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Duties to assist *others* and political obligations

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abstract

In response to recent criticisms of traditional theories of political obligation, scholars have advanced moral reasons for complying with the law that focus on natural duties to assist *other* people who are in need. In discussions of political obligation, these ‘rescue principles’ are presented as alternatives to traditional principles. I argue that theories of political obligation based on rescue principles are not able to fulfill the role theorists assign them. If the underlying assumptions of rescue theories are uncovered, they can be seen also to support more traditional obligations to obey the law. Accordingly, rather than serving as *alternatives* to traditional principles, rescue principles can only *supplement* them.

keywords

political obligation, rescue, Copp

In this article I criticize a particular line of argument used to establish moral requirements to obey the law. In recent years, traditional accounts of political obligations have been heavily criticized. In perhaps the most influential study, A. John Simmons carefully formulates and then rejects theories of obligation based on principles of consent, gratitude, fairness and a natural duty of justice. Concluding that no successful theory of obligation can be established on the premises of liberal political theory, Simmons opts for his distinctive version of ‘philosophical anarchism’.¹ Other influential theorists have argued along similar lines,² and at the present time, moral requirements to obey the law are somewhat up in the air. Scholars have reacted to this situation in different ways. Some have developed new versions of traditional principles, which are intended to avoid the criticisms that have been advanced.³ Others have developed theories of obligation based on different moral principles, especially principles of association and

a reformulated natural duty of justice.⁴ Still others, accepting the absence of political obligations, have attempted to work out plausible political theories on that basis.⁵

My focus is one of the alternative principles. In recent years, principles of association have received considerable attention, including serious critical scrutiny.⁶ But the same cannot be said for the natural duty principles. The particular principles I examine are variants of the principle of ‘mutual aid’, the moral requirement to assist other people who are in danger or in need. I refer to such principles as ‘rescue principles’ and to a theory based on them as a ‘rescue theory’. It is important to recognize the distinctive moral logic of these principles. In a traditional theory of obligation, based for example on a principle of consent or gratitude, Grey is required to obey the law because of distinctive features of his moral situation, obviously, that he has consented to or received significant benefits from his state. With a rescue principle, the focus shifts to *other* people. Grey should obey the law, not because he has consented to or received benefits from the state but because of the circumstances of other people, whom he is required to help.

My intention is not to refute rescue theories directly; nor do I contend that they should be rejected altogether. Rather, I attempt to show that they are not able to fulfill the role theorists assign them. In discussions of political obligation, rescue principles are presented as alternatives to traditional principles. Only after it has been claimed that the latter are fatally flawed are the former invoked. Accordingly, rescue theories comprise two claims, one about traditional principles of political obligations and the other the rescue principle:

- Rescue theory:* (i) Moral requirements to obey the law based on actions such as consent or benefits that individuals themselves receive cannot be established.
 (ii) The rescue principle: requirements to obey the law stem from duties to assist *other* people.

I believe rescue theories confront a dilemma. Substantiation of (ii) requires a set of assumptions about human needs and how they must be satisfied. (I call these EI and RSA; they are discussed below.) However, if these assumptions are made, then the main arguments against at least one traditional principle of obligation, the principle of fairness, will be lost.⁷ Thus in order to establish (ii), rescue theorists must make assumptions that are incompatible with (i). The first horn of the dilemma is that, if a rescue principle can be established, then at least one traditional principle can be as well. For rescue theorists, the alternative is no better. The second horn: in order to refute traditional principles, theorists must make claims that would also prevent rescue principles from being established. The implication of the dilemma is that, instead of *replacing* traditional principles of political obligation, rescue principles can only function along with them. In other words, rather than serving as *alternatives* to traditional principles, rescue principles can only *supplement* them.

Discussion is in three sections. The assumptions necessary for rescue theories are discussed in Section I. In Section II, rescue theories that have been advanced are examined in view of the dilemma noted above. In the concluding section, I discuss grounds for accepting the necessary assumptions and additional considerations that require that rescue principles play only a limited, supplementary role in grounding moral requirements to obey the law.

I.

The duty to rescue rests on certain assumptions.⁸ Consider a simple case. Smith sees Jones drowning in a swimming pool. Other things being equal, she would be subject to severe condemnation if she walked by and allowed him to drown. But this judgment rests on (at least) two assumptions. First is what we can call ‘established interests’ (EI), that Jones has a strong interest in being rescued, that he would benefit substantially from this.⁹ EI is the claim that people have identifiable interests and that these are relatively uncontroversial. There are of course enormous difficulties in specifying exactly what these interests are. But these questions can be avoided. The interests included in EI can be confined to instances of what we would ordinarily recognize as people’s clear interests. Questions of rescuing people and so pursuing their interests for them raise issues of paternalism, but I will avoid these in this article. Another complexity is that Jones could wish to die, which would greatly complicate requirements to save him. But issues along these lines can also be set aside. Clearly, under ordinary circumstances, we can assume that Jones has a strong interest in being rescued, which is one reason why Smith would be condemned for failing to try to save him.¹⁰

The second assumption is that the required efforts in question are both necessary and sufficient for the task at hand.¹¹ In many familiar circumstances, this requires that Smith be the only person situated to perform the rescue, or at least the person clearly most able to do so. The presence of other people as well or better suited to the task would complicate Smith’s requirements. In addition, Smith must be able to rescue Jones. If she were handicapped or otherwise not up to the task, she should not be condemned for not trying. Ought implies can; one triggering condition for the duty to rescue is the rescuer’s ability to succeed. Doubtless additional assumptions could be identified. But these two are relatively apparent.

Analogous assumptions are encountered in large-scale or collective duties to rescue.¹² Because large-scale efforts are required to aid large numbers of people who are in peril (call them X-ites), Smith would not be able to do so without the assistance of other people. In a case of this sort, the most plausible construal of her moral requirement is that she should contribute her fair share to the general rescue effort.¹³ In the cases that interest us, the X-ites confront situations of lawlessness, analogous to Hobbes’s state of nature, and the most plausible means through which they can be rescued is by providing a secure environment through

establishment and support of political institutions or a state.¹⁴ In such cases, in order to fulfill their duty to rescue, all eligible individuals would be required to contribute their fair shares to collective efforts to provide the institutions.¹⁵ Such cases clearly presuppose EI, as it makes no sense to compel Smith to participate in rescuing the X-ites, if they would *not* benefit from being helped. If the X-ites were living in tropical peace and harmony on a perhaps apocryphal Polynesian island, she should not be condemned for refusing to save them — ‘save them from *what?*’ could be her retort. Accordingly, a basic assumption of collective duties to rescue, and so of rescue principles, is EI, that the X-ites have strong interests in being rescued.

The second assumption concerns the means of helping them. As I have noted, in order to be rescued from peril, the X-ites require political institutions:

Requirement of State Action (RSA): state action is both necessary and sufficient to accomplish the rescue task at hand.

There are two separate claims here: that political institutions would be able to achieve the desired end, and that they are necessary for this purpose. The first is undoubtedly assumed. Once again, it makes no sense to require Smith to contribute to collective rescue efforts, if they are not likely to succeed. As for the second claim, if there were different ways in which the X-ites could be rescued, Smith would have discretion as to which to pursue. She could not be condemned for taking one course rather than others, unless her course were demonstrably inadequate or at least substantially inferior. Thus her requirement to contribute to collective efforts to establish political institutions rests on the assumption that this is the only effective means to provide a secure environment. In regard to large-scale rescue from the horrors of the state of nature, RSA is a plausible claim. But plausible or not, rescue theorists must assume it along with claims concerning clear interests their efforts will advance.

To sum up briefly, in order to justify Smith’s moral requirement to contribute to rescuing the X-ites from peril, rescue theorists must assume:

EI: the X-ites have significant interests in being rescued;

RSA: the establishment of state institutions is both necessary and sufficient for this purpose.

While these are common assumptions, rescue theorists do not always discuss them explicitly. One reason, perhaps, is that the assumptions are so uncontroversial, although, as we will see, RSA receives attention in the pieces we will examine. In Section III, I discuss grounds for accepting them.

We turn now to problems that postulation of EI and RSA causes for rejecting political obligations. I will focus on moral requirements based on the principle of fairness, though without implying that similar problems are not also seen in moral requirements based on other principles. Only brief treatment is possible here.¹⁶

In the literature, the main criticisms of the principle of fairness have long concerned difficulties in *accepting* certain benefits of cooperative schemes. If the benefits in question are non-excludable or public goods, they will be provided to all members of the given community, if provided at all. Because important public goods such as defense and clean air are unavoidable as well as non-excludable, if Smith is in the relevant territory, she will receive the benefits whether or not she 'accepts' them and would be unable to accept them, even if she wished to.¹⁷ Scholars have produced a series of examples to show the unfairness of requiring Smith to participate, if she would prefer not to receive the benefits in question at the cost of having to do so.¹⁸ However, this objection can be addressed if we focus on particular public goods that are indispensable or necessary for acceptable lives. The main goods concern security. Because these benefits are necessary for an acceptable life, we can assume that Smith benefits enormously from receiving them. Accordingly we can presume that she *would* accept them at the cost of having to contribute to their provision, if she were given the opportunity to do so. But under the principle of fairness, her obligations do not stem from hypothetical consent, that she would consent to receive the benefits under some counterfactual conditions, but from the fact that she receives them. Given the importance of the benefits, it would be unfair for her to receive them without doing her fair share to help provide them. If these claims are granted, then the principle of fairness is able to ground political obligations for most or all members of contemporary societies.

As presented here, the response to the problem of acceptance depends on EI and RSA. The claims that certain public goods are necessary for an acceptable life and are greatly beneficial to Smith of course assumes that she has established interests. As for RSA, in order for Smith to be required to contribute to state supply of essential public goods, the state must be able to supply them, and there must be no alternative. We must grant this along with EI, in order for her obligations to be established.

In recent years, the main objection to political obligations under the principle of fairness has concerned RSA.¹⁹ In his recent works, Simmons contends that even goods that are ordinarily viewed as necessary can be provided in different forms and that individuals should be allowed to provide them as they prefer. In his words, 'many public goods supplied by the state can be provided by alternative, private means, often at a lower cost and without the imposition of oppressive or restrictive conditions'. Someone 'who prefers to try to provide [some indispensable] good privately, can hardly be accused of unfairly taking advantage of a group that unilaterally foists that good upon her on their own terms'.²⁰ Accordingly, this objection to fairness obligations turns on people preferring other means of providing the indispensable goods that a given scheme supplies.

Assuming RSA along with EI defuses the objection. The role of EI is clear. The X-ites can be assumed to have strong interests in receiving certain benefits, for example, in being free from threats of violent aggression, through protective

services. One can also assume that they would benefit substantially from other services that removed additional threats posed by environmental pollution and to public health. Given the thrust of Simmons' criticisms, RSA is more important. In the present context, this entails that by themselves groups of individuals cannot provide the large-scale public goods that are necessary to allay threats. RSA includes the sociological claim that only state action is able to provide them. Alternative provision is ruled out because it cannot work. In Section III, I will discuss RSA directly and some recent arguments that bear on it. But for now, it is enough to note that, if a theorist assumes this, it defuses the objection from alternative provision.

One could still object that Smith would prefer to receive the goods in question in some other form. But RSA rules out this possibility. The goods can be provided only by the state. In the modern societies we are most likely to view as legitimate, the precise form in which they are provided is decided upon democratically. Therefore, as long as Smith receives public goods that she needs, the fact that she would prefer them to be provided in another way would carry relatively little weight, as the preferences of the majority justifiably outweigh hers.²¹ Thus we see that assuming EI and RSA defuses objections to political obligations under the principle of fairness based on alternative provision.²²

To sum up briefly, EI and RSA must be assumed in order to establish moral requirements to obey the law based on a rescue principle. However, if they are assumed, they also defuse the main objections to political obligations under the principle of fairness. The rescue theorist confronts the dilemma noted above: she can have either both rescue principles and political obligations under the principle of fairness, or neither. She cannot have rescue principles without fairness obligations.

II.

Although rescue theories are now common in the literature, not all theorists develop them in the same way. I will examine articles by David Copp and Christopher Wellman — and a third paper, in the notes.²³ As we will see, while Wellman attempts to develop a new basis for political obligations, Copp attempts to establish moral requirements to obey the law that are carefully distinguished from political obligations. But in each case, the theorist establishes the need for his own position by criticizing and rejecting traditional arguments for political obligations.

We begin with the argument of Copp.²⁴ As part of his overall project, Copp claims that the state does not possess claim-rights to its subjects' obedience. Subjects cannot be shown to have consented to its authority, while Copp also rejects benefits arguments. In accordance with criticisms noted above, the substance of Copp's objection is that subjects do not have the option of refusing state-supplied public goods. Even if the state provides public goods from which

the relevant population benefits, this would not generate claim-rights to obedience: 'The argument sees the state as analogous to a community garbage collector who establishes a service from which all benefit, and comes to ask for payment . . . But I don't see that I would be wrong to refuse to pay on the basis that I would have liked to refuse the benefit'.²⁵

In spite of difficulties with benefits (and other) arguments, Copp believes subjects have significant moral requirements to obey the law, rooted in their duties to other people. Though benefits Grey himself receives do not generate moral requirements to obey the law, such requirements can arise from the need to supply benefits to others. Briefly, Copp argues that security and the rule of law supplied by the state are necessary to protect people's rights and to allow them to meet their basic needs. In supplying these benefits, society promotes a moral good, 'justice broadly construed'. The state's duty to provide such moral goods generates requirements to obey the law: 'Insofar as we have a duty to support just institutions, and to support the establishment of justice, we presumably then have a duty to support a just state'.²⁶ Accordingly, Grey has a moral duty to obey the law because of the need to supply justice to and protect the rights of members of X.

What interests us in Copp's argument is that he establishes a rescue principle while also rejecting receipt-of-benefits obligations to obey. I of course believe that assumptions required to support the duty to obey dissolve Copp's objections to the benefits argument. The two assumptions on which we focus are EI and RSA. In accordance with the former, the logic of Copp's position requires that the X-ites benefit from protection of their rights. There can be little sense in Grey's being compelled to perform services for them, if there are significant doubts about whether the services are beneficial. The X-ites no doubt have additional established interests, but for purposes of the argument here, the ones Copp notes are sufficient.

RSA is also required. Copp believes it is an empirical fact — sociological or political — that individuals' rights will not be adequately protected and they will not be able to satisfy their basic needs unless the state provides security and enforces the rule of law. Again, the logic of his position requires this. Because individual liberty is an important value, Grey should be able to fulfill his duties to other people in the manner he chooses, unless his assistance will be effective only through action by the state. The ordered and stable environment necessary for acceptable lives requires state supply of central public goods such as those noted above: national defense, law and order, public health, etc. Because of the large-scale, complex nature of modern society, private actions will not be enough.²⁷

The problem with Copp's position is that his commitment to EI and RSA defuses his contention that obligations are not generated by even beneficial public goods. The main benefits at issue are public goods, which recipients do not have the opportunity to refuse. Once again, according to Copp: 'I don't see that

I would be wrong to refuse to pay on the basis that I would have liked to refuse the benefit'.²⁸ I believe his example of the community garbage collector is misleading. The most significant benefits in question are the essential public goods I have mentioned. As Copp notes in regard to moral requirements to aid *other* people, services along these lines must be provided if they are to lead acceptable lives. Accordingly, we have reason to be skeptical if Grey refuses to pay his share of the costs of these services because he would have liked to refuse them. Because he cannot do without them, he can prefer to refuse them only if he also prefers not to lead an acceptable life.

Copp could perhaps appeal to an asymmetry between the moral status of goods provided to an agent himself and those he is required to provide other people. As we have seen, he believes that the recipient of public goods should be able to decide if he really wants them. Perhaps benefits imposed on a prospective coercee cannot ground obligations, although benefits to other people can. But a claim of asymmetry is immediately suspect. If questions about whether goods provided to Grey himself are desired undermine his obligations, similar questions concerning the desirability of goods provided to other people should do the same. Perhaps asymmetry could be salvaged if there were in fact fewer questions about goods supplied to other people. But this possibility collapses when we realize that, in the case at issue, the goods supplied to people themselves and to others are the same. In both cases, these are major public goods bearing on law and order and defense. If the evident need for these goods is sufficient to justify forcing Grey to help supply them to other people, then there is a strong presumption that he needs them as well.

The rescue theorist can perhaps respond that there *is* an asymmetry between goods supplied to Grey and those he is required to provide other people. The goods given to him come at a price that he is required to pay. Concerns of price are not raised in regard to those given to other people. So perhaps the response is open that Grey might not want the goods *at the price he is required to pay*; since other recipients are not confronted with concerns of price, there is a significant difference between goods given to coercees themselves and to others. This line of argument fails, however, because, again, both cases concern the same goods. If the rescue theorist claims that Grey can legitimately question the need to contribute to public goods that he receives because he does not believe they are worth their costs, it is odd not to allow him to raise similar questions about the costs required of him to supply the same goods to other people. If concerns of cost do not cause problems in the latter case, then they should not do so in the former.

There appears to be another line of argument open to Grey. He could perhaps contend that, even if services such as defense and law and order are necessary for an acceptable life, he could still be justified in refusing to contribute to state provision, because he would prefer to receive the benefits from some other source or, perhaps, to provide them himself. But this approach is not available. Because

Copp assumes RSA, he cannot claim that the necessary benefits could be provided through non-state means.

Thus we see that EI and RSA have implications stronger than Copp realizes. Although he attempts to reject obligations to the state while defending a rescue principle, RSA and EI prevent him from jettisoning obligations. Perhaps another alternative would be for Copp to withdraw his commitment to EI and RSA. But as we have seen, these are not incidental features of his view. Grey can be required to cooperate in state actions intended to benefit other people only if the actions in question are needed to bring about clear benefits. If there are significant doubts whether the benefits are real, then Grey cannot be required to contribute. This alternative is ruled out by EI. Similarly, he cannot be required to contribute to state programs if other acceptable means could provide the benefits. This alternative is ruled out by RSA. Although Copp cannot do without EI and RSA, to grant them is to allow political obligations under the principle of fairness. EI and RSA cannot be employed to support natural duties but be withheld from arguments for political obligations. What's sauce for the goose is sauce for the gander.²⁹

Circumstances are similar in the natural duty position developed in Wellman's recent article.³⁰ Wellman too rejects obligations to obey the law based on benefits supplied by the state. Benefits arguments, notably one based on the principle of fairness, are plagued by the spectre of paternalism. Once again, the main benefits in question are public goods that Grey is unable to refuse.³¹ If the state supplies these benefits and then demands that Grey cooperate in providing them, it is acting on its assumptions concerning what people regard as valuable. Because Grey can disagree with the state's views, its actions in this regard are objectionable. In Wellman's words:

One of the pivotal moves in this approach is to insist that the advantages of political society bind citizens because it is the citizens themselves who benefit. The problem which emerges for this account is that the liberal premium upon individual autonomy entails that one may not justify one's coercion of another by merely citing the benefits for the coerced. Liberalism's aversion to paternalism implies that each autonomous individual has a right to decide which self-regarding benefits to pursue.³²

As with Copp, having rejected traditional obligations,³³ Wellman argues for moral requirements to obey the law based on natural duties — though he characterizes the moral requirements he establishes as obligations. The duty on which he focuses, which he calls a principle of 'samaritanism', is a rescue principle, a requirement to come to the aid of people in peril or dire need. In comparison to other natural duty principles, such as Rawls's natural duty of justice, this has the advantage of being intuitively clear and familiar.³⁴ The dangers from which people must be rescued are those of a Hobbesian state of nature, which they would generally confront if not for the rule of law and other benefits provided by the state. Wellman argues that these dangers can be alleviated only through

state measures backed by coercion. Citizens therefore have strong moral requirements to obey the law: ‘the perils that *others* would experience in a state of nature can limit *our own* moral rights’.³⁵

This is a brief summary of Wellman’s argument, but it should suffice for our purposes. I will not comment on the persuasiveness of Wellman’s overall samaritanism view.³⁶ My main concern is the dilemma we have seen. Once again, he cannot both reject traditional political obligations and uphold natural duties to obey.

Like Copp’s, Wellman’s samaritanism theory requires assumptions along the lines of EI and RSA. In regard to the former, obligations of samaritanism are triggered by the fact that given individuals are in peril, although Wellman does not explore questions concerning how we know that they are actually in peril and require rescue. Although Wellman objects to the state deciding what is beneficial to individuals in regard to political obligations, he does not object to its making similar judgments in regard to people who need rescue. He takes it as evident that their basic interests are threatened and require protection.

Like Copp, Wellman upholds RSA as well as EI. He argues at length that ‘states provide important benefits that could not be secured in their absence’.³⁷ As he notes, this descriptive premise is essential to his argument. In order to justify coercing Grey to cooperate in its samaritan endeavors, the state must show that he could not fulfill his duty to help others through other means. But once again, this premise damages Wellman’s objection to the principle of fairness. Because Wellman claims that only the state can provide the benefits in question, once again, his rescue theory collapses. Assumptions required for the natural duties he defends defuse his objections to obligations based on benefits received.³⁸

III.

Having seen that rescue principles cannot be established without at least one traditional principle of political obligation also holding, we turn to the relationship between the two kinds of principles in theories of political obligation. If rescue principles are to be established, then EI and RSA must hold. To this point we have viewed them only as assumptions. The question now is whether they should be accepted. Full discussion would be far too lengthy and involved for this article, and so what follows is only a sketch.³⁹ Because EI and RSA are plausible claims, this should be adequate for our purposes.

The case for EI is straightforward. Since people are physically vulnerable, they require protection of different forms: from organized and unorganized violence, and from environmental and public health dangers. They therefore have strong interests in receiving protective services, which are necessary for acceptable lives. An obvious counter to this claim is that some people do not require protection. For example, some people who live in remote woodland areas can fend for themselves. In response, I believe that the number of people who genuinely

prefer to live in the woods is so few as to be of little relevance for questions of political obligation. Interesting questions can be raised about the obligations of such people — and it is not self-evident that they do not require national defense or public health and environmental protection. But these matters can be set aside. Questions of political obligation are of greatest interest as they bear on the circumstances of the vast majority of ‘ordinary people’. We can address outliers and exceptional cases after the requirements of the vast majority have been established. Throughout this article, I have made reference to ‘acceptable’ lives and what these require. My assumption is that most people — the vast majority — prefer to live in modern societies as we know them, integrated into the economy and society, taking advantage of cultural, educational and recreational facilities. These people have strong interests in receiving the kind of security and other services that are necessary to lead such lives. Discussions of the state of nature are deeply rooted in our tradition of political theory, but it is important to bear in mind that discussions of political obligation should more properly focus on inhabitants of modern industrial societies with preference structures shaped by such societies.⁴⁰

Because of the circumstances of modern societies, the services that people need are large-scale public goods, requiring the cooperation of large numbers of people, which can be provided only by the state. These are the main considerations supporting RSA. I view as obvious sociological facts that in modern industrial societies, protection from the factors noted above requires state action. A common objection to claims such as RSA is that people with various fighting skills or who are armed to the teeth could provide their own defense; they don’t need the police. But this overlooks the fact that the kinds of protection under discussion extend beyond immediate self-defense. Protection from foreign armies, from terrorists — perhaps armed with weapons of mass destruction — and from environmental and public health hazards, is far more than what people can furnish for themselves.

In recent years, important theorists have argued that state action is not necessary to provide various public goods. Libertarian anarchists especially contend that voluntary individual actions coordinated by market forces could provide them.⁴¹ Arguments and counter-arguments on this subject are deeply interesting and of great concern to political philosophers, but for obvious reasons they cannot be discussed here in detail. Once again, a few points should be adequate. The key consideration is that, although these theorists have worked out plausible means to provide many public goods, they have not put forth convincing accounts of market provision of the large-scale public goods that most concern us.⁴² Their problems are most apparent in regard to non-state provision of defense from external aggression, and, in the present climate, from acts of terrorism.⁴³ Similarly, although ingenious solutions have been proposed for problems of establishing common standards to adjudicate disputes between different voluntary protective associations, these must be viewed as far-fetched.⁴⁴ In these areas

and others, state action is necessary, and so I believe we can accept RSA as well as EI.

Accepting EI and RSA allows us to establish the rescue principle. Because the X-ites have clear interests in being rescued and state action is necessary to accomplish this, Grey's duties to help them must be fulfilled by supporting state agencies. But as we have seen throughout this article, because EI and RSA also defuse objections to the principle of fairness, to establish rescue principles will leave us with fairness obligations as well. It is therefore necessary briefly to discuss how these different principles interact. Having both should not strike us as unfortunate. There is little reason to believe that the principles are incompatible or that specific moral requirements to obey the law must be based on only one moral principle. There can be many different reasons to obey specific laws; requirements to obey many laws are overdetermined. Different moral principles can overlap and reinforce one another, and so a theory of political obligation that includes both rescue and fairness principles could well be stronger than a theory based on one of these principles alone.

There are strong reasons to believe that moral requirements to obey the law from rescue and fairness principles complement one another. The principle of fairness is one of a family of moral principles grounded on benefits received. A gratitude principle is similar; both are variants of an overall principle of reciprocity. According to Larry Becker: 'Reciprocity is a moral virtue. We ought to be disposed, as a matter of moral obligation, to return good in proportion to the good we receive, and to make reparation for the harm we have done'.⁴⁵ Even if EI and RSA hold and so fairness is able to overcome the criticisms that have been developed, because it is a principle of reciprocation, it will not be able to ground moral requirements to serve or help people who do *not* benefit one. If we require that a principle of political obligation be able to support the entire range of state functions, then fairness and other reciprocation principles will fall short. Because they are based on benefits received, they cannot cover obligations in regard to social welfare functions, which are of course central to the modern state.

From this perspective, the great advantage of a rescue principle is that it is based on a requirement to help other people in need and so, working along with fairness, is able crucially to supplement the former's ability to support state functions. This suggests that rescue theorists have pursued a strategy that is ill-advised in attempting to *replace* traditional principles, when a strong theory can be constructed on top of them.

The need to combine different principles of political obligation is confirmed by limitations of rescue principles. Perhaps one reason rescue theorists do not attempt to combine their principles with others is that they do not believe this is necessary. As they present it, a rescue principle could well be able to ground moral requirements to support the full range of state functions. To this point we have not raised the possibility that rescue principles would not be able to do so, but brief reflection indicates that they would not. The particular feature of rescue

principles relevant here is that they are qualified in regard to cost. Considerations of costs are damaging to natural duty requirements to obey the law, including requirements based on duties to rescue.⁴⁶ Briefly, as they are presented by Rawls and other theorists, natural duties are generally qualified in regard to cost. Included here is the duty of mutual aid, which, according to Rawls, is a requirement to help others when they are in need, 'provided that one can do so without excessive risk or loss to oneself'.⁴⁷ This is consistent with our intuitions. Ordinarily, we would say that Grey has a strong moral requirement to help a stranger drowning in a swimming pool. He should also do so even if this could cause him to ruin his new suit. But we would not say that Grey is required to risk his life to save the stranger, e.g. to rush into a burning building in danger of sudden collapse. Other natural duties are similarly qualified. According to Rawls, the duty to bring about a great good holds 'only if we can do so relatively easily'.⁴⁸ The same is true of the duty to help establish just institutions.⁴⁹ The problem here is that obeying the law can oftentimes be costly, e.g. tax laws that require one to pay a substantial percentage of one's income and of course requirements to fight, possibly to die, for one's country. Accordingly, it is not clear that natural duties can ground requirements to support central state functions.

Rather than providing a full theory of political obligation, then, rescue principles can only complement other principles. Our concern here is of course the principle of fairness. Although this principle cannot ground duties to help other people, an advantage of the fact that it is based on benefits received is that it is ordinarily not limited in regard to cost.⁵⁰ Thus rescue and fairness principles can complement one another. The former pertains to other people and is cost qualified; the latter differs in both these respects. Although rescue principles are unable to ground central state functions, they are able to fill gaps in reciprocation theories. Thus I conclude that the instability of rescue theories is not necessarily a setback for attempts to establish moral requirements to obey the law. Combining rescue and fairness principles could well provide a theory of political obligation stronger than what can be based on either principle alone.⁵¹

notes

1. A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979). In this article, I generally use language of 'political obligations' in a loose, non-technical sense, as moral requirements to obey the law. For discussion of political obligations, see Simmons, *Moral Principles*, Chs 1–2; G. Klosko, *The Principle of Fairness and Political Obligations*, new edition (Savage, MD: Rowman and Littlefield, 2004), Ch. 1.
2. M.B.E. Smith, 'Is There a Prima Facie Obligation to Obey the Law?', *Yale Law Journal* 82 (1973); J. Raz, *The Authority of Law* (Oxford: Oxford University Press, 1979), Ch. 12.
3. Most notably, for consent, see H. Beran, *The Consent Theory of Political Obligation* (London: Croom Helm, 1987); for fairness, see R. Arneson, 'The Principle of

- Fairness and Free-Rider Problems', *Ethics* 92 (1982); Klosko, *The Principle of Fairness*; for gratitude, see A.D.M. Walker, 'Obligations of Gratitude and Political Obligation', *Philosophy and Public Affairs* 18 (1989).
4. For association, see J. Horton, *Political Obligation* (London: Macmillan, 1992); M. Gilbert, 'Group Membership and Political Obligation', *Monist* 76 (1993); R. Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), pp. 190–216. For natural duty, see C. Wellman, 'Toward a Liberal Theory of Political Obligation', *Ethics* 111 (2001); D. Copp, 'The Idea of a Legitimate State', *Philosophy and Public Affairs* 28 (1999); also J. Waldron, 'Special Ties and Natural Duties', *Philosophy and Public Affairs* 22 (1993).
 5. A. Buchanan, 'Political Legitimacy and Democracy', *Ethics* 112 (2002); Copp, 'Idea of a Legitimate State'; W. Edmundson, *Three Anarchical Fallacies* (Cambridge: Cambridge University Press, 1998).
 6. Especially Simmons, 'Associative Political Obligations', *Ethics* 106 (1996).
 7. Although granting the necessary assumptions defuses the most important objections to the principle of fairness, this does not mean that all other objections are also defused, although I believe they can be dealt with. For discussion of the principle of fairness that addresses many objections, see Klosko, *Principle of Fairness*.
 8. For an excellent defense of such a duty, see J. Feinberg, *Harm to Others* (Oxford: Oxford University Press, 1984), pp. 126–186.
 9. For the sake of simplicity, I set aside complex epistemological questions and so treat as equivalent claims that Jones has interests in being rescued and that Smith has good reasons to believe that Jones has such interests.
 10. An additional stipulation worth noting is that, in order for condemnation of Smith for failing to rescue some subject to be justified, not only must the subject benefit, but he must do so substantially. In discussing benefits in subsequent discussion, I assume that they are substantial and so satisfy this condition.
 11. This can be qualified. The projected rescue attempt must be likely or highly likely to succeed. There is some variance here depending on the importance of the goods to be realized. Possible achievement of greater goods can justify efforts that are less likely to be successful. But even for great goods, if success is highly unlikely, Smith should not be required to contribute to attempting to achieve them.
 12. For complexities in moving from individual to collective cases, see F. Kamm, 'Does Distance Matter Morally to the Duty to Rescue?', *Law and Philosophy* 19 (2000).
 13. Cf. L. Becker's account of the large-scale duty to reciprocate for large-scale benefit in *Reciprocity* (London: Routledge, 1986), pp. 105–124; see also Wellman, 'Toward a Liberal Theory', pp. 748–750.
 14. For convenience, the terms 'state' and 'political institutions' can be used loosely and interchangeably. Both can be characterized as possessing two main features: large size and significant coercive force.
 15. In addition, because the issues under discussion concern moral requirements, I will avoid complex questions concerning justification of coercion to enforce requirements to rescue. I will assume that, if it would be wrong for Smith not to contribute her share to collective rescue efforts, then she can justifiably be compelled to do so through coercive means. For discussion of some of the issues involved here, see Wellman, 'Toward a Liberal Theory', pp. 746–750.

16. For detailed discussion of the principle of fairness, see Klosko, *Principle of Fairness*.
17. Simmons argues that public goods can be ‘accepted’, but this is only in a metaphorical sense. See *Moral Principles*, pp. 118–136.
18. See esp. R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 93–95.
19. As we see in the next section, rescue theorists also argue along these lines.
20. Both quotations from Simmons, *On the Edge of Anarchy* (Princeton: Princeton University Press, 1993), p. 258; see also Simmons, ‘Fair Play and Political Obligation: Twenty Years Later’, in his *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), especially pp. 33–36.
21. Certain conditions must hold in order for this to obtain. Notably, the relevant decision mechanism must be reasonably fair and weigh all individuals’ preferences equally.
22. Additional possible responses to the argument here are considered in Section II.
23. Copp, ‘Idea of a Legitimate State’, Wellman, ‘Toward a Liberal Theory’. I examine the important paper of J. Kis, ‘When We Are Morally Required to Cooperate’, only in the notes, in order to avoid repetition and because it is as yet unpublished and to my knowledge available only on the Internet (url: <http://www.law.nyu.edu/clppt/program2002/readings/kis/kispaper.pdf>; downloaded, September 2002).
24. Copp, ‘Idea of a Legitimate State’.
25. *Ibid.*, p. 35.
26. *Ibid.*, p. 34.
27. These points are similar to Copp’s ‘societal needs argument’, see *ibid.*, pp. 36–44, especially p. 39.
28. *Ibid.*, p. 35.
29. I should note that, in a different sense, establishing obligations is not damaging to Copp’s overall position. The existence of obligations to obey given laws is not necessarily incompatible with natural duties to obey them. In this particular case, it seems that there is not only no incompatibility but the overall thesis of Copp’s article — concerning the legitimacy of the state — is strengthened by admitting both obligations and duties. We return to this subject in Section III.
30. Wellman, ‘Toward a Liberal Theory of Obligation’.
31. *Ibid.*, p. 738.
32. *Ibid.*
33. Wellman examines a number of different arguments for obligations in addition to fairness; see *ibid.* pp. 735–740.
34. *Ibid.*, p. 751 n. 18.
35. *Ibid.*, p. 744; his emphasis.
36. On this, see Klosko, ‘Samaritanism and Political Obligation: A Response to Christopher Wellman’s “Liberal Theory of Political Obligation”’, *Ethics* 113 (2003).
37. Wellman, ‘Toward a Liberal Theory of Obligation’, pp. 742–743.
38. An additional example, which I will discuss only in this note, is Kis, ‘When We Are Morally Required to Cooperate’. Kis too rejects a theory of political obligations based on benefits received from the state and then argues for moral requirements to

support the state in order to rescue other people. His reasoning is similar to that of Copp and of Wellman. He claims that many people would not accept the benefits in question (which have been characterized as ‘presumptively beneficial’): ‘It is simply not true that almost all people on almost all occasions actually prefer the presumptively beneficial goods (at the given price of these) to not paying the price (and not having the goods)’ (p. 8). As an example, he presents the ‘Company Smoker’, who smokes, in spite of health risks, and claims that there are many other examples: ‘I don’t think my Company Smoker is very eccentric. And similar examples abound’ (p. 8). As additional examples, Kis appeals to numerous people, mainly young women, who damage their health by dieting excessively in order to be slim (note 15, on p. 8). As with Copp’s garbage collector, I believe these are poor examples. The benefits on which we should focus are public goods that are necessary for acceptable lives.

Like Copp and Wellman, Kis moves on to argue for requirements to obey the law based on the duty to rescue other people. Once again, my criticism is that, in arguing for his own position, Kis does not raise difficult questions concerning benefits provided by cooperative services intended to rescue people in peril. Kis too can be seen to be committed to assumptions similar to EI and RSA. A given individual, Smith, can be required to engage in cooperative activity to rescue others in need only if the latter are non-controversially in need of rescue and only if they can be helped only by the state. And so once again, if Kis assumes EI and RSA (or closely related precepts) in this portion of his argument, then they also apply elsewhere, and the grounds on which he rejects benefit-obligations are cut away.

39. More complete discussion of these assumptions is provided in Chapter 2 of my book-in-progress, *Political Obligations* (under contract with Oxford University Press).
40. I set aside questions concerning the political obligations of inhabitants of other kinds of societies.
41. See, e.g., D. Friedman, *The Machinery of Freedom* (New York: Harper and Row, 1973); M. Rothbard, *For a New Liberty* (New York: Macmillan, 1978); also B. Benson, *The Enterprise of Law* (San Francisco: Pacific Research Institute for Public Policy, 1990).
42. For brief discussion of game theoretic solutions to problems of providing public goods, see Klosko, ‘The Natural Basis of Political Obligation’, *Social Philosophy and Policy* 18 (2001).
43. Friedman characterizes defense as ‘the hard problem’; his suggestions are highly speculative (*Machinery of Freedom*, Ch. 34). Rothbard’s suggestions are similarly improbable (*For a New Liberty*, pp. 237–241, also Ch. 14). Benson concedes the need for governmental defense (*Enterprise of Law*, p. 373). Simmons devotes little or no attention to defense in *Moral Principles* or his other books; see *On the Edge of Anarchy; The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992).
44. See esp. T. Cowen, ‘Law as a Public Good: The Economics of Anarchy’, *Economics and Philosophy* 8 (1992); and W.M. Landes and R.A. Posner, ‘Adjudication as a Private Good’, *Journal of Legal Studies* 8 (1979).
45. Becker, *Reciprocity*, p. 3.
46. See Klosko, ‘Political Obligation and the Natural Duties of Justice’, *Philosophy and*

- Public Affairs* 23 (1994); 'Samaritanism and Political Obligation'.
47. John Rawls, *Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 114. I should note that consequentialist theorists generally deny such cost qualifiers. For discussion, see S. Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989).
 48. Rawls, *Theory of Justice*, p. 117.
 49. *Ibid.*, pp. 115, 334; it is interesting to note that the other political duty Rawls posits, to support and to comply with just institutions that exist, is not so qualified (pp. 115, 334).
 50. It should be noted that, although they can require significant sacrifice, political obligations are generally viewed as prima facie moral requirements, subject to being overridden by strong countervailing considerations.
 51. I am grateful to Colin Bird, Richard Dagger, Micah Schwartzman and an anonymous reviewer for this journal for helpful comments and suggestions on previous drafts of this article.