1. **Last week**

Consent-based theories of political obligation run into a range of problems.

* Hume’s (more sophisticated) objection: if consent only generates obligations under legitimate states, the grounds for legitimacy do not lie in consent
* Feminist objections: what about those who are not asked for their consent? And what about injustices left unsolved by Locke or Hobbes?

These problems suggest we should appeal directly to moral principles that apply to us regardless of whether we accept or consent to them. This week we consider two attempts to do this

1. **Fair play**

The basic principle: it’s only fair that individual citizens pull their weight

e.g. housemates’ dish washing rotation

HLA (Herbert) Hart

“When 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 similar submission from those who have benefited by their submission”

FPT: Others have a right to compliance from me in virtue of 2 facts

1. They have contributed to a joint enterprise
2. I have benefitted from that joint enterprise

Political obligation: if I benefit from e.g. the NHS, funded and operated by the state, other citizens have a right to my compliance with the state

FPT is thereby non-utilitarian, and not based on consent

Recommended further reading: HLA Hart (1955) ‘Are there any natural rights?’ *Philosophical Review* 64, pp.175 – 191

1. **Free riders**

The cardinal sin in fair play theories is being a free-rider: someone who takes advantage of the joint enterprise by benefitting without contributing their share

More precisely, for Hart, a free rider is someone who transgresses another’s right to their compliance or contribution to a joint enterprise

Richard Arneson contrasts this with:

Nervous cooperator: desires to contribute, but does not because they fear for the stability of the enterprise

Reluctant cooperator: desires to contribute, but does not on the grounds that they expect others to unfairly benefit without contributing

(According to Arneson) only free riders are blameworthy because they intend to benefit from the cooperation of others without themselves cooperating

Reading:

Arneson, Richard, 'The Principle of Fairness and Free-Rider Problems', Ethics, 92, no. 4 (1991-82): 616-33.

Klosko, George, The Principle of Fairness and Political Obligation. 2nd ed. (Lanham, MD: Rowman & Littlefield, 2004), ch. 2 'The principle of fairness'.

1. **Robert Nozick’s counterexample**

Is it fair to compel someone who has not consented to the scheme?

Consider Robert Nozick’s public entertainment system example:

Suppose some of the people in your neighbourhood…decide to institute a system of public entertainment. They post a list of names, one for each day, yours among them. On his assigned day…a person is to run the public address system, play records over it, give news bulletins [etc]. After 138 days on which each person has done his part, your day arrives. Are you obligated to take your turn?

For more see Robert Nozick (1974) *Anarchy, State, and Utopia* New York: Basic Books, chapter 5

*First response to Nozick*

This seems unfair because the benefits of the system are not always worth the cost. But a more specific version of the fairness principle will survive the counter example:

Others have a right to my compliance to a joint enterprise from which I have benefited where the benefit from the scheme is greater than the cost of compliance

But surely even with this caveat, benefits from the scheme will be unequal. Is it fair to compel me to comply with a scheme from which I benefit a little, while others benefit significantly more?

Then we need a further adjustment:

Others have a right to my compliance to a joint enterprise **where the cost of compliance for a person is proportional to that person’s benefit from the scheme**

*Second response to Nozick*

John Simmons: the issue is not consent, but whether one has voluntarily accepted the benefit of the scheme (as opposed to passively receiving the benefit)

Consider Simmons’ community well example: we may not consent to the building of the well, but we are a free rider only if we then take water from the well

The ‘limiting argument’: the fairness principle applies only to a person who has voluntarily accepted the benefits of a joint enterprise

1. **Natural Duty Theory**

Another problem for fair play theory: what if we have voluntary accepted the benefits from an unjust joint enterprise?

Say a person in 1930s Germany knowingly and willingly accept property stolen from a Jewish family by the Nazi government. Is that person then under an obligation to contribute my fair share to implementation of the Nuremberg laws?

John Rawls: we have a political obligation to comply with the state and its component institutions *only if those institutions are just*.

We are obligated to comply because of a natural (moral) duty to support and comply with just institutions (this is sometimes contrasted with *theories of acquired obligation*

Why think we have such a duty? Varied explanations are given by Natural Duty Theorists

e.g. just institutions provide an objective and unbiased application of other natural duties and moral laws

e.g. just institutions are democratic and thereby treat all equally, in accordance with a moral duty to egalitarianism

(The relevant John Rawls is: A Theory of Justice. Rev. ed. (Cambridge, MA: Harvard University Press, 1999), ch. 6, sects. 51 & 52.

But I recommend looking at the Stanford Encyclopaedia of Philosophy entry on Political Obligation, section 4.5 on Natural Duty. This can be accessed online: <https://stanford.io/2R1xX28>)

1. **Problems for natural duty**

*Particularity problem*

Political obligation is usually understood to be particular to the state of which we are citizens: if I have an obligation to comply with the law, it is an obligation to comply specifically with the laws of my political community

(This problem in fact speaks in favour of theories of acquired obligation, either consent based or fair play)

*Reply 1*

Must political obligation be particular? Consider a rich and powerful anarchist who undermines the law in another country: are they not under an obligation to refrain from doing this?

*Reply 2*

Our natural duty to justice must start somewhere. If we must establish and respect just institutions, why not start with our neighbours? (both replies from Waldron)

*Negligible effect problem*

The existence of just social institutions does not stand or fall on whether I respect all laws uniformly at all times. The effect of my actions on furthering the end of justice is negligible (Simmons)

For more on objections to and defence of natural duty theory see:

John Simmons, 2005. “The Duty to Obey and Our Natural Moral Duties,” in, *Is There a Duty to Obey the Law?* Cambridge: Cambridge University Press

Waldron, Jeremy, 1993. “Special Ties and Natural Duties,” *Philosophy and Public Affairs*, 22: 3–30

**Next week:** philosophical anarchism

Recommended reading: Robert Wolff, *In Defense of Anarchism* (Berkeley, CA: University of California Press)

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