdetermines what exactly you should bring. In this case, perhaps not much would be lost if there was no social norm about this at all. But, at least in my social circles, there is one, and its function, I assume, is to smooth social relations, reduce the chances of awkwardness and misunderstandings, and to reduce deliberation costs.

\(^7\) See my Social Conventions, chapters 1&2
Though I argued that all social conventions are norms underdetermined by their underlying reasons, not only conventional rules have this function. Many institutional norms, often explicitly enacted, have this feature as well. Countless legal and bureaucratic norms, for example, serve the function of rendering concrete and specific reasons that leave the requisite conduct under-specified.  

Think about rules that function to set a cut-off point in borderline cases of some regulatory rationale, such as setting a particular age limit for voting or for drinking alcohol, setting speed limits for driving, or deadlines for submitting official requests, etc., etc.. Or think about the kind of norms we have in the daily operation of institutions. In the law school there is need for somebody to make decisions, on a regular basis, about teaching allocations and schedules. It can be the dean, the associate dean, or a committee, for example. Each law school might have its norms about this. They all respond to the same reasons, but the reasons do not determine which option to choose. I hope that these examples are sufficient to show how prevalent these kinds of norms are, namely, norms that instantiate reasons where the reasons in play are such that they underdetermine the particular mode of conduct required.

Some of the examples mentioned above may attest to the fact that vagueness has something to do with the underdetermination of reasons. General reasons for action can be vague. Consider the reasons for setting an age limit for voting in democratic elections. There is a very good reason to limit voting rights to persons with a certain level of cognitive maturity. Voters should be able to understand what voting is about and what is that they are asked to decide, etc. But maturity is a vague criterion, and it admits of borderline cases. We know who is clearly mature enough, who is clearly not mature enough, but there are bound to be borderline cases of maturity. Where and how exactly to set a desirable cut-off point -- assuming there is a practical need for it -- is underdetermined by the reasons in play here. And this phenomenon is prevalent, it actually explains a great many social and institutional norms we follow in our everyday lives.

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8 This function of legal norms has long been identified; Thomas Aquinas called it determinatio.
To sum up: we would typically get a reason-instantiating norm when the reasons for a certain mode of conduct underdetermine the specific conduct required, and there is some additional reason to have a publicly available norm people can follow, that is, when there is a practical need for some concerted action under the relevant circumstances. I hope we can see that the combination of these two types of reasons, when present, explain how the condition of normativity applies to reason-instantiating norms. One would regard the norm as a reason for action, not because the norm constitutes the main reason in play, but because the norm adds the requisite specification of reasons that are otherwise not sufficiently determinate. In these cases, it makes perfect sense to say that I have a reason do this (rather than some other reason-responsive act) because there is a norm prescribing it. In other words, one's complete reason for action would have to cite the norm as one of the operating reasons for action.

c. Constitutive norms

One of the main functions of norms, both social and institutional, is to constitute certain distinct types of human activities. In previous work I argued that many social conventions have this feature and that they are distinct from coordination conventions.\textsuperscript{10} There is no need repeat those arguments here, the conventional nature of constitutive norms is not our present concern. Whether conventional or not, a great many kinds of social norms and, of course, countless institutional, including legal norms, have this constitutive function: their function is to create a distinct type of activity, a kind of activity that could not exists without the rules that make it the kind of activity it is. There is a considerable range of human activities constituted by some distinct normative framework, such as structured competitive games and sports, artistic genres, etc. In the legal domain, examples include corporate entities and their functioning as such, perhaps even contracts\textsuperscript{11}, arguably at least certain aspects of private ownership of property, legally constituted organizations and agencies of various sorts, to some extent, the

\textsuperscript{10} See my \textit{Social Conventions}, mainly chapter 2

\textsuperscript{11} At least to the extent that they diverge from ordinary promises. How much contracts and promises diverge, and how much they should, is controversial, of course.
institution of marriage\textsuperscript{12}, and so on and so forth. The constitution of distinct types of legally enabled activities is, actually, one of the main functions of law in a modern legal order. Each one of these activities is constituted by a complex set of interlocking norms, determining what counts as an act of this or that type, who has the legal power to do this or that, whose obligation it is to comply, what are the sanctions for non-compliance, and so on and so forth.

I take it that all this is familiar. The difficult question here is to explain what the relation of constitution is, and how it affects reasons for action, in particular, how it explains the condition of normativity. Now, if we want to be very pedantic about this, we can acknowledge that rules or norms, by themselves, do not constitute anything. A certain social reality of following the rules is what constitutes the activity in question. Think about music. Scores do not make music; scores are instructions how to make it, and only when the orchestra follows the instructions, we get the music. Similarly, the rules of chess don't, by themselves, as it were, constitute the game. The rules define what counts as winning and losing, what are permissible and impermissible moves, etc. People play chess when they follow the rules. But here is the crucial point, which is meant to capture the idea that rules can constitute an activity: the idea is that we can only grasp the idea of playing chess as a rule guided activity. Without the rules of the game, there is no game to play. And whenever people actually play the game, part of what they do, an essential part, is to follow the rules.

So the first step here is to see that there are types of human activities, like playing a competitive game or, for example, acting on behalf of a corporate entity, perhaps even forming a legally binding contract, where following some rules is an essential aspect of the activity, it is partly what the activity of that kind essentially is. And at least in this sense, it makes perfect sense to say that the rules enable the activity in question. Notice, however, that there is more to the constitutive relation than one thing enabling another. A

\textsuperscript{12} Marriage is a very interesting case in which legal-institutional norms and social practices interact in complex ways; there are historical and cultural variations about the extent to which institutionalized norms actually constitute what marriage is, and how it is conceived by those who practice it. One of the interesting lessons from the recent advocacy of gay marriage and its widespread momentum is that the crucial role of legal norms and their constitutive function has been widely recognized. It is one of those cases in which people saw very clearly how legal norms have a constitutive function in shaping interpersonal relationships, even respect and self-esteem.
shovel enables you to dig, but digging is not constituted by shovels. No doubt, in part at least, because you can dig without one; there is digging without shovels, there is no playing chess without the rules that determine what chess is.

I don't think that we will make progress by trying to analyze in greater detail what the relation of constitution is. For our purposes, it is sufficient to understand the notion of A constituting B in terms of building blocks: A is constitutive of B, we can say, iff A is an essential building block of B, that is, without A we could not have B. The key to understanding how norms can constitute an activity lies in understanding the latter notion, namely, the idea of an activity. Rules do not constitute an act, they constitute activities, and the distinction between the two is what explains, I think, the kind of constitutive norms we are after.\(^{13}\)

Activities are types, not tokens. We often perform acts, as tokens of a type, within or, as part of, certain activities. Not all acts, however, have to be tokens of an activity-type. Running is an act, which may, or may not, form part of a larger activity. It can be part of, say, a sports competition or even, perhaps, the activity we call "jogging", if you will. But one can also just run to catch the train, which is not an activity. What makes for an activity is the complex relations that obtain between different parts of it, such as different acts and attitudes, to something that has a meaning as a whole. An activity has semantics and syntax, as it were. By combining elements in certain ways we get new meanings. The role of rules and norms here is analogous to the role of norms in language, they provide the syntax and the semantics of the activity in question. This is just a metaphor, of course, so let's try to cash it out a bit.

Consider a move in chess, say, you move the rook one square ahead on the board. You performed an act of moving a piece of carved wood on a checkered board. Saying that doesn't quite capture, of course, what you have done, which is, we presume, making a move in the game. To explain the latter we need some semantics; we need to have a sense of what the game is, what are moves within it, what for, what counts as winning the game, etc. Without grasping the meaning of these different acts within the game, and the

\(^{13}\) I've explained this argument in my *Social Conventions*, chapter 2.
meaning of the game itself, as it were, we cannot grasp the meaning of the move, as such, as a move in the game. All activities, I submit, have this complex structure of different parts making distinct contributions to something that has meaning for us, as a whole. And norms play a constitutive role here in providing both the syntax of the relations between the various parts, and how they combine to form meaningful structures, and in providing some of the semantics. It is impossible to explain the meaning of the moves, and their relations to other moves, without reference to the rules that define them.

You might think that I'm reversing an old metaphor here. It used to be the hallmark of the Oxbridge philosophy of language in the 40s and 50s to explain concepts and meaning by reference to the example of games. Here's a quotation from Ryle, as an example:

"... concepts are not things, as words are, but rather the functionings of words, as keeping wicket is the functioning of the wicket-keeper. Very much as the functioning of the wicket-keeper interlocks with the functioning of the bowler, the batsman and the rest, so the functioning of a word interlocks with the functioning of the other members of the team for which that word is playing."\(^{14}\)

So yes, in a way I am reversing the same metaphor. To the extent that language is like a game, games are also like language. They have rule-defined syntax and moves within the game have meanings in the functioning they contribute to other moves and to the game as a whole. Needless to say, not every activity is as clearly structured as a game of chess (or Cricket, for that matter). Many human activities are a bit more intangible and diffusive, so to speak. But I think that all activities have some structure constituted by norms that define, to some extent, their syntax and semantics. It's true of social practices as well as institutional ones.

Consider, for example, the kind of activities we engage in in our academic institutions. We teach, we grade exams, we publish books and articles, we confer degrees, and so on and so forth. All these activities are made up of particular acts, of course, but

the acts have the meanings they do only in relation to, and as part of, some social and institutional reality that is partly constituted by norms. We just cannot grasp or explain what it is to be a student, or to take an exam, or to confer a degree, or even to participate in a seminar, without the institutional and social norms that contribute to the meaning we assign to these roles and functions. And of course the legal domain provides ample examples as well. Suppose you observe A giving an object to B and getting some other object from B. Whether A sold something to B (or vise versa) is for the law to determine; legal norms define what counts, legally speaking, as an act of sale. And they can only define it in relations to other kinds of transactions in the vicinity, such as a loan, or a rent, or a gift, etc.

Granted that norms have some constitutive function in enabling the kind of activities we engage in, how would they meet the condition of normativity? How can constitutive norms give us reasons for action? John Searle rightly observed, a long time ago, that constitutive norms typically have a regulative function as well.\footnote{J. Searle, 
*Speech Acts* (Cambridge, 1969), 33.} A norm that stipulates, say, what counts as a touchdown in football, would also give you some guidance, it would also tell you what you need to do with the ball to make a touchdown. Similarly, a law that stipulates what counts as a legally valid contract would also guide you to ways of making one if you wish to do so. So the problem here is not to explain how constitutive rules can also guide action, it's partly what they stipulate. The question is what kind of reasons for action such norms can provide, and on what grounds. I think that the main answer is fairly obvious: whatever reasons we have for following any set of constitutive norms would have to be derived from the value of the kind of activity that the norms constitute. Constitutive norms enable a certain kind of activity that would not have been possible to engage in, as an activity-type, without the norms. Therefore, if and to the extent that the activity in question is valuable for certain agents, its value for those agents would ground their reasons for following the constitutive norms in question.

Let me insert a clarification here. It is not part of my argument to reject Scanlon's buck-passing account of values.\footnote{T. Scanlon, *What We Owe to Each Other*, (Harvard, 1998), chapter 3.} Though I spoke as if I take it for granted that values
have explanatory priority over reasons, my argument does not depend on such a view. It can be translated, as it were, to Scanlon type buck-passing account. We can say that whatever value people find in a given activity is entirely a function of the reasons there are to engage in that activity. Either way, buck-passing or not passing, my point is that the reasons to follow the constitutive norms are parasitic on the reasons to engage in the kind of activity they constitute or, if you prefer (as I do), on the values people find in the activity in question.

The result of this dependence relation between reasons to follow constitutive norms, and the values we find in the activities they constitute, is that the normativity in questions is a conditional one: If and to the extent that A finds (or perhaps ought to find) an activity of type X valuable (or has reasons to engage in X), A would have a reason to follow the norms that constitute X. Thus we can see that constitutive norms meet the condition of normativity conditionally. The reasons to follow constitutive norms depend on the reasons to engage in the kind of activity they constitute. I doubt that this is a surprising result. It should be rather obvious. And the conditional nature of the normativity in play here should be even less controversial upon realizing that the values of different kinds of activities constituted by norms are of different types; some values or reasons are entirely dependent on subjective preferences, sometimes on matters of taste or inclination, while others might have a categorical nature. Some activities might be such that people have reasons to value them regardless of their own personal inclinations or interests. Either way, the reasons to engage in the activity or to value its practice is what provides the reasons to regard the constitutive norms worth following.

d. Authoritative Norms.

Many norms of conduct we follow in our everyday lives are institutionally enacted. They are products of some authoritative directive. The most prevalent directives are legal, of course. The law, in a developed legal system, regulates by way of authoritative directives almost every aspect of our lives. But the law is not the only social context in which we face norms purporting to regulate conduct by way of authoritative
directives. For one thing, parental authority does the same; parents often aim to regulate the conduct of their children by way of setting norms they expect the children to follow. And then there are countless sub-legal institutions and practices, such as corporations (or, more generally, employers), universities, clubs, NGOs, etc., where authoritative norms are ubiquitous. Needless to say, not every authoritative directive has to take the shape of a norm. Authorities can direct their subjects to perform a particular act. Parents and employers often do just that; they tell their addressee to do this particular thing or to refrain from doing that particular thing. Legal and other institutional authorities, however, tend to regulate by way of issuing rules, not instructions to do this or that. They lay down norms that purport to apply at some level of generality, both in terms of the norm's subjects and the type of act they regulate.

So let us take a simple model. Suppose A is an authority, issuing the following norm, N: "All Xs who are F ought to ϕ in circumstances C". So now the question is what would have to be true of A and N for Xs who are F to have a reason to ϕ in C, in a way that meets the condition of normativity? That is, in a way that would account for the fact that X is to regard N as at least part of the reason to ϕ in C.

Following Joseph Raz, many philosophers assumed that the answer is simple and it all depends on whether A is a legitimate authority vis a vis X (at least those who are F, on matters of C). So the idea here is that if we can spell out the conditions for the legitimacy of practical authorities, we would have an answer to the question of how any putative authority's directive can make the practical difference it purports to make, that is, meet the condition of normativity. A's authoritative norm can make this difference if A's authority is legitimate vis a vis the subjects whose conduct A purports to guide.\(^\text{17}\)

With some qualifications, I will come to agree with that. But we shouldn’t move too fast. Directives don't have to be authoritative. There is a great variety of cases in which the saying so of a person changes the reasons for action of another, and in a way that is very similar to the condition of normativity we are discussing here. In fact, the term "directive" is used in speech act theory to capture the category of speech acts where

\(^{17}\) Raz’s theory of authority has been refined and modified over the years. Mostly I rely here on his original formulation of the theory in *The Morality of Freedom*, (Oxford, 1986), chapter 1-4.
the utterance is performed with the intention of giving the hearer a reason for action by way of recognizing that the performance of it is part of the hearer's reason for action.\textsuperscript{18} Examples are abundant, they include asking a question, issuing an invitation, making a request, adjourning a meeting, expressing consent\textsuperscript{19}, etc.,. In all these cases, and many others, speakers intend to create a reason for action to the hearer by way of recognizing this intention and recognizing that the speaker's expression of the intention is at least part of the reason to comply. When I ask you a question (genuinely, of course, not a rhetorical question) I intend to give you a reason to answer and by way of recognizing that my asking it gives you such a reason. You may have had no reason to answer before I asked, and perhaps you have no reason to answer if somebody else were to ask the same question. But by asking you, that is, by performing the speech act, I clearly presuppose that my asking gives you a reason to reply. The same applies to invitations. You may have no reason to show up at my dinner party unless I invite you. By inviting you, under normal circumstances and assuming sincerity and all, I intend to give you a reason to come and I intend this reason to stem from the fact that I had actually expressed the invitation. "Thanks, I was planning to come to your dinner anyway" is not normally a good answer to a dinner party invitation. Which is to say that the invitation is a directive, without it being expressed the relevant reasons are not there (at least not the complete reason).

So I hope we can see that changing another's reasons for action by saying something is ubiquitous and certainly not confined to authoritative directives. Furthermore, notice that all directive speech acts presuppose some notion of standing, in the normative sense of it. When I invite you to the party, I assume that I have the relevant standing to do so; I can invite you to my party, not to Joseph's. Even asking an ordinary question assumes some notion of standing; it assumes that I can reasonably expect you to answer the question under the circumstances. And this kind of assumption may be wrong or misguided on occasion. (For example, when you present an intimate question to someone with whom you do not have an intimate kind of relationship.) Generally, then,

\textsuperscript{19} Consent usually waives a reason against doing something, rather than giving a reason for action. But I doubt that this is a significant difference.
when you perform a speech act with the intention of creating a reason for your addressee, at least partly by your performance of the speech act, you would presuppose that you are in some normative relation to the addressee that makes it reasonable to expect her to comply, that is, to gain that reason by way of your saying so. And of course, the relevant kind of standing depends on the kind of speech act performed and other normative and factual circumstances. Notice, however, that from the perspective of the addressee or the hearer, the reasons to regard the speech act as giving them the reason for action it purports to give would normally follow from a combination of two considerations: the question of whether the speaker does actually have the kind of standing his or her directive presupposes, and of course, from the specific content of the directive. Suppose, for example, that I invite you to Joseph's dinner party (not mine); perhaps you'd like to go to that party if invited, but you might think that I don't have the standing to issue the invitation. So my speech act would fail to give you the reasons to go on grounds of lacking the relevant standing here. But of course, having the requisite standing does not guarantee that the hearer ought to accept the reasons for action the speech act purports to give; not every directive speech act gives you a reason for action. Some invitations are not welcome, some questions are too silly to answer, etc. In other words, we can distinguish between two ways in which the condition of normativity may fail, on a particular occasion, for a directive speech act: it can fail for lack of standing (call it standing-failure), or it can fail because the content of the directive is such that in the relevant circumstances it does not give the hearer the reason for action it purports to give (call this content-failure).

Admittedly, the distinction between content failure and standing failure is not always very sharp. Consider, for example, requests from a friend. Normally, friendship is precisely the kind of relationship that gives you a standing to ask for a favor. But if the favor you ask for is much too burdensome, or perhaps such that your friend cannot possibly perform, your request may fail to give your friend a reason to comply; it's just

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20 It might be worth noting that the distinction between content failure and standing failure is well recognized in administrative law. Standard challenges to administrative decisions can either take the form of a challenge to standing, alleging that the administrative agent in question had no standing to make the decision (ultra vires), or it can take the form of challenging the content of the decision as being patently unreasonable or unwarranted, in US law called "arbitrary and capricious".
too crazy or pointless, the friend might rightly think. So this would normally be a content failure. But suppose the request is not simply too burdensome, complying with it might get your friend in serious trouble. At some point we might think that you have no standing to make such requests, friendship notwithstanding. The distinction admits of borderline cases, no doubt.

Speech act theorists have long noted that performing a speech act of ordering or issuing a command presupposes an authoritative standing vis a vis the addressee. And that seems quite right. However, one might suspect that orders or commands are not the only kind of authoritative directives we encounter, certainly not in legal and other institutional contexts. Laws and regulations often take the form or granting rights of various kinds, conferring normative powers, and such. These don't look like commands, as H.L.A. Hart famously demonstrated.

Let's take a step back: why is it that directives of a certain kind necessarily presuppose an authoritative standing vis a vis the addressee? What makes authoritative directives unique? The widely held response is that authoritative directives purport to impose an obligation on the addressee of the directive. Asking a question, issuing an invitation, making a request, and these kinds of directives, do not purport to impose an obligation. They purport to create a reason for action, but not of an obligatory kind. Authoritative directives, however, typically aim to impose an obligation. And that would seem to sit well with the assumption that in order to be able to impose an obligation on another by your speech act, you need to have an authoritative standing vis a vis the other. This doesn't mean, of course, that authoritative directives must be orders or commands. They can take a variety of forms; but the underlying normative function of authoritative directives is to impose an obligation. And this is not contradicted by the fact that authorities often grant rights or permissions, or confer powers; rights and powers involve imposing some obligations. By successfully granting somebody a right you also impose an obligation on somebody else to protect or respect the right in some sense; by

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21 See Bach & Harnish, ibid.
successfully conferring a power on somebody you also impose an obligation on another to comply with the power-holder's directives;\textsuperscript{23} and so on and so forth.

All this would seem to lead to the conclusion that the question of how directive norms meet the condition of normativity that we are after, entirely depends on the relevant standing in question. If the directive norm imposes obligations, it must be an authoritative directive and thus presuppose an authoritative standing. And thus reasons to comply with the directive would depend on the authoritative relations between the relevant agents. If the authority is legitimate, its directives obligate those who are subject to the authority. And they obligate the subjects in virtue of the authoritative standing in play. Though this picture doesn't get things wrong, it is suspect in one respect: it would seem to imply that with respect to authoritative norms, the condition of normativity can only fail to obtain by virtue of a flaw in the relevant standing; content failure seems to be ruled out. If true, it would make authoritative directives unique in some crucial respect, compared with other kinds of directives. As we mentioned earlier, directive speech acts can fail the condition of normativity either by way of standing-failure or content-failure. Do we have reasons to think that authoritative directives are unique? And are they unique in a way that rules out content-failure?

Before I explore some options, let me acknowledge that Raz's view seems to be the exact opposite. According to Raz, authoritative standing is entirely a function of content. Namely, authorities gain the authoritative standing they have by virtue of the function they fulfill in guiding their subjects to comply with the correct reasons for action that apply to them.\textsuperscript{24} My doubts about this aspect of Raz's theory of authority I have expressed elsewhere\textsuperscript{25}, and I will not repeat those arguments here. I mention this here to clarify that the argument I explore below aims to put pressure on the opposite view, not on Raz's.

Perhaps the uniqueness of authoritative directives stems from what Raz called their \textit{preemptive} nature. Consider for a moment the difference between an order and a

\textsuperscript{23} Granting a permission to $\phi$ is typically a case of withdrawing a prior obligation not to $\phi$.
\textsuperscript{24} Raz, \textit{The Morality of Freedom}, chapter 3.
request. When I request somebody to help me out with a certain task, I intend to give the addressee a reason to do something that he would not have had but for my request. My intention is to give him a reason for action, but not necessarily of the kind that is meant to replace other reasons for action that apply to him under the circumstances. "I would have loved to help you but I'm really tired right now" is not necessarily an inappropriate response to my request. In other words, the idea is that it makes sense to assume that a request aims to add some reason for action that may not have been there prior to the expression of the request, but it does not necessarily aim to replace other reasons. An order, however, necessarily aims to do precisely that. It aims to create a reason that is there to replace at least some of the other reasons that apply to the addressee under the circumstances. According to Raz, authoritative directives in general, and not only orders of course, have this preemptive function, that is, the function to replace some of the reasons that apply to the subjects of the authority, and not only to be added to the balance of their reasons for action.

Raz gave us a very elaborate account of what it is for reasons to function in this preemptive sense: reasons for complying with an authority’s directive are meant to be both of a pre-emptive nature and constitute protected reasons. The idea of preemption is the one I mentioned above:

“The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should replace some of them.”

Therefore, an authoritative directive constitutes what Raz calls protected reasons: a protected reason to φ is a “first order reason to φ and an exclusionary reason not to fail to φ for a certain range of excluded reasons.” So, as far as I can tell, Raz cashes out the idea of preemption in terms of protected reasons. An authoritative directive is meant to replace some of the antecedent reasons for action in the sense that it provides the agents with a combination of first order and second order reasons. First order reason to do as

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instructed and second order reason to exclude certain types of considerations or reasons from potentially defeating the first order reasons.

Now there is, undoubtedly, something very compelling about Raz's account of preemption. Consider, for example, Father telling his teenager Son: "You can go out, but make sure to be home by 7". Clearly Father intends to give Son a first order reason for action, that is, to be home by 7. But, additionally, Father also intends Son to have second order reasons to exclude certain types of potentially defeating reasons from counting against getting home by 7, such as a reason to go to see a movie later or a reason to have another spin in town. Not all potentially defeating reasons are excluded, of course. If there is an accident and Son needs to take his friend to the hospital, for example, that would be OK, it would be the kind of potentially defeating reason that is not excluded.

As Raz made quite clear from the start, however, this combination of first order reasons for action and second order exclusionary reasons is not confined to authoritative directives. Consider, for example, the reasons in play when you use a GPS navigation system to get from A to B; you have a first order reason to follow the direction indicated by your GPS, as well as reasons to exclude certain kinds of potentially conflicting reasons, such as your own sense of direction or best guesses which way to go (as my wife often needed to remind me). Similarly, if a friend asks for a favor, you may have both a first order reason to comply, and some exclusionary reasons, say, to exclude some reasons of minor discomfort from potentially defeating the reason to comply. In other words, protected reasons are ubiquitous, and it's not clear that they capture the unique force we normally attach to authoritative directives. What seems to be missing is the obligatory nature of reasons to comply. Protected reasons do not necessarily amount to an obligation. There is no obligation to follow your GPS instructions, even if it is the rational thing to do under the circumstances.

Raz was quite aware of this, and seems to have suggested that obligations involve certain kinds of reasons, those that are “categorical reasons, that is, ones whose application is not conditional on the agent’s inclinations or preferences, and so on…”  

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28 J. Raz, Practical Reasons and Norms, (Princeton, 1990)
29 “On Respect, Authority and Neutrality” at p. 291.
Whether Raz is correct about this, and in general, the question of how to explain the concept of obligation, is not our immediate concern. For our purposes, it would seem to be enough to accept that authoritative norms purport to create protected reasons for their putative subjects. And if the authoritative directive is legitimate, then we can say that the subject has protected reason to comply, that is, a first order reason to do as instructed and second-order reasons to exclude certain types of potentially conflicting reasons from defeating the first order reason for action. Now this would seem to meet the condition of normativity. It would seem to explain in what sense the subject of an authoritative norm would have reason to do something because the norm requires it.

Assuming that this is true, as far as it goes, we have not yet seen any reason to doubt that authoritative directives can fail for content-related reasons as well. As we noted earlier, the addressee's reasons for complying with an ordinary directive speech act are not only a function of the relevant normative standing presupposed by the speaker. Having the normative standing presupposed by a directive might be a necessary condition for giving the addressee the reason to do as directed, but it is not a sufficient condition. It also depends on the content of the directive, in the particular circumstances of its utterance, and the relevant reasons in play. And this should apply to authoritative directives as well. In other words, legitimate authorities can issue directives that fail the condition of normativity; they may fail the condition of normativity for reasons related to the content of the directive, even if they would not fail for lack of standing.

There is a possible counter-argument we need to consider. It is possible to argue that when A is a legitimate authority vis a vis B with respect to matters of type C, the issuing of a directive to B to \( \phi \) (in C) necessarily creates a reason for B to \( \phi \), even if that reasons is immediately and unquestionably defeated by countervailing considerations. Perhaps the directive is so silly or pointless or misguided that there is no reason for B to comply; but those would be defeating considerations, immediately outweighing the reason to \( \phi \). Notice, however, that if A's directive is authoritative, it must purport to give B a protected reason to \( \phi \). So it must be of the kind that also excludes certain reasons from potentially defeating the reason to \( \phi \). And then it becomes questionable that we
must assume that any directive issued by an authority with the right kind of standing would necessarily create for the subject a protected reason for action.

To me it seems more simple and natural to maintain that authorities can fail to give their putative subjects any reason at all. I don't see how it would be different from other kinds of directives where standing is not the issue but the content of the directive is. Consider, for example, asking a good friend, who happens to be completely broke, to give you a huge loan to pay down your mortgage. The standing to ask for a favor you may have, but under the circumstances, the request is just too silly or pointless, it gives your friend no reason to do anything. Perhaps not even a reason to politely refuse. In fact, it may be the other way around; at least in some cases, expecting the addressee to come up with a defeating reason might be the wrong kind of expectation, even if the speech act is not subject to a standing failure. One can appropriately ask a partner to have sex, for example, but it is far from clear that the partner needs to have any reason to say no. In short, legitimate authorities may issue all sorts of directives that simply fail to give their subjects any reason for action. Authorities, legitimate or not, can issue directives that are silly, pointless, or downright immoral. Not every mistake of an authority renders it illegitimate or calls its legitimacy into question. Mistakes about the content of a directive are just that, mistakes, and they can be such that give the subjects no reason to do anything. And if a directive gives you no reason to \( \phi \), there is no need to come up with a reason not to \( \phi \).\(^{30}\)

e. Is law's normativity unique?

Having seen that different types of norms bear on our reasons for action in different ways, it is time to consider how all this plays out in the legal context. From the discussion so far I hope it is clear enough that all four types of norms we examined prevail in law as well. To recap, many legal norms aim to codify preexisting reasons for action.

\(^{30}\) I am not denying that there might be all sorts of secondary and auxiliary reasons to comply with authoritative directives even when they fail the condition of normativity. Reasons concerning setting a bad example for others, or undermining the authority's ability to regulate conduct in the area, etc., might still be in play.
action. This is most evident in the central provisions of criminal law and torts, perhaps even contracts (to the extent that contract law aims to enforce promises), in the cases of safety regulations, etc. Countless legal norms are of the reason-instantiating kind, particularly those that set cut-off points or precisifications for borderline cases of vague requirements. Then there are countless legal norms, or rather, clusters of norms, constituting various activities people can engage in, particularly in the corporate domain and related areas. Finally, all these norms are also authoritative, and thus, belong to the authoritative-norms category as well.

Normally, the fact that one and the same norm functions in more than one way, say both constitutive and authoritative, is not particularly puzzling or problematic. One possible exception, however, might be the combination of codifying norms with the authoritative kind. One might wonder how can the same norm both try to codify preexisting reasons for action, that is, reasons that apply to us anyway, and at the same time make the demand authoritative. Raz's Normal Justification Thesis provides a good answer. Authorities are often in a very good position to help their subjects comply with reasons that apply to them anyway, regardless of the authoritative directive. Ordering you to do something that you have reasons to do anyway is quite rational and useful whenever it is the case that by complying with the order you are more likely to act according to the reasons that apply to you, than by trying to figure out, or act on, those reasons by yourself. And as Raz and others convincingly demonstrated, this condition obtains often enough. So there is no contradiction in the combination of authoritative directives with norms of the codifying kind.31

Still, you might think that there is something problematic here. As we’ve seen, at least from the perspective of the norm-subjects, codifying norms fail the condition of normativity. If a norm codifies reasons for action that apply to you anyway, then citing the norm as a reason for your action would be an instance of acting on the wrong kind of reason. You ought to avoid assaulting a person because assault is wrong and ought not be done, not because the criminal code forbids it. But we’ve also seen that there are good reasons to have norms of the codifying kind, and it’s not difficult to see that those reasons

can be instantiated by authoritative directives. It is important to have a legally authoritative definition of what counts as a criminal assault, for example, to render punitive reaction to assault publicly transparent, to minimize misunderstandings, and such. Thus, even if the main provisions of, say, a criminal code, fail the condition of normativity, their authoritative nature is rational and serves all sorts of auxiliary functions.

The question I want to address in this final section is whether there is any general feature of law that renders its normativity unique. Raz suggested, a long time ago, that there is something that makes legal normativity unique, in that law necessarily purports to be supreme to any other kind norms that might apply to its subjects and claims the authority to regulate any kind or sphere of behavior. In other words, the idea is that law claims to be the final arbitrator in determining what reasons for action apply to its subjects and in all possible domains of human conduct. Raz called these two features law's claim to be supreme and comprehensive. Law's claim to supremacy, however, can be understood in two ways. In one sense, and I am pretty sure this is the one Raz had in mind, law's claim to supremacy is an attribute of a legal system in relation to other normative systems that might be practiced in a given community. So the idea is that between different systems of norms that are regarded as binding by given population, such as law, religion, social customs, positive morality, and such, law essentially claims a normative superiority. But then, another sense in which we might think of law as claiming superiority over other normative considerations might be directly related to the kind of reasons for action legal norms purport to create; it is arguable that whenever the law tells you to do something, it purports to give you an all things considered reason to do it. So in this sense, supremacy of the law is to be understood as an attribute of legal norms, as such. I think that both of these theses about law's claim to supremacy are inaccurate, at best. Let me explain.

Raz's idea, which I am not sure he holds anymore, that legal systems necessarily claim comprehensiveness and supremacy conflates, I think, law with state sovereignty. The emergence of modern states and the idea of state sovereignty clearly went hand in

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32 Practical Reason and Norms at 150-151.
33 I have made this point in greater detail in my Positive Law & Objective Values (Oxford, 2001), at 39-42.
had with these ideas of normative supremacy and comprehensive authority. The authority of a state was meant to be the supreme authority in the land, often allowing other normative systems to be in place but only by the authoritative permission of the state; and state sovereignty, at least in its ideal form, indeed acknowledged no inherent boundaries to its reach. But at least from an historical perspective, these ideals of state sovereignty are relatively novel, starting from, roughly, the 16th century, reaching their peak around late 19th to first half of 20th century, and fading away in the last few decades. Legal systems were in place long before state sovereignty came on the scene. In other words, I seriously doubt that law's claim to be comprehensive and supreme is an essential attribute of law and legal systems. It is an attribute of a particular political ideal of state sovereignty, not of law.

Let me explore, however, a different sense in which law might be understood to claim supremacy. When the law imposes an obligation or some requirement, it also implicitly acknowledges, as it should of course, that one may have good reasons not to comply under the circumstances, perhaps deriving from a conflicting obligation or some other excuse. But the law always claims the authority to determine whether non-compliance was legally justified or not. In other words, the law always reserves itself the final say on what you should do or should have done all things considered. Consider a simple example: the law prohibits parking in a given space; this amounts to an obligation not to park there. But then there might be a conflicting obligation that applies to you, you may need to pick up your friend who is seriously ill and cannot make it to the car if it's parked far away. So you might think that the latter obligation prevails, and you park your car in the prohibited zone for a bit. Now the law may agree with you, or not, but it purports to be the final arbitrator about your decision. The law claims to have the authority to determine whether you had a legally recognized defense, and it may agree with you or not, but in any case, it purports to decide whether all things considered you could park your car there or not. So it would seem that the law claims supremacy in the sense of claiming to give its subjects all things considered reasons for action, that is, at least from a legal point of view.
Let’s try to be more precise here. Legal norms impose obligations of various kinds; all legal obligations include various explicit or implicit unless clauses that are meant to capture various exceptions or modifications of the relevant obligations under some circumstances. Since it is well recognized that not all justified exceptions to the application of norms can be predicted in advance, the law authorizes someone (typically the courts) to make the final decisions about such matters.\textsuperscript{34} Therefore, in each particular case, whenever the law has a conclusive verdict on what you have reason to do, it is a verdict about your reason for action all things considered; at least from a legal point of view, if you will.

Now, one way of understanding Raz’s ideas about law’s claim to superiority is precisely the sense in which the legal point of view, quite generally, claims superiority over any other kind of normative consideration. So we might think that when a final legal verdict on reasons for action conflicts with some other normative demand, such a moral one, the law claims, and necessarily so, superiority over the moral considerations. But even if true, the claim to supremacy is not unique to law, after all, morality would also claim normative superiority to law; and the same can be said about religion, for those who take religion to give them reasons for action, or about conflicts between demands of morality and personal attachments. Normative points of view can genuinely conflict. There are many complicated issues involved here, no doubt, but I cannot see how law’s claim to superiority over other normative domains, if it has such a claim, as it were, makes law unique in any way; all comprehensive normative perspectives might conflict with other perspectives and would naturally embody some claim to superiority, it’s what makes it a conflict.

Let us put aside, then, the question of how the legal point of view compares with other normative domains, and focus on the way in which legal authority purports to give us reasons for action. I think that it is true that in some contexts the law purports to give its subjects an all things considered reason for action. But I think that this is more common then one might think. Authorities often intend, and not irrationally, to give their

\textsuperscript{34} I explained this in greater detail in my “Defeasibility and Pragmatic Indeterminacy in Law”, in Capone & Poggi (eds.), \textit{Pragmatics and the Law: philosophical perspectives}, (Springer 2016), 15.
subjects all things considered reasons for action. Consider Father's instruction to Son again. When Father instructs Son to be home by 7, he may intend to give Son an all things considered reason to do so. Think about the deliberative process here. It might go like this: Father thinks that it is important for Son to be home for dinner, there are reasons for this. Of course Son might prefer otherwise, and he may have reasons for that. Father considers the conflicting reasons that apply, and makes a decision. All things considered, he decides, Son should be home for dinner. Thus by communicating his authoritative directive, Father quite possibly intends Son to have an all things considered reason to be home for dinner. After all, he considered all the reasons and concluded that being home for dinner is required. Now there are two caveats: First, if Father is a reasonable person, he would realize that there might be relevant reasons he failed to consider. But notice that under normal conditions, the possibility of error is just that, a possibility, and would not be taken to affect the conclusiveness of the directive. For all I know I ought to ϕ is, practically speaking, for me tantamount to I ought to ϕ. Unless, of course, it turns out that I was wrong. But if I have no particular reason to suspect that I am wrong, I ought to ϕ.

The second caveat does have practical import: Father would also know that some new and unforeseen reasons might come up or reveal themselves later. And it's always possible that a defeating reason may come up that outweighs, all things considered, the original reasons for the directive. In this sense, the all things considered reason he purports to give Son is qualified: all things considered, Son ought to ϕ, unless something comes up, presently unforeseen, that outweighs the reason for ϕ-ing. In other words, there is always an "unless...." clause attached to a directive for action all things considered: unless a defeating reason comes up later, which is presently unforeseen.

Notice that all things considered judgments are typically qualified in this manner. Suppose I wonder whether I should keep a promise I made to X which turns out to be a more burdensome than I had initially predicted. Obviously I have reasons to keep my promise, and now it seems that I have reasons not to keep it, and I must make a decision: What is it that, all things considered, I have reason to do? Suppose I realize that all things considered I ought to keep my promise. It doesn't normally mean: keep my promise come what may, especially if the action required is in the future. It only means that within the
domain of reasons that are reasonable for me to consider, those I can be reasonably expected to take into account right now, all things considered I ought to keep my promise. But the possibility that something might come up later, that I couldn't reasonably take into account right now, is something that we are normally aware of. All things considered I ought to φ normally incorporates an implicit unless clause: unless something comes up that, all things considered, defeats the reason to φ. Of course it has to be the case that the defeating reason is not presently predictable; if it is, then its likelihood and possible impact should form part of the all things considered reasons.

Suppose it is true that authorities, sometimes at least, intend to give their subjects an all things considered reason to do as instructed. That still leaves it an open question of whether the subject has an all things considered reason to comply. Even if we assume, as we should for now, that Son has an obligation to comply with Father's directives, whether all things considered Son ought to comply with Father's instruction is a separate question. An obligation to φ does not entail an all things considered reason to φ. Obligations give us protected reasons, they give us a first order reason and second-order exclusionary reasons. But protected reasons are not all things considered reason. So from the perspective of the subject, whether compliance with an authoritative directive is required all things considered, is a question to be answered on the merits of the case. In principle it is always possible that all things considered one should not comply with an authority's directive, even if the authority is by and large legitimate and its directives obligatory.

The conclusion I drive at here might have an air of paradox to it. It would seem that on the account I suggest, authorities may purport to achieve something that they cannot expect to accomplish; an authoritative directive to φ may purport to give the subject an all things considered reason to φ, but for the subject, the reason to φ cannot be an all things considered one, solely on the grounds that the subject was instructed to φ, even if the instruction is legitimate, as it were. Whether there is an all things considered reason to comply with an authoritative instruction is always an open question. So it seems that authorities, again, at least sometimes, purport to give their subjects the kind of reasons that subjects cannot be given. I doubt that this is as paradoxical as it seems, but there is certainly an essential asymmetry in the authority subject relations. Authorities
may purport to give their subjects all things considered reasons, whereas subjects can only regard authoritative directives as giving them protected reasons.

You might think that the difference between trying to give you an all things considered reason to \( \varphi \) -- when "all things considered" is inevitably qualified to the domain of likely and foreseeable reasons (as it always is) -- and trying to give you a protected reason to \( \varphi \), is just too abstract; it has the feel of a hair-splitting distinction. So let us try to think about it by comparing two kinds of speech acts: compare a command or an order with a request of a certain kind, the kind of request that gives the addressee a pretty strong reason to comply. For example, suppose I am in a dire need of financial help and I ask my best friend to help me out with a modest loan, one that he can easily afford. This is the kind of request that would seem to give my friend a protected reason to comply. Once I made the request, he has a first order reason to give me the loan, and some second order exclusionary reasons, say, not to consider his immediate discomfort or embarrassment to count against the first order reason (after all, I am in a dire need of help and he is my best friend and all...) So the idea is that some requests may well give us protected reasons to do as requested. But this is still markedly different from a typical legal order. If the IRS issues a directive requiring me to make an advance on my taxes, it aims to do more than just give me a protected reason. It tells me to send in the check, all things considered. And if I fail to send in the check, the law clearly purports to determine whether my failure was warranted or not. But again, there is nothing all that unique to law here. Authorities often purport to give their subjects all things considered reasons for action, parental authority being one good example.

None of this was meant to suggest that the law necessarily purports to give its subjects an all things considered reason for action. In other words, I am not suggesting that this is an essential feature of legal directives. It is a feature of certain types of authority the law purports to exercise in certain contexts, mostly in the contexts of mandatory regulations, such as criminal law, safety regulations, tax law, etc. In many other domains, the law operates as a service provider, offering arbitration and enforcement services if certain conditions it sets out are met. Contract law, for example, doesn't tell the subjects how to make binding promises, and it certainly does not tell
anyone to make a contract. It only conditions the adjudicative and enforcement services the law provides on the parties meeting certain conditions. If you want the law on your side, make sure to have a legally binding contract. In other words, the law is not always in the business of telling us what to do (or not to do). It is often just a service provider, and like any other service provider, it lays out its conditions for the service to be provided. Needless to say, this is hugely over-simplified. Many services the law provides are not easy to avoid. But that is true of countless other services we are offered, they are often not easy to avoid. Law’s coercive aspect, though not unique to law, calls for an explanation of its own, one which would have to rely on a serious elaboration of what is the nature of coercion and what makes something coercive to begin with. Those are complex issues that go far beyond the confines of this essay.