Let us assume that we have an obligation to follow the law. We should consider what form this obligation takes. The traditional account regards this obligation as one of obedience: we have an obligation to obey the law. A more recent position put forth by Sir Neil MacCormick suggests that the language of obedience inadequately describes this obligation, and that we should regard our obligation as an obligation to conform to the law. Philip Soper offers a third option in The Ethics of Deference, namely that we have an obligation to defer to the law. The respective language appropriate to each alternative – obedience, conformity, deference – puts a particular spin on our relationship to legal norms and the legal system. It determines the reasons that we have to follow the law. It also specifies the degree of autonomy that we retain when following the law. Finally, the language used reflects a certain conception of the authority that is claimed and possessed by the law.

The question is: Does deference better describe our obligation to the law than either obedience or conformity does? More specifically, what advantages, if any, does Soper’s notion of a duty of deference offer our understanding of, and relationship to, the law? By comparing these three descriptions of our obligation to the law, I shall examine critically Soper’s defence of deference. In brief, although his thesis is well argued and original, it is not clear that the language of deference, which implies respect for another person’s opinion or judgment, is entirely appropriate in the context of the law. Despite this, of the three options, it may offer the best characterisation of our obligation to the law.

\[1\] N. MacCormick, ‘On the Rights of Europeans and the Risks of a European Constitution’: the Austin Lecture given 4 April 2003 at the UK Association for Legal and Social Philosophy annual conference, Henderson Hall, University of Newcastle upon Tyne.
Of the three descriptions of obligation under consideration, obedience is the most restrictive. Obedience involves a submission of one’s will to the rule or authority of another. It means complying with that other’s demands irrespective of both the validity of those demands and one’s own attitude toward them. In acting thus, one suspends one’s autonomy to a significant degree, even though one’s action may accord with what one would do were one not obligated to obey. By obeying, one abandons the autonomous judgments one otherwise would make of the merits of opposing views, the rightness of different actions, and the circumstances in which authority is legitimate. Instead, one gives priority to the judgments of an authority irrespective of its legitimacy. To obey, in essence, is to acknowledge one’s subordinacy to the person or group issuing demands.

In more detail, obedience requires one to forego a meaningful assessment of the moral worth of the demands made. One complies not because the demands are morally right, but because one is required to submit to them or risk exposure to sanctions. It is often fear of the consequences of disobedience that leads one to obey even though one believes that the demands in question are morally wrong. The dictum that applies here is, ‘Obey orders though you break owners’, that is, obey orders even if they are wrong.

As Soper notes in his Preface, given the militaristic connotations of obedience, the language of obedience well describes the attitudes that we adopt toward coercive systems – systems that demand our compliance and threaten sanctions for disobedience. The question is: Is the law such a system? John Austin, for one, regards the law as the command of a sovereign backed by sanctions, the sovereign being the person or body whom citizens are in the habit of obeying. And yet, if the law were such a system, we could easily dismiss the claim that people have any obligation of obedience. As H. A. Prichard points out, ‘the mere receipt of an order backed by force seems, if anything, to give rise to the duty of resisting rather than obeying’ (xiii n5).² To maintain that we have some obligation toward the law we require a different conception of the law, and indeed, a different conception of our obligation. The conception of law we require is in fact that which most modern legal theorists accept. In general, legal scholars now reject the view that the law is purely coercive and regard the law as a normative system that makes normative claims about both