

THE MORAL OBLIGATION TO OBEY THE LAW

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The moral obligation to obey the law, or as it is generally called, political obligation, is a moral requirement to obey the laws of one's country. Traditionally, this has been viewed as a requirement of a certain kind, to obey the law for the "content-independent" reason that it is the law, as opposed to the content of particular laws. In characterizing this as a moral requirement, theorists distinguish political obligation from legal obligation. All legal systems claim to bind people subject to them; part of what we mean by a valid law is that the relevant population is required to obey it. This requirement is generally supported by coercion, while those who do not obey are subject to sanctions. But these aspects of legal obligation leave open more ultimate questions about the state's justification for imposing such requirements. Unless citizens have moral requirements to obey the law, they may be forced to do so, but in compelling obedience, the state is acting unjustly and impinging on their freedom.

As H. L. A. Hart argues, the distinctive thrust of political obligations can be seen in the contrast between being obliged to do *p* and having an obligation to do it (Hart 1961: 80–88). If a gunman holds Smith up and threatens to shoot her unless she turns over \$50, she is likely *obliged* to surrender this sum. But by this locution, we mean no more than that the alternatives to complying are significantly unpleasant, which gives her a strong reason to comply. According to Hart, obligation adds to this an internal dimension. While Smith's being obliged to do *p* is analyzed in terms of her assessment of the consequences of obeying or not obeying, her having an obligation to do *p* adds to these concerns the moral legitimacy of what she is compelled to do. If Smith is a citizen of a legitimate state that requires she pay \$50 in taxes, once again she could well be forced to comply; the consequences of noncompliance could be unacceptable to her. But in this case, it is *right* that she surrender the money. If she recognizes the obligation, she will believe it is the right thing to do—although we should note that this is a *prima facie* moral requirement, capable of being overridden by additional moral considerations.

At the present time, no theory of political obligations is generally accepted. All accounts are subject to vigorous controversy. Absence of consensus on moral reasons is accompanied by more basic disagreements about the nature of political obligations themselves and whether a satisfactory account is possible. At the present time the dominant

position in the literature may well be that there are no political obligations in the traditional sense. But this contention too is disputed by scholars from numerous directions.

According to standard analysis, an obligation is a moral requirement that an individual imposes on himself or herself (Brandt 1964; Hart 1958; Simmons 1979, ch. 1). For instance, if A promises B to do p , the moral requirement to do p is generated by the act of promising and would not otherwise exist. But in spite of the label “political obligation,” most scholars argue that moral requirements to obey the law need not be grounded in requirements of this kind (an exception is Pateman 1979). In spite of other disagreements, scholars largely agree about a few basic criteria that a successful theory of political obligation should satisfy (Simmons 1979, ch. 2; Klosko 2005, ch. 1). First, the theory should be general; that is, it should explain the obligations of all or almost all citizens. It should also explain their requirements to obey the laws of their own country. This criterion is generally referred to as “particularity” (Simmons 1979: 31–35). It should be comprehensive, i.e., explain requirements to obey all or almost all laws. Finally, as indicated above, in keeping with the general thrust of liberal political theory, the moral requirements in question should be of only limited force. They should bind citizens as a rule, but, as *prima facie* obligations, able to be overridden by conflicting moral requirements (see Klosko 1992: 12–14). Other features are discussed in the literature. But these should be adequate for this essay. Putting these four features together, we may say that a successful theory of political obligation explains the requirements of all or almost all citizens to obey all or almost all laws of their own countries, with these requirements of limited force.

In the literature, scholars have attempted to justify political obligations on a variety of grounds. In the liberal tradition, arguments from voluntary consent are traditionally most central. Until relatively recently, the history of political obligation has been a history of consent (Klosko 2011b). Additional approaches that will be discussed in this essay are consequentialist arguments, based on the effects of obedience or disobedience, arguments based on the principle of fairness (or fair play), which turn on receipt of benefits from the state, and arguments based on a principle of membership or association, and a natural duty of justice. I will examine the strengths and weaknesses of these different approaches and recent developments that have called into question central features of political obligations as traditionally understood.

Consent Theory

Although elements of a consent theory of political obligation are present in earlier thinkers, the view receives its classic statement in John Locke’s *Second Treatise of Government* (1988/1690). Locke argues that people are naturally free in the state of nature. Although the state of nature is governed by natural law, in the absence of an authority to enforce this, Locke subscribes to the “strange Doctrine” (§ 13) that all men have the right to enforce it for themselves. However, general self-enforcement leads to conflict, and so people are willing to surrender their enforcement powers. They do this in two stages—erecting a community, which then places its powers in a legislative authority. Because people surrender only certain of their rights, the legislative power is able to act only in these areas. But in these areas, individuals agree “to submit to the determination of the majority, and to be concluded by it” (§ 97). Because Locke’s overall purpose in the *Second Treatise* is to justify revolution, he is deeply concerned with limitations on authority. Although he does not use the word “contract,” he argues that

legitimate political authority is held in trust. When the limitations are violated, people have strong rights of resistance, including resistance by single individuals when they believe “the Cause of sufficient moment” (§ 168). However, Locke argues that this right will not lead to disorder, as individuals will realize the futility of acting alone (§ 208).

Locke holds that, because people are naturally free, only their own consent can place them under political authority (e.g., § 95). It follows that one is not bound by the consent of one’s father, or by an original contract made at the foundation of society (§ 116–18). However, although “express consent” establishes clear political bonds, Locke recognizes that few people actually consent in this way. Thus he turns to “tacit consent,” which is able to bind most or all inhabitants of a given country. As a result, his theory of political obligations based on consent is for all intents and purposes a theory of tacit consent.

Locke’s account of the actions that constitute tacit consent is expansive:

And to this I say that every Man, that hath any Possession, or Enjoyment of any part of the Dominions of any Government, doth thereby give his tacit Consent, and is as far forth obliged to Obedience to the Laws of that Government, during such Enjoyment, as any one under it; whether this his Possession be of Land, to him and his Heirs for ever, or a Lodging only for a Week; or whether it be barely traveling freely on the Highway; and in Effect, it reaches as far as the very being of any one within the Territories of that Government.

(§ 119)

By reducing consent to, in effect, simply being within a given territory, Locke is able to argue that all or virtually all people have consented. But this raises a problem of its own. In making consent all but unavoidable, Locke deprives it of its moral significance. According to Hannah Pitkin: “we are likely to feel cheated by Locke’s argument; . . . why go through the whole social contract argument if it turns out in the end that everyone is automatically obligated?” (Pitkin 1965: 995). In spite of this and other problems, Locke’s view of consent is probably the standard account in the literature and—directly or indirectly—has influenced how many people think about political obligations.

Locke’s view of tacit consent was classically criticized by David Hume, in the latter’s essay, “Of the Original Contract” (Hume 1985). Hume agrees with Locke’s fundamental claims concerning the ability of consent to bind and the limited nature of political power. But he rejects the existence of an actual historical contract into which people entered, because of the lack of evidence this ever occurred. He agrees with Locke that most people have not consented expressly to government. If they had done so, they would remember this but do not. He also breaks with Locke in regard to tacit consent, claiming that, because of the nature of existing societies, most people should not be viewed as having consented. We will return to this subject below.

Variations on Consent

Theorists have attempted to preserve consent theory in different ways. Certain theorists have attempted to identify widely performed actions that constitute tacit consent. One

possibility is voting. If Jones votes in an election, one could argue that he has agreed to be governed by the winners, and so to obey the law (Plamenatz 1968: 168–71). Other similar actions could be suggested, e.g., saying the Pledge of Allegiance or taking the appropriate oath upon joining the armed forces. But if we examine the conditions necessary for an act of consent to create a moral requirement to obey the laws, it can be seen that these and similar acts fall short.

As A. John Simmons notes, when people talk about “consenting” to one’s government, they often mean something much looser than voluntarily accepting a moral requirement to obey the law. Rather, they employ an “attitudinal” sense of consent. When Smith says that she consents to her government, what she frequently means is that she approves of it (Simmons 1979: 93–94). Perhaps, as indicated below, she would consent if given the opportunity, but this does not mean that she has actually bound herself to obey its laws through an act of consent.

Although a full account of the conditions necessary for effective consent cannot be presented in this context, for our purposes, three are especially important. First, the consenter must not be forced to consent—that is, reasonable means of refusing to consent must be available to her; she must be aware of what she is consenting to; and she must be competent to do so. Circumstances that do not satisfy these conditions may be described as “defeating conditions” and prevent acts of consent from generating moral obligations (Beran 1987, ch. 1).

These conditions cause problems for acts that have been purported to constitute tacit consent. Consider voting. Although it may seem that someone who votes is among other things expressing support for the political system, this is not enough for voting to ground political obligations. To use a distinction of Simmons’s, we may say that voting is “consent implying” (Simmons 1979: 88–95). It does not make much sense to vote if one does not support the political system. But this is different from saying that the act of voting actually constitutes consent. It is unlikely that many people vote with the idea that, by doing so, they are agreeing to obey the laws of their countries, and that if they did not vote, they would not have moral requirements to do so. If voting is to generate a moral requirement analogous to what is created by a promise, something along these lines would have to be true. There are similar problems with other actions that have been taken to constitute consent. For instance, although the oath one takes upon entering the armed forces does appear to generate moral requirements in regard to the oath’s contents, it ordinarily binds only as long as one is serving. When one leaves the armed forces, such oaths ordinarily expire.

The most plausible action—or lack thereof—that may be taken to constitute tacit consent is staying in one’s country. There is a certain plausibility to this position. Most people are probably aware that if they remain in a given country, they will be required to obey its laws, while this requirement will no longer obtain if they leave. However, the requirement referred to in the last sentence is legal—likely backed up by coercion—rather than moral. If staying in one’s country is to ground moral requirements to obey the law, in this case lack of action must constitute consent. As Simmons argues, failure to act may communicate consent; tacit consent differs from express consent not because it is not communicated but in the manner through which it is communicated. But additional conditions must be satisfied. Potential consenters must not only know that consent is called for, but they must also know how it is communicated, and the period of time during which they may consent or not consent (Simmons 1979: 80–81). In addition and most important, as noted above, the mode of indicating dissent must be

“reasonable and reasonably easily performed.” In order for consent to be voluntary, the consequences of dissent must not be extremely harmful or detrimental to the potential consentor (81). Accordingly, hanging over this form of tacit consent is the criticism of Hume, who rejects claims that residence constitutes tacit consent, because the means of expressing lack of consent are not ordinarily available:

Can we seriously say that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.

(1985: 475)

Clearly, if one is prevented from leaving a given territory, remaining in it cannot constitute consent.

Two centuries later, conditions have changed in certain respects. With greater affluence and improved transportation it is easier for many people to travel. But one can move to another country only if another is willing to take one in. Moreover, as Simmons argues, much of what is precious in life cannot be taken with one: family, friends, a particular culture (1979: 99). Therefore, choice of either consenting or leaving could well be viewed as coercive.

In response to the difficulties of tacit consent, theorists have worked out other variants of consent. One possibility is that the consent in question need not be actual consent. Rather, if conditions in one's country are such that one would consent to obey the laws if given the opportunity, then this hypothetical consent could ground moral requirements to obey the law. This approach traces back to Immanuel Kant, who argues that government's power is limited by the requirement that the legislator should “frame his laws in such a way that they could have been produced by the united will of a whole nation” (Kant 1970: 79; see Waldron 1987). However, “hypothetical consent” is immediately vulnerable. To use the words of Ronald Dworkin: “A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all” (Dworkin 1977: 151). Hypothetical consent is useful in shifting attention away from actions performed or supposedly performed by the obligee to aspects of the political system that would justify consenting to it—along the lines of the attitudinal sense of consent mentioned above. But because it is not able to establish obligations on its own, if it is to ground political obligations, hypothetical consent must be supplemented by additional moral principles.

An alternative means to establish political obligations based on consent is to devise political institutions that provide opportunities for more individuals freely to consent. A possible mechanism would allow citizens to consent when they reach a certain age. Various political systems have had such mechanisms, among them ancient Greek cities (see Kraut 1984: 154–57). A “reformist consent” mechanism that could be set up in the United States would require individuals to apply for formal citizenship at the age of 18, the age at which men are presently required to register for military service. An oath of allegiance to the government and/or Constitution could be part of the process. In his defense of consent theory, Harry Beran proposes that individuals who do not consent be given the option of emigrating to a “dissenters' territory” (Beran 1987: 31–32, 37–42).

However, the obvious flaw with these proposals concerns what happens to individuals who refuse to consent. They could be required to leave the territory. But if such a choice is viewed as coercive as an alternative to tacit consent, it is unlikely to pass muster here. Thus Beran's proposal is unlikely to be acceptable, as it not only forces individuals to emigrate but has the additional disadvantage of forcing them to live in a dissenter's territory. The situation is not improved if individuals are allowed to stay in their countries (see Walzer 1970). The main benefits provided by the state are public goods and so available to all inhabitants of a territory whether or not they have consented. Non-consenters who stay in the territory will continue to receive these benefits without being required to support the institutional mechanisms that provide them. This would not only be unfair to consenters, whose efforts produce the benefits in question, but it could well make non-consent more attractive and so lead increasing numbers of people to refuse to consent (Klosko 1991). As fewer people consented, the costs of providing basic public goods would rise, encouraging additional people not to consent, and so leading to possible social collapse.

Consequentialism

Along with his rejection of political obligations based on consent, Hume developed an alternative view based on social utility. His argument is in accord with common sense. Government is required for the good of society and so should be obeyed, as long as it promotes this end. If it ceases to be useful, it loses its reason for being and also its authority. However, because it is so costly to change governments, this is justified only if governments become egregiously tyrannical (*Treatise of Human Nature*, III, ii: 9). In central respects, Hume's conclusions are similar to those of Locke. But Hume believes he is able to establish these without the fictions of an original state of nature, individual consent and social contracts.

Hume's basic position was developed by subsequent theorists in the utilitarian tradition, e.g., Bentham (1788/1776, ch. 1). In departing from the voluntarism of consent theory, this position has the considerable advantage of being able to bind most or all citizens, regardless of actions they may or may not have performed. However, consequentialism faces a central difficulty in grounding requirements for given individuals to obey the law.

The problems with consequentialism, like those with consent, stem from conflict with the facts of society. Under certain circumstances, it is actually more beneficial to society if a given individual disobeys. Whether or not other people are complying with some social norm, it is in a given individual's interest not to comply (see Taylor 1987; Klosko 1990). Important cases involve actions that are beneficial to the agent, while causing small or undetectable harms. But if performed by large numbers, these actions become extremely harmful (Harrod 1936: 148). An example is Brown's contributing to air pollution by not fixing the catalytic converter on her car. Sensitive scientific instruments would be unlikely to detect the difference in air quality caused by her conduct. If the large majority of her fellow citizens do comply with anti-pollution laws, air quality will be acceptable, and so, on consequentialist grounds, it is not clear why it is wrong for Brown not to comply. Since we may stipulate that fixing the catalytic converter would be expensive, her noncompliance affords Brown additional money to spend, which could contribute to her happiness or that of her family and friends. Thus in this case, it is actually more beneficial for society—as of course for Brown herself—if she breaks the

law rather than complies. Something similar holds for laws requiring Brown to pay her taxes or to serve in the military. If her society is large, encompassing many millions of people, it is likely that, on consequentialist grounds, her disobeying these laws would also be better for society. However, in these and similar cases, the consequences of general disobedience could well be disastrous.

The difficulties here are well known, and consequentialist theorists have tried a number of ways to get around them. This essay is not the place for a full examination of this problem. But very briefly, unlike "act-utilitarians," who argue that the rightness or wrongness of an action depend on its consequences alone, "rule-utilitarians" apply the consequence test to moral rules rather than to specific actions falling under the rules. Thus rather than assessing the rightness or wrongness of fixing one's catalytic converter according to the consequences of that specific act, rule-utilitarians assess the consequences of following general rules of obeying air-pollution laws or not obeying them. If this test were applied to Brown's situation, the result would be that it would be wrong not to fix the catalytic converter. The consequences of general rules not to pollute the air, to pay taxes and to provide military service are obviously superior to those of general rules of not doing these things.

However, rule-utilitarianism has been criticized by scholars. For instance, according to J. J. C. Smart, for a utilitarian, it does not make sense to require Brown to obey a given rule, when, as we have seen, society is actually better off if she breaks it. To require her to obey is "superstitious rule worship." Smart believes the only defensible form of rule-utilitarianism consists of one rule: "maximize utility" (Smart 1967: 177; 1973: 9-12). This of course would not solve the problem of requiring Brown to fix her catalytic converter. Alternatively, it is widely held that, when rule-utilitarianism is worked out, it can be seen to be extensionally equivalent to act-utilitarianism. The difficulty concerns the exact rule that should be complied with under particular circumstances. According to rule-utilitarianism, this should be the rule that is most beneficial to society. As just noted, society is much better off if this requires non-pollution than pollution. However, society will be even better off if the rule in question is crafted to require general avoidance of pollution but to allow Brown not to fix her car. Additional exceptions must be built into the rule to accommodate the immediate gains from additional noncompliance. As a result, rule-utilitarianism collapses into act-utilitarianism. Consequentialist theorists have attempted to get around this difficulty in other ways. Their efforts raise formidable technical questions in regard to the consequences of particular actions. For instance, Derek Parfit argues that acts with small or undetectable consequences may be wrong when they are parts of sets of acts that are clearly harmful (Parfit 1984, ch. 3). This principle would explain the harmfulness of contributing to air pollution. But it has proved difficult for consequentialist theorists to provide the "moral mathematics" to support this position (Gruzalski 1986; Parfit 1986; Klosko 1990).

The Principle of Fairness

The difficulties with consequentialism indicate the advantages of arguments from the principle of fairness (or fair play). Return to the pollution case. As we have seen, because general but not universal adherence to anti-pollution laws is necessary, it is actually better for society, as of course for Brown herself, if she disobeys them. But one could ask why Brown rather than other citizens should gain the benefit of noncompliance. Is it fair that she simply assumes this advantage, while most or all other citizens would

presumably also prefer not to comply? Underlying the principle of fairness is the intuition that in situations along these lines, advantages of noncompliance should be distributed fairly. It is unfair for a given individual who benefits from the sacrifices of her fellow citizens simply to assume for herself the additional benefits of noncompliance.

The principle was first clearly formulated by Hart in 1955 (exposition here draws on Kosko 1992 and other works):

[W]hen a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission.

(Hart 1955: 185)

The moral basis of the principle is mutuality of restrictions. Under specified conditions, the sacrifices made by members of a cooperative scheme in order to produce benefits also benefit noncooperators, who do not make similar sacrifices. According to the principle, this situation is unfair, and it is intended to justify the obligations of noncooperators. The underlying moral principle at work in such cases is described as "the just distribution of benefits and burdens" (Lyons 1965: 164).

In certain cases, concerning supply of "excludable" goods, the principle's workings are clear. Assume that three neighbors dig a well. For a fourth, who refused to share their labors, to take water from it would be a clear case of free-riding. In such cases, recipients of the scheme's benefits have the option of whether or not to receive them, and it seems clear that they must accept or otherwise seek out the benefits, if they are to incur obligations. But the principle is of greater interest as it concerns the supply of non-excludable or public goods, which, because of their nature, cannot be sought out or even accepted. Such goods must be generally available to the population of a given territory if they are supplied to only certain members. The most important examples are public goods produced by the cooperative efforts of large numbers of people that are vital to people's lives. Included in this class are public goods bearing on physical security, most notably national defense and law and order. Because provision of such goods requires that people's activities be coordinated by the state, theorists contend that the principle of fairness grounds moral requirements to obey the state in regard to the relevant cooperative schemes. However, because the benefits in question are public goods, it must be explained how individuals who have not accepted them incur obligations. Important theorists argue that recipients must accept benefits in order to incur obligations, and so that the principle of fairness does not bind recipients of public goods (Rawls 1971: 113–16; Dworkin 1986: 192–93).

This position is supported by a famous example of Robert Nozick's. Assume that Jones's neighborhood organizes a public-address system to provide music and other programs, and each neighbor takes a turn running the system for a day. If Jones has enjoyed listening to the system, must he give up a day when his turn comes? What if he prefers not to? Nozick argues that Jones does not have a requirement to participate. The principle of fairness does not eliminate "the need for other person's *consenting* to cooperate and limit their activities" (Nozick 1974: 93–95, his emphasis). Important scholars agree that, under these circumstances, Jones does not have an obligation to comply. But they draw various conclusions in regard to exactly how the example works and what it means for the principle of fairness. For instance, according to Simmons, the reason Jones does

not incur an obligation is that he is simply a bystander in regard to the public-address scheme. It has been built up around him, with no input from him. In order for him to have obligations to do his part in running it, he must be a *participant* in the scheme (Simmons 1979: 120–21). To be a participant, he must have particular attitudes in regard to benefits it provides. He must believe the benefits are worth their costs, and he must receive them “willingly and knowingly.” This last condition requires that he know that the benefits in question *are* products of a cooperative scheme, a condition that Simmons believes is not generally satisfied (Simmons 1979, ch. 5).

Other scholars believe that argument along these lines can be countered. Richard Dagger argues that state benefits are in fact widely accepted. In many of their activities, citizens take advantage of facilities the state provides. They make use of roads and communication facilities, and do so voluntarily. Although these facilities cannot be avoided, they are used “voluntarily,” taking “voluntarily” in a wider sense as meaning “not under constraint or duress” (Dagger 1997: 75). Although a given citizen may not perform a particular action that constitutes acceptance of state benefits, the latter are central to their lives. Because there is a clear sense in which they have voluntarily accepted these benefits, it would be wrong for recipients not to do their part in providing them (Dagger 1997: 77).

Other theorists argue that voluntary acceptance is not necessary. I believe Nozick’s example appears to work because of the trivial nature of the benefits in question. But if we consider cooperative schemes that provide much more important benefits, conclusions are different. I characterize goods that are indispensable, necessary for acceptable lives, as “presumptively beneficial.” Included in this class are public goods necessary for national defense, law and order, and protection from deadly diseases and natural disasters. Because of the great importance of these goods, it can be presumed that almost all recipients *would* accept them, if given the opportunity. Clearly, if placed in a neutral choice situation such as Rawls’s original position and given the choice whether to accept these goods at the required price, virtually all citizens would do so. But obligations under the principle of fairness do not turn on hypothetical consent, that people would accept them, but on the fact that they actually receive the benefits (Klosko 1992, ch. 2). That we all need the public goods in question regardless of whatever else we need is a fundamental assumption of liberal political theory. It is notable that liberal theorists generally view providing them as central purposes of the state.

On this interpretation, the principle of fairness overcomes the generality problem that besets consent, as the benefits in question are received by all or virtually all citizens, who require them for acceptable lives. In addition, while consequentialist theories are plagued by difficulties concerning the miniscule or undetectable consequences of single acts of not obeying the law, the principle of fairness does not require that disobedience cause actual harms (cf. Smith 1973: 956–58). In the cases under consideration, regardless of actual consequences, disobedience is unfair to one’s fellow citizens and wrong for that reason.

At the present time, the principle of fairness is widely viewed as the most promising avenue for justifying political obligations (Green 2002: 530; Soper 2002: 103), but problems remain. For instance, in response to the contention that citizens accept benefits such as defense and law and order, one may ask whether they have a choice. As noted above, it could be said that citizens accept them in the sense that they make use of them in planning their activities. But once again, because the benefits pervade the environments in which they live and cannot be avoided, does this actually constitute

acceptance in a meaningful sense? As noted above, Dagger construes “voluntarily” in an extended sense, as “not under constraint or duress.” In response, one may ask whether “acceptance” in this sense—what Simmons characterizes as “mere receipt”—is sufficient to generate obligations. According to Simmons: “Certainly, it would be peculiar if a man, who by simply going about his business in a normal fashion benefited unavoidably from some cooperative scheme, were told that he had voluntarily accepted benefits,” and so incurred obligations to support the scheme (Simmons 1979: 131).

Against a view that does not depend on an extended sense of “voluntary,” there are numerous lines of attack. Even if we grant that the principle of fairness is able to ground moral requirements to do one’s part in cooperative schemes that provide essential public goods, the state does much more than this. Central tasks of governments generally include building roads, educating children, preserving the environment, providing museums and recreational facilities, and much more. Are all these tasks essential for acceptable lives? If not, does this mean that citizens are not required to obey the laws that pertain to them (see Klosko 1992, ch. 4)? Alternatively, what if citizens genuinely do not want the benefits provided by government? As Simmons argues: “Goods are only benefits to persons on balance if their costs and the manner in which they are provided are not sufficiently disvalued by those persons” (Simmons 1993: 258). Suffice it to say that, at the present time, debate about the principle of fairness is ongoing.

Association Theories

Theories of obligation based on association or membership are supported by commonsensical belief that we should obey the laws of our societies because we belong to them. An example often invoked is the family. It is commonly held that family members have special moral requirements towards one another, simply because they belong to the same family. Transferring this contention to the political sphere, theorists explain connections between membership and requirements to obey the laws in different ways, according to different accounts of “association” or “membership.” For instance, Margaret Gilbert focuses on a variant of tacit consent. Through certain kinds of association, people acquire attitudes and commitments towards one another that make them “plural subjects” (Gilbert 2006). Jointly engaging in various activities—e.g., going for a walk together—is able to generate certain obligations. Even though subjects may not explicitly articulate the substance of their joint undertaking, this is communicated through other means and jointly understood. Gilbert construes the understanding of citizens along similar lines, arguing that such common sentiments imply requirements to obey the law.

A very different view is presented by John Horton in perhaps the most sophisticated association theory. Horton too appeals to feelings of shared political identity and collective political responsibility that are common features of political life. But he argues that the binding force of association requires no independent justification: “My claim is that a polity is, like the family, a relationship into which we are mostly born; and that the obligations which are constitutive of the relationship do not stand in need of moral justification in terms of a set of basic moral principles or some comprehensive moral theory” (Horton 1992: 150–51).

Like other theories of obligation, association views have been strongly criticized. An important criticism concerns certain association theories’ lack of sustained argument. In response to Horton, saying that no explanation is necessary does not constitute an

explanation. We still require an account of why the fact that an individual has certain feelings in regard to a particular community in itself entails particular moral requirements towards it. In perhaps the most important critical account, Simmons presents this criticism and others (Simmons 1996). Most notable is what Simmons refers to as the argument from “normative independence.” Very briefly, Simmons claims that feelings that we should abide by the rules of certain associations are grounded in the value of the associations, rather than in independent principles of association. Clearly, an association that pursues evil purposes will not generate obligations, as, according to general beliefs, these characteristics preclude obligations. But imagine an association that is absolutely neutral in regard to moral worth. In Simmons’s words: “To the extent that a practice seems morally pointless . . . to that extent it seems very hard to imagine anyone insisting that the associative obligations it assigns have any genuine moral weight. Even mildly beneficial, harmlessly silly practices seem unable to impose any genuine obligations on non-consenters assigned roles within them” (1996: 269–70). Theorists of association have responded to these and other criticisms (see esp. Horton, 2006–2007). On this subject as with many others, discussion is ongoing.

Natural Duty of Justice

Serious attention to a theory of political obligation based on a natural duty of justice began with John Rawls’s *A Theory of Justice* (Rawls 1971). According to Rawls, the natural duties of justice apply directly to individuals, unlike the principles of justice, which apply to institutions. But they are like the principles of justice in that they are justified by being chosen in the original position. For instance, a duty of mutual aid, i.e., a duty to help others when they are in need or distress, would be chosen because it’s likely that its benefits would outweigh its costs (1971: 338). Relevant to political obligations is a natural duty “to comply with and to do our share in just institutions when they exist and apply to us” (334; and, similarly, 115). We may refer to this as “the natural political duty.” Rawls does not view requirements established by the natural duties as obligations; he reserves that term for moral requirements that are self-imposed, e.g., by making promises. But requirements established by the natural political duty are functionally equivalent to political obligations.

An important advantage of these requirements is their generality. Their ability to bind all members of society, as opposed to requirements established by the principle of fairness, which, he believes, depend on acceptance of benefits, was Rawls’s reason for abandoning a position based on fairness, which he had previously held (Rawls 1964; Rawls 1971: 113–14). In *A Theory of Justice*, Rawls discusses the natural political duty in reference to its ability to require obedience to unjust laws, as long as the overall political system is tolerably just. But although he did not develop other aspects of an overall theory of political obligation, his discussion has had considerable influence, and natural-duty theories are now prominent in the literature.

Although Rawls establishes his particular natural duty through the device of the original position, other scholars generally view a natural political duty as intuitively clear in its own right. Among the most influential discussions are articles by Jeremy Waldron (1993) and Christopher Wellman (2001). Following a discussion of Kant in *The Metaphysical Elements of Justice*, Waldron views the state as a construction into which people enter to resolve conflicts and to secure property. In order for these functions to be fulfilled, people must leave the state of nature and enter into the state. A natural duty to comply with

the laws of one's state follows, as it will not be able to function effectively unless its commands are obeyed. In Waldron's words: "Our cooperation in establishing and sustaining political institutions that promote justice is morally required" (1993: 29).

Wellman argues according to a principle along the lines of Rawls's duty of mutual aid, which he calls "samaritanism." Given the familiar idea that people have strong moral requirements to come to the aid of others who are in peril or in dire need, we can rescue others from the state of nature only by supporting the state. And so citizens may justifiably be forced to obey the law. Wellman supports this claim with examples according to which the rights of a given person may be violated in order to rescue someone else. In his words: "coercion is permissible because the peril of others generates weightier moral reasons than the presumption in favor of each individual's dominion over her own affairs" (2001: 746).

Considerations of space rule out discussion of possible criticisms of these theories in this essay (a valuable and devastating critique is presented by Simmons, in Wellman and Simmons 2005). Probably the most important criticism of a natural-duty position turns on the requirement of "particularity" (see Simmons 1979, ch. 6). As noted above, to satisfy this requirement, a theory of political obligation should explain the close ties people have to their own states. But on Rawls's position, it is not clear why we should support the institutions of one state rather than another. If England has just institutions, why should we support the institutions of the state in which we live rather than of England? According to Rawls, we are to support the state that "applies" to us. But he does not explain what this means. As argued by Simmons, clear ways for a state to "apply" to a given individual include her consenting to or receiving benefits from it. If this is what Rawls has in mind, then the problem is that relationships with one's state such as these appear to be able to generate obligations to obey its laws on their own, without reference to the natural duty. At the present time, the problem of "particularity" is widely viewed as a severe impediment to natural-duty theories of political obligation.

Philosophical Anarchism

In recent years, a prominent trend in the literature—perhaps the most prominent—has been denial of the existence of political obligations. Scholars present skeptical arguments of two main types: conceptual, and what we may characterize as "empirical." Supporters of these positions, so-called "philosophical anarchists," differ from radical political anarchists such as Mikhail Bakunin, in not entirely rejecting the state.

The most prominent conceptual approach was developed by Robert Paul Wolff, in his brief, polemical book, *In Defense of Anarchism* (R. P. Wolff 1970). Wolff claims a fundamental conflict between authority and autonomy. Because people's "primary obligation" is preserving their autonomy, they must assume responsibility for their actions and obey only rules that they impose upon themselves. This means that they cannot submit to state authority, which, according to Wolff, means obeying laws "simply because they are the laws" (18, his emphasis). "If all men had a continuing obligation to achieve the highest degree of autonomy possible, there would appear to be no state whose subjects have a moral obligation to obey its commands" (19). Wolff allows an exception, a "unanimous direct democracy," in which all citizens are authors of all laws (1970, ch. 2). In addition, unlike traditional anarchists, he recognizes the value of certain state activities, and holds that those that the subject views as valuable should be supported. But unlike a general requirement to submit to the laws, Wolff believes the

state's commands "must be judged and evaluated in each instance before they are obeyed" (71). He believes that voluntary compliance with state directives will be sufficient to allow achievement of its legitimate ends (80).

Most scholars reject Wolff's argument. They criticize his belief in an "obligation" to pursue autonomy (e.g., Simmons 1987: 269, n. 2) and his view of autonomy's exaggerated strength, that it always overrides conflicting values. This would denigrate other moral requirements, e.g., promises, as well as the overall requirement to act justly. Moreover, Wolff recognizes circumstances under which autonomy should be subordinated to other concerns. For instance: "when I place myself in the hands of my doctor, I commit myself to *whatever* course of treatment he prescribes" (1970: 15, my emphasis). If it is allowable to submit to the judgment of another person for reasons of health, it is not clear why it is wrong to do so in order to achieve crucial ends that the state pursues.

The empirical approach is straightforward. A series of scholars have argued against the existence of political obligations by criticizing the theories that have been put forth to explain them. I use the term "empirical" because this position is based on experience, which has shown that no theory works satisfactorily. Many arguments taken from practitioners of this approach are drawn on in the above discussion. So successful have the efforts of these scholars been that there is wide belief in a "skeptical consensus" in the literature (Morris 1998: 214; Buchanan 2002: 696). For instance, in the best-known example of this genre, Simmons criticizes in turn theories of political obligations based on consent, fairness, gratitude and a natural duty of justice. Other theorists who pursue similar strategies include Leslie Green (1988), Joseph Raz (1979, ch. 12), William Edmundson (1998) and M. B. E. Smith (1973)—although, it should be noted that not all of these theorists identify themselves as philosophical anarchists.

The philosophical anarchists' response to this situation is of great theoretical importance. Although they believe themselves to have refuted the idea that there is a single reason to obey all laws, they do not believe all laws should be disobeyed. Rather, as R. P. Wolff suggests, laws should be assessed on a case-by-case basis and obeyed if the moral facts support this. As Simmons argues (1979, ch. 7), confronted by a particular law, the subject should take all moral consideration into account. Although there is no presumption that laws should be obeyed, in many cases there are good reasons to behave in accordance with specific laws, generally so as not to hurt or inconvenience other people. Moreover, under these conditions individuals would have rights—indeed, would be morally required—to punish other people who violate the moral law, while the state would possess similar rights. For example, if it is wrong to commit murder and Smith would be acting morally if she prevented Black from murdering Brown, or punished him if he did so, then the state too would be acting morally if it acted against Black. The implication is that people should behave in accordance with many laws, even though they do not have obligations to obey them simply as laws.

Practical Implications

A notable implication of the philosophical anarchists' approach is rejection of the traditional view that political obligations are "content independent," that laws should be obeyed simply *because they are laws* (see Klosko 2011a). Belief that laws are content independent is supported by the "self-image of the state" (Green 1988, ch. 3). According to Leslie Green, the state views itself as a "duty imposer," able to bind its subjects by making laws, regardless of the content of the laws (1988: 86). This view was pioneered

especially by Hart (1958; 1982), and is widely subscribed to. According to Green, content independence could not be abandoned “without abandoning part of any satisfactory analysis of political authority” (1988: 239).

One consideration that supports this view is an analogy between laws and promises. If A promises B to do *p*, the obligation to do *p* does not arise from the nature of the promised action but from the promise itself. Similarly, according to traditional views of political obligation, if Grey has an obligation to obey the law, this too is content independent. He is required to obey law *L* because the state has made it the law, rather than because of its content. However, this analogy breaks down. In the case of promises, the content of each specific promise is determined by the obligee, who renders it obligatory through the act of promising. In contrast, (a) the contents of specific laws are determined by state authorities rather than directly by the obligee, and (b) the obligee himself does not attach obligating force to the content of each law; rather, this is done by state authorities. Because the subject does not have a direct role in either choosing the content of a given law or in affixing normative force to its particular content, in order for a law to generate normative force for a particular content, the basis of the state’s right to bind its subjects in this way must be explained. As traditionally interpreted, the problem of political obligation is to identify the relevant features of the relationship between individuals and the state that give the state this right. And so scholars have attempted to develop theories of obligation such as those discussed above (see Klosko 2011a).

What we are left with if we reject content independence is a view according to which moral reasons to obey the law depend on considerations that bear on each particular law, assessed on a case-by-case basis. Such a view agrees with philosophical anarchists about the nature of moral requirements to obey the law. However, philosophical anarchists do not recognize the practical implications of their view. If we believe that most laws of legitimate states fulfill justifiable purposes, the results of this mode of inquiry will be moral requirements to obey virtually all laws. Thus, in spite of the theoretical importance of the philosophical anarchists’ critique of traditional views of political obligation, their critique lacks significant practical implications. It leaves intact the traditional beliefs that we have moral requirements to behave in accordance with all defensible laws.

This discussion of philosophical anarchism is predicated on acceptance of their claim to have successfully refuted the traditional theories of obligation. Obviously, a ready way to overturn their position is to develop a theory of obligation that resists their criticisms. In recent years, the main theories of political obligation have found renewed defenses (most notably, for consent, see Beran 1987; for fairness, Arneson 1982 and Klosko 1992 and 2005; for gratitude, Walker 1988; for natural duty, Waldron 1993 and Wellman 2001; for association, Horton 1992 and 2006–2007). But none of these should be viewed as clearly overcoming all problems.

However, it is important to recognize how critiques of these theories have been developed. Skeptical scholars have generally approached the traditional theories of obligation from a particular perspective, criticizing them *seriatim*, one after another. When a particular theory is found not to satisfy all conditions, the theorist moves on to the next. Simmons proceeds this way, as do the other scholars I have mentioned. What this strategy overlooks is the possibility that general reasons to obey the law can be established by combining different principles, thereby overcoming the weaknesses of a theory based on a single principle (J. Wolff 2000; Klosko 2005, ch. 5).

A moment’s reflection reveals that examining theories of political obligation one at a time defies common sense. As the philosophical anarchists argue, a range of moral

considerations is relevant to whether or not specific laws should be obeyed. It is possible that, by combining two (or more) theories of obligation, the result will be a position that is stronger than either of the original theories on its own. Many political obligations are clearly overdetermined, while there is also an element of truth in many different theories. Even if a theory based on a single principle—e.g., consent or fairness—is not able to overcome all difficulties, this does not mean it is not able to account for at least some requirements to obey the law. While the overlap of different principles complicates the task of laying out a satisfactory theory, moral requirements to obey the full range of laws could well stem from the crosshatch of different principles.

Principles may interact in different ways. Different principles may cover different services provided by the state, and so by combining principles, a larger range of services may be accounted for. Alternatively, in regard to certain state functions, if a given principle on its own cannot justify compliance, the problem could possibly be overcome by more than one principle working in tandem. By combining moral principles in these and other ways, it may be possible to develop moral reasons to obey all or virtually all laws, thereby accomplishing the traditional practical aim of theories of political obligation, explaining why all citizens have moral requirements to obey all or virtually all laws.

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GEORGE KLOSKO

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Further Reading

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