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FROM THE EDITORS

Edition in Tribute to John Simmons

Plato portrays Socrates as regarding his duty to obey his state as so important that he thought it better to accept execution at the hands of the state than to violate the duty, knowingly foregoing clear opportunities to escape this high cost for obedience. More recent historical treatments of the question of political obligation (Locke's treatment, for instance) often have framed the discussion in terms of identifying those (extreme) actions or failures of government that would morally justify rebellion or revolution. More recently still, for instance, during the civil rights era in the United States, the practice of civil disobedience well short of revolution was nonetheless widely justified against a presumption that there existed for citizens a general duty to obey the state. It is fair to say that the idea that persons have some kind of duty to obey their states has held sway throughout the history of western philosophy.

Rejecting this long-held idea has gained an eloquent and forceful spokesman, however, in John Simmons. Simmons' defense of philosophical anarchism takes center stage in this edition, earning critiques from his University of Virginia colleague, George Klosko, and David Lefkowitz. Klosko focuses attention on Simmons' treatment of arguments grounding political obligation on duties of fairness while Lefkowitz builds on the recent work of Christopher Wellman's samaritan-based natural duty defense of political obligation. In addition, Chris Naticchia suggests that Simmons understates the case for philosophical anarchism against any natural duty approach to grounding political obligation, a case that can be seen by considering the practical reasoning that would apply to anyone under a natural duty to obey the state. Finally, John Simmons responds to these three essays, focusing primarily on the way in which his particularity requirement for establishing a duty to obey the state is not fully appreciated, though in different ways, by his commentators.

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ARTICLES

John Simmons on Political Obligation

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I first read *Moral Principles and Political Obligations*¹ soon after I arrived at the University of Virginia in 1983. My impression was that it was a brilliant book, clearly yet elegantly written, presenting many beautifully formulated, compelling arguments, driving towards an arresting overall conclusion. Yet I also thought the work was wrong in fundamental respects. Working extensively in the area of political obligation in the intervening years has strengthened my original impressions, although I now believe I have a better understanding of exactly what the work contributes and exactly how it is mistaken. I should note that having John Simmons as a colleague at UVA has been a source of continual stimulation and enjoyment, and that our off and on arguments about political obligation for almost twenty-five years have contributed immeasurably to my understanding of many issues. I am also grateful for his continued willingness to offer helpful comments and criticisms of my work, especially as much of that work is directed against his own position.

Moral Principles and Political Obligations is one of the rare philosophical works—especially rare for a revised doctoral dissertation—that defines an entire field. To a large extent, since its publication in 1979, all work in political obligation has been attempting either to respond to it or to build upon its basic insights. The book makes important original contributions on both particular and general levels. As many people know, the form of the work is straightforward. After two clear and helpful chapters on the nature of obligation and political obligation, Simmons proceeds to examine the then standard arguments in support of political obligations, which he demolishes like ducks in a row, to use a reviewer's metaphor, quoted on the book's cover. In large part as a result of his criticisms, prominent scholars now claim a "consensus" in the literature against the existence of political obligations.²

Simmons' own view is that free consent is an adequate basis for political obligations, but it does not ground the obligations of most actual citizens because few have performed acts that constitute consent. His forceful critique of claims to widespread tacit consent is perhaps the best in the literature, while his other critical arguments are, again, clearly and elegantly developed, raising daunting objections. Several of Simmons' points are now standard throughout the literature, e.g., his identification of "generality" and "particularity" as criteria of a successful theory of political obligation,³ problems the latter raises for natural duty theories, and difficulties in fixing the content of obligations from

gratitude. Others of his arguments, if less original in absolute terms, have attained classic status because of their presentation. This is especially true of his arguments against consent. Although his approach has been familiar since the time of Hume, Simmons' case is especially well crafted. His discussion is also studded with valuable insights, including identification of the "attitudinal sense of consent" and observations concerning Locke's tendency to run together arguments from consent and from benefits received.⁴

The position Simmons defends in his final chapter follows from what he views as failure to establish an acceptable theory of political obligation.⁵ He faces the consequences of this situation head-on and develops his distinctive account of "philosophical anarchism." In Simmons' hands, this position differs from more familiar anarchistic doctrines, which generally reject the state.⁶ For instance, according to Mikhail Bakunin: "If there is a state, there is necessarily domination and consequently slavery. A state without slavery, open or camouflaged, is inconceivable—that is why we are enemies of the state."⁷ One of Simmons' significant accomplishments is to make a version of anarchism appear, if not exactly plausible, not unacceptably implausible on its face. Philosophical anarchism, unlike its distinguished forbear, does not deny the legitimacy of the state, but only the idea that individuals are morally required to support it. Briefly, according to Simmons, the state is a legitimate moral actor, even a necessary one. In the absence of political obligations, there remain significant moral reasons to obey many laws, and so the absence of political obligations does not entail anarchy (as popularly understood) and chaos. Rather, confronted with particular claims on the part of the state that they should obey, citizens should examine the full range of moral factors involved in each case—including the fact that the state says to obey X—and decide how the overall balance of reasons requires that they act. Much of what the state commands is beneficial in different ways, e.g., not to commit obvious moral wrongs, such as murder and rape, while it also performs important services in coordinating various spheres of action, e.g., traffic laws. In these cases and many others like them, the balance of reasons often favors obedience. But once again, this is because of the entire range of factors in each situation, not because the state says we should obey.

In spite of Simmons' impressive development of philosophical anarchism, not all scholars have been persuaded. Claims concerning the existence of a skeptical consensus are clearly exaggerated. Some scholars are less confident than Simmons that the consequences of doing away with political obligations would be relatively benign,⁸ while the idea that there are no obligations seems to clash with strong general beliefs that there are.⁹ In order to counter skepticism, scholars have pursued a number of different strategies. First and most obviously, they have attempted to counter criticisms of existing theories. In recent years, there have been significant reworkings of theories of political obligations based on all the main principles: consent, gratitude, a natural duty of justice, and fairness.¹⁰ Other scholars attempted to develop theories of political obligation on new grounds. Two approaches that are especially notable are based on principles of association or membership and samaritanism.¹¹ Finally, important scholars have pursued strategies like Simmons' own, turning their backs on traditional theories of obligation. Attempting to work out the implications of societies without political obligations, these scholars generally argue for the existence of the state, although individuals' determinations when obedience is necessary should be based on all moral considerations operative in each case. Like Simmons, these scholars distinguish between a state's having "legitimacy" and "authority" and defend the former but not the latter.¹² To counteract the view that people

have political obligations, and so that the state can justifiably claim obedience, they argue that authority is not necessary, that important state functions can be accomplished without political obligations. Clearly, such approaches are among the most important new areas of research on political obligation.

I. Balance of Reasons and Multiple Principles

In order to appreciate Simmons' accomplishment, it should be helpful to step back and look briefly at how questions of political obligation have traditionally been addressed in the literature.¹³ The standard approach has long been to treat different theories of obligation in somewhat reified form, as independent "theories." Each is assessed as if it alone is to provide satisfactory answers to the full range of questions. When a given "theory" is found deficient in some respect, it can be labeled unsatisfactory and rejected. The critic can then move on to assess the next "theory" on his list. In the literature, such procedures of "divide and conquer" are followed not only by Simmons but by other important scholars as well.¹⁴ Their conclusions are largely responsible for the currently widespread view that political obligations cannot be accounted for.¹⁵

Taking matters one step farther, Simmons recognizes that discussion of political obligation does not end with successful refutation of individual theories. As just indicated, he believes we should proceed on the balance of reasons. But he does not recognize that the balance of reasons approach severely undermines the critical side of his project. Briefly and simply, if decisions whether or not to obey particular laws should be made on the basis of all relevant moral considerations, in examining overall questions of political obligation, why should we confine attention to separate theories, in isolation from one another? Divide and conquer is obviously flawed. The fact that no single moral principle is able to answer all relevant questions does not rule out the possibility that, by bringing other considerations to bear, better answers can be developed. It is possible that, by combining two or more different theories, we can construct a position that is stronger than either of the original theories on its own.

I believe that many political obligations are overdetermined and that there is an element of truth in many different theories of obligation. Even if a theory based on a single principle—e.g., gratitude or a natural duty of justice—is not able to overcome all difficulties and so to give rise to a theory that is fully satisfactory, this does not mean that it is not able to account for at least some requirements to obey the law. Accordingly, while Simmons has made impressive achievements in lining up the traditional theories and shooting them down (although I criticize his analysis of one particular principle, below), and in opening up a way to move beyond the apparent failure of traditional views, his leap from criticism to skepticism is overly quick. While his arguments provide strong evidence against general obligations based on a single moral principle, they do little to dispel the idea that general obligations can be salvaged through a non-traditional theory that combines different moral principles. While the overlap of different principles complicates the task of laying out a satisfactory theory of political obligations, requirements to obey the full range of laws could well be provided by a crosshatch of different principles.

Although I cannot make this case here, I believe it can be shown that, through the combination of different moral principles, a satisfactory account of general political obligations can be developed.¹⁶ To the extent this is true, it does little to diminish the importance of Simmons' critical accomplishments, although it leads to strikingly different results. On this line of argument, the result of a balance of reasons approach will be a view that is in practical terms substantially similar to the traditional one. Although our eventual answers to questions

of political obligation will not be based on a single moral principle, they will be traditional in the crucial practical respect of mandating obedience to all justifiable laws. In other words, properly understood, philosophical anarchism leads to results that are extensionally equivalent to those of traditional theories of political obligation.

In the following section, I turn to Simmons' arguments against political obligations based on one particular moral principle, the principle of fairness (or fair play). Although I do not believe that, by itself, this principle is able to ground a fully satisfactory theory of political obligation, I believe it is able to establish requirements to obey laws bearing on provision of security and other essential state functions. For this reason, this principle constitutes the core of a successful multiple principle theory of obligation. I will attempt to show that Simmons' analysis of the principle of fairness is seriously flawed, focusing on two main areas: his political sociology and his direct criticisms of the principle.

II. Simmons' Political Sociology

As a general rule, a successful theory of political obligation must establish both normative and factual premises.¹⁷ The former center on the need for the state. Unless the state is necessary, it is difficult to justify claims that people must obey it. The latter premises address why individuals should obey particular states. Simmons' views in regard to the former subject are not entirely clear. It appears that he is influenced by his overall Lockean orientation, to the detriment of the plausibility of his position.¹⁸ Although I have no objection to normative Lockean premises concerning the inherent dignity and liberty of individuals, Simmons appears to be unusually Lockean in his sociological views as well. Although he recognizes the possibility that the state is necessary, throughout his works he says little about this, especially exactly what it is necessary for, and, in the absence of the state, how various requirements of a functioning society could be met. Simmons' basic position is presented in the concluding chapter of *Moral Principles and Political Obligations*. As I have noted, according to Simmons, although we do not have obligations to obey the state, it remains in existence. In the resulting situation, the state is a moral actor like other actors, required to abide by moral norms, but also, like other moral actors, able to take justifiable steps to enforce them. Although people are not required to obey the state, they should support it when it performs important tasks.¹⁹

To my knowledge, Simmons has provided little or no detailed discussion of the nature of this state, e.g., who staffs it, their motivation, how they are paid, and other similar matters. It appears that he assumes the continued existence of the state in something like its present form, although with the major difference of clear recognition that general requirements to obey it cannot be established. Presumably, the behavior of Simmons himself and other people who properly understand their relationship to the state will be affected by this realization. But what would ensue were this recognition to become general is a subject he does not examine.

Even if we accept these points, we must inquire further into our relationship to the state, in particular, whether it is in fact necessary, and, if it is, exactly what it is necessary to do. In various contexts, Simmons makes broad claims about the necessity of the state. This is discussed in "The Duty to Obey Our Natural Moral Duties":

As I have indicated already, I am prepared to grant (at least *arguendo*) all that is said about the accomplishments of modern states and modern legal systems—about their importance (or even their necessity) for the efficient provision of a (relatively)

secure environment under the rule of law; about their importance (or even their necessity) for solving the coordination and assurance problems that would plague even a relatively benign social condition without government and law; about their consequent importance (or even their necessity) for the provision of a wide range of other public goods.²⁰

Although it is unclear how seriously we are to take "*arguendo*" here, it is likely that Simmons does recognize the necessity of the state,²¹ though once again the sphere of this necessity is not explicitly delineated. But concessions along these lines are rare. Simmons is clearly interested in various self-help schemes and mechanisms through which, through voluntary actions and cooperation, individuals are themselves able to provide services that are often thought to require the state. We will return to questions concerning self-help below.

In regard to the need for the state, Simmons faces a pair of unpalatable choices, both of which eliminate much of the apparently paradoxical force—and so the distinctive philosophical territory—of his philosophical anarchism. It is difficult to argue that the state is necessary but that people do not have obligations to obey it. If it is necessary, it is obviously necessary for particular people and, as we will see in the next section, a position according to which A, B, C, etc. need the state but are not required to obey it is difficult to maintain. The alternative is no better. To the extent that Simmons argues that the state is in fact not necessary, that through voluntary arrangements, people would be able to furnish the requisites of acceptable lives without its help, his position departs from traditional liberal political theory and enters the territory of traditional anarchism. If this is in fact his position, then he should be required to discuss life without the state, how the services we require—especially in the modern world—would be supplied. To the extent that his arguments against political obligation rest on doing without the state, his criticisms of particular theories of obligation are largely otiose. How can Jones be required to obey an entity that he does not need?

Although it is not possible to present a full-fledged defense of the state and our need for it in this context, in the following discussion I stipulate that we do need it—and discuss various services it must provide. Because of the elusiveness of his presentation, this assumption may not be entirely fair to Simmons. But if it is not and he wishes to maintain that the state is in fact not necessary after all, then once again, he must take pains to avoid falling into the trap of conventional anarchism.

III. Political Obligations and the Principle of Fairness

As indicated in the last section, establishing the need for the state takes us only part of the way to a successful theory of political obligation. In addition to demonstrating that the state is necessary, we must provide convincing reasons why individuals have moral reasons to obey it. I believe such reasons exist in connection with the principle of fairness. From my first reading of *Moral Principles and Political Obligations*, I have believed that, in spite of the merits of Simmons' arguments against other possible bases for obligations, his arguments against the principle of fairness were seriously flawed. In the intervening time, Simmons has presented a range of additional arguments, but as we will see, none of these is convincing.

Before proceeding further, I should make clear exactly what I believe can and cannot be established by proper understanding of the principle of fairness. As indicated above, I believe Simmons has succeeded in demonstrating the futility of attempting to establish a theory of political obligation along conventional lines, that is, a theory that justifies the state's ability to impose on the

relevant population obligations to support the entire range of its services. As we will see, the principle of fairness falls short of this ideal. It establishes obligations only in regard to a central core of services. But in keeping with Simmons' balance of reasons approach, I believe appeal to additional moral considerations can support the remaining services.²²

Reasons of space and scope do not allow full discussion of the principle of fairness in this context.²³ The principle was first clearly formulated by H.L.A. Hart in 1955:

[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.²⁴

Briefly, proponents of this principle argue from mutuality of restrictions. If a given individual, Jones, profits from the burdensome cooperative labor of others, then under certain circumstances he will have a moral requirement to share in the burdensome labors. As we will see below, the principle works differently in regard to different kinds of benefits. If the benefits are excludable goods, then ordinarily Jones would have to accept them or otherwise seek them out in order to incur obligations to scheme members. The principle bears more importantly on questions in regard to public goods, which ordinarily cannot be accepted or sought out. Moral requirements to cooperate in providing these may be incurred if the benefits are (i) worth their costs, (ii) indispensable to satisfactory lives, and (iii) fairly distributed.²⁵ Exceptions are justified if there are morally relevant differences between particular recipients and other people. For instance, if Jones is a pacifist, this may absolve him of duties he would otherwise have to contribute to defense. Or, more fancifully, if he were physically invulnerable and so did not require a secure environment, such an environment would not be a benefit to him and he may not have requirements to contribute to it. But when people receive benefits that are ordinarily viewed as essential to acceptable lives, the facts that they receive them and can be presumed to need them generates a burden upon them to demonstrate the existence of morally relevant differences, if they wish to be absolved of obligations.²⁶

If we grant these points, then it follows from the state's role in providing public goods concerning a secure environment and other requisites of satisfactory lives that people who receive these goods incur obligations to do their fair share in the burdensome cooperative activity necessary to produce them. Ordinarily, these moral requirements will be to obey the law as it bears on providing the public goods in question. These moral requirements are not comprehensive. In accordance with a balance of reasons approach, the state must be able to justify requirements to cooperate in the provision of each public good it supplies.

In considering political obligations under the principle of fairness, it is important to concentrate on a particular kind of cooperative scheme. In modern countries, these are large, involving the cooperation of many millions of people, in the U.S., of hundreds of millions. The goods in question must not only be necessary for acceptable lives, but because of their nature and the large-scale cooperation they require, they must *not* be able to be supplied by individuals themselves without state direction. The incentive structures of these public goods generally correspond to those of N-person prisoner's dilemmas. Although it is in the interest of each person to receive the goods, even at the required costs of contributing, it is more advantageous not to bear these costs, as long as enough other people will cooperate to make sure the goods in question

are supplied. Given the likelihood that many people would attempt not to cooperate, the state is necessary to make sure that all people, or as many as possible, do. Although I am not able to pursue this topic here, I stipulate here that, for a range of necessary public goods, voluntary efforts are not enough. If voluntary efforts were sufficient to provide all relevant public good, then, in keeping with the discussion above, it would be difficult if not impossible to demonstrate the existence of political obligations—in regard to receipt of these goods. Under full anarchist assumptions, according to which all necessary goods could be provided without the state, political obligations likely could not be demonstrated. But as noted above, a view along these lines falls outside traditional liberal political theory and so, in this context, need not be discussed.

Two examples may be used to illustrate the nature of the moral requirements generated by the principle of fairness in the cases that interest us:

(a) *Defense Example:* Grey lives in a territory, X, that is surrounded by hostile territories, the rulers of which declare their intention of massacring the people of X. Accordingly, the X-ites bind together for their protection, instituting demanding measures, compulsory military service for men and women, mandatory service in the reserves, including a substantial period of yearly active duty until a relatively advanced age, and provisions for rapid mobilization of reservists. Because these requirements are obviously burdensome, Grey, who would prefer to go about his business as usual, decides not to comply. Under these circumstances, assuming that a number of X-ites, sufficient to ensure the safety of X and its inhabitants, do comply, is he justified in not complying?²⁷

A second vignette concerns environmental protection.

(b) *Pollution Example:* Brown lives in a territory, Y, that is affected by severe air pollution, which is dangerous for all inhabitants' health. Accordingly, the Y-ites pass stringent environmental regulations, including strict limits on driving and requirements that all vehicles be equipped with expensive catalytic converters to limit harmful emissions. A sufficient number of Y-ites comply with these regulations to reduce the air pollution to acceptable levels. For obvious reasons, Brown would prefer not to have to restrict her driving or to purchase a catalytic converter. Under these circumstances, is she justified in not complying?

I believe it is apparent that Grey and Brown have moral requirements to cooperate with their respective cooperative schemes, and that in each case, the obligations in question are based on the principle of fairness. In each case, it is wrong for them to benefit from the cooperative labors of others without bearing similar burdens themselves.

Simmons has long disputed these conclusions. In arguing against political obligations based on the principle of fairness, his main strategy is two-part. He contends that, in order to establish fairness obligations, a cooperative scheme must meet stiff requirements. Then step two is that existing states do not meet them, and so the principle is unable to ground general obligations. In assessing his position, I will focus on the two most important arguments used to develop this approach.²⁸

IV. Classification Argument

Simmons' first argument may be referred to as the *classification argument*. Part of his attack on fairness obligations is that moral requirements that appear to be generated by various cooperative schemes do not involve the principle of fairness, but other moral principles. For instance, in "Duty to Obey," referring to the arguments from the principle of fairness developed in my previous works, he argues as follows: "George Klosko's prominent recent defense of a fairness theory of obligatory

obedience [...] seems actually to be far less concerned with fairness, properly understood, than with the needs of those who depend on the public goods states provide” (DO, p. 189). His meaning is made clear in a footnote on the following page: “Klosko’s theory is not really a *fairness* theory at all. It is in fact a disguised Natural Duty theory, resting on an unstated moral duty to help supply essential goods locally—and is thus indistinguishable in its foundational assumptions from” natural duty theories (DO 190 n. 3; his emphasis).²⁹

In response, I wish to make two points. First, such questions of classification have little bearing on what I view as the main questions at issue. Our central questions concern the extent to which citizens have obligations to obey the law because of their relationship to cooperative schemes like those described in the Defense and Pollution examples. If, as seems intuitively clear—but this is a point to which I will return—Grey and Brown have strong moral requirements to comply, it does not matter whether we describe the bases of their requirements as fairness or natural duty, or other alternatives. The crucial point remains that under certain kinds of circumstances, political obligations are generated. If, as I also contend, these circumstances are central to the lives of all or almost all contemporary citizens, the resulting moral requirements satisfy the generality criterion. Because individuals receive the relevant public goods from particular cooperative schemes, the particularity condition is satisfied as well. If these points are accepted, then central questions of political obligation are largely solved, regardless of exactly how we characterize the moral principles at work.³⁰ Establishing the existence of moral requirements to obey the law in these respects is enough, regardless of the labels we choose to put on them.

Aside from their irrelevance, I believe Simmons’ classification claims are also incorrect. As one can see from the Defense and Pollution examples, the moral requirements that are generated in such cases follow from the fact that Grey and Brown would otherwise be profiting from the cooperative labors of others without doing their fair shares. In the Defense Example, why should Grey be exempt from military service when he benefits from provision of defense in much the same way as everyone else, unless there are morally relevant differences between him and other people? The same principle is at work in the Pollution Example. Why should Brown rather than other people be free from driving restrictions and having to buy a catalytic converter? In these two cases—and many others one could identify—it is possible that additional moral requirements flow from providing important public goods to other people. But whether such added requirements exist and how they should be understood are questions we need not examine in this context. These additional considerations need not be invoked to justify Grey and Brown’s moral requirements, which appear obviously to stem from the principle of fairness.

V. Argument from Subjective Conditions

Simmons, however, contests this analysis because he does not believe obligations of fairness are generated by the kinds of cooperative schemes under discussion. This is his second argument, to which we may refer as the *argument from subjective conditions*.

Simmons’ account of the principle of fairness follows from his view of the wrongs it is intended to redress. He describes these as “*taking advantage of or exploiting the sacrifices of persons who have freely assumed the burdens associated with maintaining mutually beneficial schemes*” (FP, pp. 29-30; his emphasis). As we will see, the points at issue depend largely on what one means by “freely assuming” the relevant burdens. Simmons bases his interpretation on small, voluntary schemes that exemplify a spirit of willing cooperation. If the neighborhood

puts on a pot-luck dinner to which each neighbor agrees to bring a dish and Jones shows up without a dish, he is clearly doing something wrong. If the neighborhood digs a well and, after refusing to join in the labor, Jones proceeds to take water, he is guilty of a similar wrong. I agree with Simmons that the wrongs in such cases are clear, and that, as Simmons says, in each case, they may be characterized as “self-selection” (p. 30). In such cases, in order for the relevant enterprise to succeed, universal cooperation is not necessary. Only general cooperation is needed, and so if Jones decides unilaterally that he, rather than other people, will assume the advantages of not having to contribute, he commits a wrong of fairness.³¹ However, one should note that the cooperative schemes in these examples provide excludable benefits. They are what we may call “excludable schemes.” Because individuals can be excluded from receiving the benefits in question, ordinarily, it should be their decision whether or not to participate, and so membership of such schemes is essentially voluntary. In such schemes, the workings of the principle of fairness verge on consent to bear the relevant burdens in return for the benefits, although as Simmons demonstrates, in certain cases, the two moral principles do not entirely overlap.³²

With all this I have no quarrel. But I believe Simmons makes a fundamental mistake in insisting that *all* cooperative schemes capable of generating fairness obligations must be of this sort. Without strong reasons, he dismisses other kinds of cooperative schemes that provide non-excludable benefits (“non-excludable schemes”). Although the latter depart from the Lockean models that Simmons apparently has in mind, because these other cooperative schemes provide the essential public goods on which the successful functioning of modern societies depends, they are far more important to political philosophers than the schemes that interest him.

As indicated above, the main benefits I have in mind are those centering on security. These include law and order, national defense, control of threats to the environment, protection against infectious diseases, against natural disasters, and perhaps other dangers. Provision of each of these benefits requires the cooperation of many millions of people. I also stipulate that, as noted above, in each case, this must be coordinated by the state, with unwilling parties forced to cooperate by the threat of sanctions.³³ Because these benefits are necessary for acceptable lives in modern societies, cooperation is generally worth the costs of compliance, while the essential nature of the benefits entails that all individuals in the relevant community benefit from their receipt, generally at a high level. And so these goods may be described as “presumptively beneficial.” But this is only a presumption. If Jones is able to present convincing reasons why he does not benefit—or benefit to the relevant extent—from some particular public good, then he will be freed of requirements to cooperate in providing it. But such reasons must be convincing; it is not enough for Jones to say simply that he would prefer not to cooperate. Because the relevant benefits are public goods, he will continue to receive them as long as he resides in the relevant territory. He must therefore explain why his situation differs in morally relevant ways from those of all other X-ites, who presumably would also prefer to receive the benefits at no cost to themselves but are required to cooperate.

Crucial to Simmons is that, in such cases, individuals do not freely accept the goods in question. However, a strong case can be made that a given individual, Smith, incurs obligations from receipt of such public goods, even if she does not accept them or otherwise seek them out. Because they are public goods, they cannot be accepted in the usual sense. Consider receipt of national defense. Because this is a public good, Smith receives

it whether or not she pursues it. In fact, because the benefits of national defense are unavoidable as well as non-excludable, it is not clear how she could pursue them even if she wished to. Because these benefits are indispensable, we can presume that she *would* pursue them (and bear the associated costs) if this were necessary for their receipt. If we imagine an artificial choice situation analogous to a state of nature or Rawls's original position, it seems clear that under almost all circumstances Smith would choose to receive the benefits at the prescribed cost, if she had the choice. But in the case under consideration, Smith's obligation to the defense providers does not stem from hypothetical consent—that she would consent to receive the benefits under some circumstances—but from the fact that she receives them.³⁴

Simmons' Lockeanism shows up in the examples he uses to counter an argument along these lines. In "Fair Play," for instance, he argues that the magnitude of particular benefits is irrelevant to their generation of obligations by presenting the following example, in which he assumes that water is an essential need:

Suppose there is a severe drought in my rural neighborhood, where we are all dependent for water on our wells, wells that are now drying up. I am hard at work, successfully digging a new, much deeper well in my backyard to supply my family. But my neighbors, instead of doing the same, opt to dig a long trench along our neighborhood road and beyond, diverting water from a river several miles away, so that all will have access to running fresh water in front of their homes. If I decline to participate in my neighbors' scheme, have I breached an obligation of fair play by benefiting as a free rider? (FP, p. 34)

This, of course, is a poor example, as the individual in question does not need the benefit supplied by the state. He does not need it because he is fully capable of supplying it himself. The benefits provided by the non-excludable schemes that interest us are of an entirely different order of magnitude. Because of the large numbers of cooperators they require, they cannot be supplied by individuals themselves, or through voluntary associations. To make Simmons' example more relevant, it could be recast as follows.³⁵ While still accepting that fresh water is necessary for acceptable lives, we should alter the circumstances so that a given group of individuals cannot simply dig wells and provide their own supply, but that this requires the coordinated efforts of large numbers of people. Accordingly, assume that all wells have dried up and so the trench Simmons mentions is necessary and digging it will take a hundred thousand people. If this is the only way water will be available, then for Simmons' protagonist to be absolved of obligations to contribute, he must be able to demonstrate morally relevant differences between himself and other people.

Simmons' main argument against the ability of large-scale, non-excludable schemes to generate obligations under the principle of fairness is their non-voluntary nature, once again, that the relevant benefits are not accepted. The obvious problem with his view is that the benefits are unavoidable as well as non-excludable and so cannot be voluntarily accepted even if individuals wish to accept them. Simmons is therefore forced to find a substitute for "acceptance" relevant to non-excludable schemes. He argues that in order for the relevant benefits to be accepted, individuals must possess certain attitudes. Cooperative schemes characterized by such beliefs evince cooperation in a strong sense, while Simmons holds that wrongs under the principle of fairness necessarily involve cooperation in this strong sense. In "Fair Play," he writes:

The unfairness lies in the way that self-selection exploits or takes advantage of others' good faith-sacrifices—an advantage-taking that occurs, I maintain, only when one freely takes the benefits of cooperation with the requisite beliefs and preference structure, *not* when one merely unavoidably receives those benefits while going about one's normally permissible business. (FP, pp. 30-1; his emphasis)

What are the relevant attitudes?: "only those who accept benefits from cooperative schemes can be bound (by considerations of fair play) to reciprocate, and [...] acceptance (in the relevant case of public goods) involves taking benefits willingly and knowingly (so that, e.g., one understand the source and costs of the benefits, prefers their provision in the manner provided to nonprovision, and so on)" (p. 32).³⁶

In this context, it is unfortunately not possible to pursue all highways and byways of Simmons' position, and so I must refer the reader to my previous work on this subject.³⁷ In response here, I will make four points. First, although I believe some subjective beliefs must be present if Smith is to acquire obligations under the principle of fairness, these are minimal. As I have indicated, the benefits in question must actually be benefits, a requirement that is ordinarily satisfied by their status as presumptively beneficial. If Smith is able to make a strong case that she does not in fact benefit from their provision, then, once again, she will not have obligations to help provide them. But beyond this, it is simply not clear why what Smith thinks about the scheme in question is relevant to her moral requirements. If provision of national defense makes it necessary to draft her into the army, does it matter that she understands that an army requires large-scale cooperation and is necessary for defense? Or do her requirements to pay taxes depend on her knowledge that taxes are generally paid and finance public services?³⁸ It is hard to imagine that any citizen does not have some basic awareness of these connections, while if Smith does not, that is no excuse, as she should.³⁹

To my knowledge, Simmons has never provided convincing examples to demonstrate the relevance of such knowledge in regard to the non-excludable schemes that provide presumptive benefits. In "Fair Play," he presents the following example:

If my neighbors cooperate to put on a concert, expecting those who listen to reciprocate later but never announcing this fact, I acquire no obligation to take up an instrument and help form a band, just because I innocently listened to the concert during my morning walk. (p. 33)

While this example shows that, under some circumstances, non-excludable goods can be produced in ways that may not generate obligations for individuals who receive the benefits, it has little bearing on the cases that interest us. In this example (as with Nozick's famous example of the public address system⁴⁰), the benefit is of trivial value. This fact allows a certain casualness in its production. The concert requires the cooperation of few people, little coordination, and apparently also involves little or no costly sacrifice. Once again, let us alter the circumstances. If, for some mysterious reason, hearing the concert were necessary to preserve acceptable lives for all inhabitants of the community, things would be less casual. Under these conditions, steps would be taken to ensure production of the concert, especially if these required the cooperation of large numbers of people and would-be band-members could not organize it themselves, and even more so if participation involved costly sacrifices. With listening to the concert now necessary, its receipt too would not long be a matter of indifference. As a result of these changes, receiving the concert's benefits would generate obligations to

help bear the costly sacrifices. It is important to note that these changes flow from raising the value of the benefit. Moreover, as this example shows, the possible significance of subjective beliefs vanishes as we introduce sociological factors that make the example more relevant to discussions of political obligation in contemporary society.

Let us turn to the second point. Simmons supports his claims concerning the need for a strong sense of cooperation by appealing to “our intuitions” concerning the nature of cooperative schemes. For instance, concerning his view of “true cooperation,” he writes: “This is important, I think, because our intuitions about fair play are drawn from our experiences with small-scale schemes that *are* cooperative in this strong sense” (FP, p. 40; his emphasis).⁴¹ The problem with such an argument is apparent. Who is to say if the intuitions in question are actually “ours”? In the cases that concern us, I think it is overwhelmingly clear that our actual intuitions support the existence of obligations and that Simmons is prevented from recognizing this by his deep-seated Lockean sentiments.

This contention is more than assertion on my part.⁴² Simmons concedes the existence of obligations in the relevant cases but, invoking the classification argument, claims that they do not proceed from fairness.⁴³ He writes:

If I genuinely cannot do without a public good, supplied as it is and at the price demanded for it, then I will probably freely accept it. But then the basis of my obligation is my free acceptance of the goods, my bringing myself into the cooperative scheme that supplies the goods. (FP, p. 35)

He continues: the “value or importance of the goods is irrelevant” (FP, p. 35). In response is my third point. It seems unusual, to say the least, to contend that in cases in which, because of their nature, essential public goods cannot be sought out or accepted, even if one wished to accept them, a notion of free acceptance is doing the moral work, instead of a requirement to do one’s share in providing the goods. Once again, not to cooperate in the goods’ provision is to take advantage of the cooperative labors of others. Simmons’ concession that obligations are generated in these cases tells strongly against his contention that recipients’ views about how the benefits are provided is relevant to whether or not obligations are generated. He notes that because of the indispensability of the goods in question, he would “probably freely accept” them. But what if he chooses not to accept them? Does this absolve him of obligations he would otherwise have? What if he chooses not to accept some benefit because he doesn’t feel like paying taxes to support it? Is this enough? Clearly, our actual intuitions support the generation of obligations in such cases almost without regard to subjects’ feelings and beliefs. And, once again, because all this turns on the indispensability of the benefits, their value or importance is crucially relevant.

My last point concerns an additional concession by Simmons. I believe the cases that interest us concern cooperative schemes, although they involve a sense of cooperation that is weaker than what Simmons demands. The sense of cooperation relevant to large-scale schemes involving millions of people centers on joint production and consumption of public goods. As I have indicated, there are minimal additional requirements concerning participants’ beliefs, but cooperation in this sense falls far short of what is seen in a pot-luck supper. However, the crucial point here is that cooperation in this weaker sense is sufficient to generate obligations in the schemes in question. Simmons’ additional concession concerns this weaker sense of cooperation. He writes:

There is undoubtedly a weak sense of “cooperation” in which behavior so indifferently motivated might

still be said to add up to a “cooperative scheme,” since all (or at least most) are made better off by the “scheme” and none is left perfectly free always to act in egoistically optimal ways. (FP, p. 42)

According to Simmons, this sense of cooperation is not enough. But once again, he has no real argument in support of his position. The above quotation continues: “But there is, of course, also a weak sense of ‘cooperation’ in which the whipped galley slaves can be said to cooperate in their propulsion of the galley” (FP, p. 42).

This last sentence may be dismissed out of hand. The putative “cooperative scheme” of slaves and masters of course falls short of what is required to generate obligations under the principle of fairness. There is no fair distribution of benefits and burdens, while it is not clear that the slaves receive significant benefits at all.

The series of concessions Simmons makes is damaging to his philosophical anarchism. He notes that provision of indispensable public goods will “probably” generate obligations, although, once again, he does not recognize these as fairness obligations. I have addressed his classification claims in some detail. But however we come down on the nature of the relevant obligations, the fact that they follow from state production of indispensable public goods demonstrates that the balance of reasons approach of Simmons’ philosophical anarchism will establish central moral requirements for all or almost all individuals to support the state in regard to its core functions of providing security.

VI. Conclusion

Having reviewed both Simmons’ approach and central problems with his position, I hope the nature of his contribution is clear. Once again, Simmons’ work has defined an entire subject area. Because of his forceful presentation, many scholars have given up on traditional theories of political obligation, while those who have not done so generally address their efforts at Simmons’ criticisms. His pathbreaking analysis of people’s moral requirements in circumstances without traditional political obligations has spurred an entire series of innovative proposals. But once again, as it seems to me, Simmons does not recognize the full implications of his accomplishments. His balance of reasons approach requires citizens to consider all relevant factors whenever they are called upon to obey the law. Where Simmons falls short is in not recognizing the force of these circumstances. In many cases, and most clearly in regard to central functions concerning security, individuals can be seen to have strong moral requirements to obey the state. In practical terms, the result of a balance of reasons approach will be moral requirements to obey all justifiable laws. Although the road to this conclusion breaks with the traditional view, the conclusion itself is much the same. While moral requirements to obey justifiable laws may follow from a range of moral considerations, they are centrally concerned with the principle of fairness, properly understood. Simmons’ attempts to undermine this principle fall short in various ways, frequently as a result of the Lockean assumptions he brings to his work.

In closing, then, although one may take issue with the constructive side of Simmons’ endeavors and with one set of his critical arguments, this does not alter the fact that, for the near future, his work will set the agenda for studies of political obligation, as it has for more than twenty years.⁴⁴

Endnotes

1. A. J. Simmons. *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979).
2. A skeptical consensus is posited by C. Morris, *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998),

- 214; A. Buchanan, "Political Legitimacy and Democracy," *Ethics* 112 (2002): 69.
3. For brief discussion of these criteria, and one other, see below, note 5.
4. *Moral Principles*, pp. 90-1.
5. For discussion here, the requirements of a successful theory of political obligation are three: (a) "generality," that the theory establishes obligations for most or all relevant individuals; (b) "particularity," that these obligations are owed to their particular states; (c) "comprehensiveness," that obligations are established to support the full range of state services. Other criteria could be invoked but are less important here. For discussion, see Simmons, *Moral Principles*, ch. 2; G. Klosko, *Political Obligations* (Oxford: Oxford University Press, 2005), ch. 1.
6. Some exposition here draws on my Introduction to the new edition of *The Principle of Fairness and Political Obligation* (Savage, MD: Rowman and Littlefield, 2004).
7. M. Bakunin. *Statism and Anarchy*, edited and translated by M. Shatz (Cambridge: Cambridge University Press, 1990), 178.
8. T. Senor. "What If There Are No Political Obligations?" *Philosophy and Public Affairs* 16 (1987).
9. For survey research and focus groups on attitudes towards political obligations, see Klosko, *Political Obligations*, chs. 7-11. Compare L. Green, "Who Believes in Political Obligation?" in *For and Against the State*, edited by J. Sanders and J. Narveson (Savage, MD: Rowman and Littlefield, 1996); and Simmons, "Philosophical Anarchism," in *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001), 118-20.
10. 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); R. Dagger, "Playing Fair with Punishment," *Ethics* 103 (1993); Klosko, *Principle of Fairness*; for gratitude, see A.D.M. Walker, "Obligations of Gratitude and Political Obligation," *Philosophy and Public Affairs* 18 (1989); for natural duty, J. Waldron, "Special Ties and Natural Duties," *Philosophy and Public Affairs* 22 (1993).
11. For association, see J. Horton, *Political Obligation* (London: Macmillan, 1992); M. Gilbert, *A Theory of Political Obligation* (Oxford: Oxford University Press, 2006); R. Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), 190-216. For an excellent critique of associative obligations, see Simmons, "Associative Political Obligations," *Ethics* 106 (1996); for samaritanism, C. Wellman, "Toward a Liberal Theory of Political Obligation," *Ethics* 111 (2001).
12. A. Buchanan. "Political Legitimacy and Democracy," *Ethics* 112 (2002); W. Edmundson. *Three Anarchical Fallacies* (Cambridge: Cambridge University Press, 1998); D. Copp. "The Idea of a Legitimate State," *Philosophy and Public Affairs* 28 (1999). It is important to note that, as Simmons uses the term "legitimacy," it corresponds to what most scholars mean by "authority," while Simmons' "justification" corresponds to what is generally meant by "legitimacy."
13. Exposition in the next few paragraphs draws on Klosko, "Multiple Principles of Political Obligation," *Political Theory* 32 (2004).
14. 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; and Dworkin, *Law's Empire*, ch. 6.
15. For similar implications of the general view that political obligations must be "independent of content," see Klosko, "Philosophical Anarchism and Independence of Content" (under review).
16. See Klosko, "Multiple Principles."
17. This formulation follows Wellman, "Toward a Liberal Theory of Political Obligation."
18. For Simmons' Lockeanism, see his Introduction to *Justification and Legitimacy*; see also Simmons, *On the Edge of Anarchy* (Princeton: Princeton University Press, 1993); *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992).
19. *Moral Principles*, ch. 7; also "Philosophical Anarchism"; "The Anarchist Position: A Reply to Klosko and Senor," *Philosophy and Public Affairs* 16 (1987): 276-79.
20. "The Duty to Obey and Our Natural Moral Duties," in Wellman and Simmons, *Is There a Duty to Obey the Law?* (Cambridge: Cambridge University Press, 2005), 193.
21. For instance, he also writes that "the denial of a general moral duty of domestic legal obedience can perfectly well be maintained even in conjunction with the acceptance of standard claims about the importance or necessity of states and legal system to the provision of familiar public goods" (p. 196).
22. For support of these contentions, see Klosko, "Multiple Principles."
23. For discussion, see Klosko, *Principle of Fairness*.
24. H.L.A. Hart. "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 185. For full discussion of political obligations based on the principle of fairness, see Klosko, *Principle of Fairness*.
25. For these conditions, see Klosko, *Principle of Fairness*, ch. 2; for satisfactory lives and certain public goods they require, see Klosko, *Political Obligations*, ch. 2.
26. For how exceptional cases are dealt with, see Klosko, *Political Obligations*, p. 61.
27. With slight modifications, the wording here is taken from what was read to focus groups used to examine attitudes towards political obligation. This vignette was read to four focus groups, #'s 7-10; see *Political Obligations*, chs. 10-11.
28. These are found in: "Fair Play and Political Obligation: Twenty Years Later," in *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001); and "Duty to Obey." From this point on, these works will be cited in parentheses in the text as "FP" and "DO," respectively.
29. Simmons has made arguments along these lines since 1987, in "Anarchist Position" (p. 272). He is not alone in construing a position based on the principle of fairness along these lines; see Green, "Law and Obligation," in *Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by J. Coleman and S. Shapiro (Oxford: Oxford University Press, 2002), 537-38. Cf. D. Lefkowitz, "The Duty to Obey the Law," *Philosophy Compass* 1 (2006): 16-7.
30. I should note that fully satisfying the comprehensiveness requirement would still remain.
31. In cases in which universal cooperation is not necessary, the advantages of non-participation should be distributed by a fair procedure (e.g., a lottery), not unilaterally assumed.
32. Simmons, *Moral Principles*, pp. 127-28; for discussion, see Klosko, *Principle of Fairness*, pp. 145-47.
33. For detailed discussion, see Klosko, *Political Obligations*, ch. 2.
34. Discussion here draws on Klosko, *Principle of Fairness*, ch. 2, which also considers and counters other possible arguments against obligations in these cases. Additional important criticisms of the position are presented by Simmons, in *On the Edge of Anarchy*, pp. 256-60; for a response, see Klosko, *Political Obligations*, ch. 3.
35. This discussion draws on Klosko, *Political Obligations*, pp. 67-8.
36. Also see *Moral Principles and Political Obligations*, pp. 128-33; for discussion of the subjective conditions argument in that work, see Klosko, *Principle of Fairness*, pp. 51-2.
37. See esp. Klosko, *Political Obligations*, ch. 3, and discussion of focus group results, in chs. 10-11.
38. For discussion of how to deal with disagreements over the form in which particular benefits should be provided, see Klosko, *Principle of Fairness*, ch. 3.

39. To use Simmons' term, her lack of awareness would constitute "culpable or negligent ignorance" (FP, pp. 32-3).
40. R. Nozick. *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 93-5.
41. He makes numerous other similar appeals, e.g.: "For I think these defenders have not adequately considered which features of cooperative schemes actually give rise to our intuitions that obligations are owed to their participants" (FP, p. 38).
42. I tested the intuitions of focus group participants in regard to the kinds of cases at issue. Simmons' claims about "our intuitions" were unanimously rejected; see Klosko, *Political Obligations*, ch. 10.
43. "Klosko can avoid their force [of standard objections to fairness theories] only by abandoning any real reliance on intuitions concerning fairness, relying instead on our intuitions about various natural duties we might have to diminish the needs of others..." (FP, p. 35; his emphasis).
44. The author is grateful to Luke Gregory, Ryan Pevnick, and Micah Schwartzman for helpful comments on previous drafts of this paper.

Simmons' Critique of Natural Duty Approaches to the Duty to Obey the Law

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In his most recent book on the moral duty to obey the law, A. John Simmons considers and rejects a number of natural duty approaches to justifying political authority.¹ Among the targets of Simmons' criticism is the account defended by the book's co-author, Christopher Heath Wellman.² In this essay, I evaluate the force of Simmons' objections to Wellman's account of political obligation. As will become clear below, I think Wellman's defense of the duty to obey the law defective in certain ways—but not in all of the ways that Simmons argues it is. By rebutting some of Simmons' criticisms and identifying the limits of others, I aim not only to indicate one direction in which a renewed defense of natural duty approaches to political obligation might proceed, but also to encourage the pursuit of such a philosophical project.³

Simmons levels three main challenges to Wellman's samaritan account of the duty to obey the law. First, he questions the existence of a samaritan duty as Wellman characterizes it, arguing that it is a strange hybrid of a samaritan duty as understood in paradigm cases of easy rescue and an imperfect duty of charity. Second, Simmons argues that Wellman cannot account for the particularity of the duty to obey the law; that is, the fact that an agent's alleged moral duty to obey the law is almost always conceived to be owed to a particular state, usually the one in which the agent enjoys legal citizenship. Third, Simmons contends that Wellman's argument fails to demonstrate that agents have a duty to *obey* the law of their state; rather, at best it entails that most agents will often, but not always, have good reason to *comply* with the law.⁴ In response, I argue for the following conclusions. Simmons' first criticism is correct, but the (alleged) moral duty Wellman employs as the foundation for his argument can easily be replaced by some other (genuine) natural moral duty or duties. Simmons' second criticism is also correct, but it only establishes one conclusion that he has long advocated, namely, philosophical anarchism, and not another, namely, that consent is the only *possible* means whereby a state can come to enjoy authority over an individual, and that individual a correlative duty to obey the law. Simmons' third criticism

is incorrect; Wellman does demonstrate that if agents have a moral duty to support the specifically political institutions that comprise their state, then their support ought to take the form of obedience to its law.

I.

I begin with a much abbreviated reconstruction of Wellman's argument for the duty to obey the law.⁵

1. All moral agents have a natural duty to rescue others from significant harms as long as the cost of doing so is reasonable. Call this a samaritan duty, or duty of easy rescue.
2. The perils of a Hobbesian state of nature constitute a significant harm.
3. Therefore, as long as the cost is reasonable, all moral agents have a samaritan duty to save others from the perils of a Hobbesian state of nature (or, as Simmons sometimes writes, a duty to provide security for all). (From 1 and 2.)
4. Only specifically political institutions—or, more controversially, the modern state—provide(s) a reliable defense against the perils of a Hobbesian state of nature.
5. Therefore, as long as the cost is reasonable, agents have a samaritan duty to support the state, since only by doing so can they rescue others from the perils of a Hobbesian state of nature. (From 3 and 4.)
6. If the benefits that the state provides each individual are taken into account, the cost to each of them of supporting the state is a reasonable one.⁶
7. Therefore, agents have a samaritan duty to support the state. (From premises 5 and 6.)⁷

As Wellman recognizes, however, protection from the perils of a Hobbesian state of nature can be accomplished with less than universal support for the state. What the argument thus far implies is that *some* agents have a samaritan duty to support the state (specifically, whatever number of agents suffices in a particular case to ensure that the state succeeds in providing protection from the perils of a Hobbesian state of nature). What it does not show is that each agent has a duty to support the state in every case. In order to establish this conclusion, Wellman adds another premise:

8. All those with a duty to rescue others from the perils of a Hobbesian state of nature ought to contribute their fair share to the achievement of this goal.

Thus, even if my failure to support the state has no effect on the provision of security for all, I still act wrongly because I treat unfairly those who do support the state. It is only because they do so that my failure to support the state does not wrong those who have a claim against me that they not suffer the harms likely to occur in the state of nature. Since there is no morally relevant distinction between those who support the state and me—we all bear the same samaritan duty—I have no justification for according myself a privilege I can enjoy only as long as they do not. Therefore,

9. Agents have a samaritan duty to do their fair share in supporting the state. (From 5, 6, and 8.)

It still remains to be shown, however, that every agent's contribution of his or her fair share of support for the state must take the form of obedience to law. After all, just as the state can provide security for all even in the face of a limited number of non-contributors, so too it can accomplish this goal even when a limited number of those who support it do so by means other than obedience to law, or who choose instead to

support some other state. To address this point, Wellman once again appeals to fairness:

10. Discretion with respect to the form an agent's support for her state will take, or which state she will support, is something all agents have reason to value.⁸ Given this, and given that only a limited exercise of such discretion is compatible with the state's provision of security for all, it follows that any agent who unilaterally exercises some of this limited discretion treats unfairly the other members of her state—i.e., those who by forgoing the exercise of this discretion (which they have reason to value) make it possible for this defector to act as she does without undermining the provision of security for all.

Wellman concludes, therefore, that:

11. All moral agents have a duty to obey the law of their state. (From 9 and 10.)

II.

Simmons' first objection to Wellman's argument concerns the claim that the duty to save others from the perils of a Hobbesian state of nature is but one instance of the more general samaritan duty to rescue others from significant harms when the cost of doing so is not unreasonable. Paradigmatic cases of easy rescue involve statistically abnormal threats of immediate or imminent harm, and given their statistical abnormality (both in terms of how many people suffer the (risk of) harm and how often anyone does so) such cases usually involve a rather limited number of agents. In contrast, the perils of a Hobbesian state of nature that Wellman invokes to justify a duty to obey the law are statistically normal, the harm at issue is a future, potential, one, and the number of people with either a right to be rescued or a duty to rescue, or both, is (almost) limitless. There seems to be good reason to doubt, therefore, that the duty to provide security is an instance of the general samaritan duty of easy rescue.

Indeed, Simmons argues convincingly that Wellman's account of the duty to obey the law rests on an odd hybrid duty that combines elements of both a samaritan duty of easy rescue and a duty of charity. The localized nature of the duty to provide security (i.e., the claim that agents have a duty to rescue their compatriots), and the fact that those in need of rescue from the perils of a Hobbesian state of nature have a right to it, follow if the duty is a genuine samaritan one.⁹ The fact that the duty to provide security is owed to all members of an agent's political community (and not just those he interacts with face-to-face), and that it involves the prevention of a potential, future, harm, which is a perennial rather than periodic threat, follow if the duty is one of charity. Simmons concludes that "the specific form of Wellman's duty seems to be inspired primarily by his argumentative needs, not by independent reasons to believe such a duty exists."¹⁰ Moreover, he maintains that as they are commonly conceived, neither the duty of easy rescue nor the duty of charity can provide a foundation upon which Wellman can construct a defense of the duty to obey the law. The elements Wellman takes from the other duty in constructing his hybrid indicate those features that each of these duties lack, but that are necessary for the success of his argument.

Though I think this first objection Simmons raises to Wellman's account correct, it is easy enough to see how Wellman's argument might be modified to avoid it. Rather than basing the argument on an alleged duty of easy rescue, Wellman could instead appeal to a certain conception of those duties correlative to all agents' basic moral (or human) rights. The conception I have in mind is one that understands the fulfillment of these duties to include positive acts of provision

as well as negative acts of forbearance.¹¹ On such a conception of people's basic moral rights, the duty to provide others with security (or the secure enjoyment of their basic moral rights) requires that an agent do more than simply refrain from acts that directly undermine others' security, such as assaulting them. In addition, agents must take positive steps to see to it that all enjoy security, say by contributing to the creation and preservation of institutions that enforce people's basic moral rights, such as a moderately just police force.¹² Note that the duties of positive provision that correlate to people's basic moral rights differ from the duty of charity Simmons describes. The objects of the former are things or forms of treatment owed to particular people (i.e., each of the agents with a right to it), while the object of the latter (whatever it may be in a particular case) is not.¹³ Furthermore, insofar as it is an imperfect duty, charity is not something an agent must display in every situation where it is possible for him to do so; rather, morality permits an agent to act on a non-moral reason (such as self-interest) in some percentage of these situations. In contrast, the duties of positive provision correlative to people's basic moral rights are perfect ones, meaning that unless such duties are defeated by other moral considerations, agents must carry them out in every situation where it is possible for them to do so.

The replacement of Wellman's hybrid duty with the duties correlative to people's basic moral rights—henceforth, for brevity's sake, the duty to promote basic rights—appears to only exacerbate the challenge to all natural duty approaches that samaritanism was supposed to address, namely, accounting for the particularity of the duty to obey the law. Of course, if Simmons argues correctly when he contends that there is no reason to accept the existence of the hybrid duty Wellman describes, as I believe he does, then nothing has been lost if we substitute for it the duty to promote basic rights, even if an argument premised on the latter duty cannot justify a particularized duty to obey the law. Simmons will likely reject the rough sketch of the duty to promote basic rights I offer here, especially the idea that all moral agents owe natural duties of positive provision to all moral persons, and not just those with whom they have transacted in certain ways (e.g., to whom they have made a promise), or that they can easily rescue, or to whom they owe reparation. Unlike Wellman's hybrid duty, however, something similar to the duty to promote basic rights as I characterize it is defended by a significant number of theorists and practitioners (e.g., non-governmental organizations such as Human Rights Watch and Amnesty International). Moreover, many of those who defend it do so without any thought of the role it might play in a defense of the moral duty to obey the law; indeed, for all I know, some defenders of the duty to promote basic rights may be philosophical anarchists. Obviously, these facts do not demonstrate the truth of a duty to promote basic rights as I have characterized it here. But they do render such a duty secure against the kind of objection Simmons makes to Wellman's hybrid duty, namely, that there is no reason to believe that such a duty exists other than the role it plays in a defense of political obligation.

Moreover, as Simmons makes clear, even if we grant Wellman his hybrid duty, he still cannot justify an agent's duty to support his particular state (and so a duty to provide that support in the form of obedience to his state's law). The duty in question is owed to all those vulnerable to the perils of a Hobbesian state of nature, not just those who are vulnerable and who happen to be legal subjects (or citizens) of the same state as the agent. Even if we assume that the fulfillment of the duty to provide security requires agents to support specifically political institutions, it seems quite likely that some agents, some of the time, will be able to contribute equally or better to the provision of security for all by supporting political

institutions other than those that comprise their own state. As Simmons points out, Wellman and others cannot appeal to considerations of fairness in order to meet this challenge; that is, they cannot argue that even though support for some other political institution contributes just as much or more to the morally mandatory end, it also involves treating my fellow citizens unfairly, and so I ought not to do it—or, in other words, that I have a moral duty to support my particular state. Considerations of fairness arise only amongst those with a duty to participate in the collective pursuit or realization of some end. Yet, thus far, neither Wellman nor any other defender of a natural duty approach has provided a compelling explanation for why an agent's fulfillment of his natural duty requires that he contribute to the particular collective action scheme (broadly construed) that partly constitutes the state of which that agent is a legal subject or citizen.

To repeat, an individual accused of treating his compatriots unfairly when he elects to promote security for all by sending money to the United Nations instead of paying taxes to his state can respond as follows. I only treat you unfairly if I have a duty to do my fair share of providing security for all by supporting our particular state. But you have not shown that I must adopt this particular means for carrying out my duty to provide security for all. It seems extremely unlikely that you can do so on empirical grounds; for example, by demonstrating that I can only fulfill this duty by supporting my particular state, or even that support for my state will always provide a far superior (i.e., more effective and/or more efficient) means for doing so, even if it is not the only means to that end.¹⁴ It seems equally unlikely that you can do so on moral grounds by showing that I have a special obligation to my compatriots, say one grounded in consent or my occupying the legal role or office of citizen.¹⁵ Of course, you might invoke a (*sui generis*) moral duty to rescue one's fellow citizens from the perils of a Hobbesian state of nature, but doing so settles the matter of particularity by fiat, rather than by rational argument.

In short, Simmons' criticism of Wellman's defense of the duty to obey the law on the grounds that it cannot account for that duty's particularity strikes home even if we grant the existence of the hybrid duty on which Wellman bases his argument. Nor will Wellman's argument fare any better if we replace that hybrid duty with a duty to promote basic rights. I consider elsewhere the ability of a natural duty approach that assigns a central place to democracy to account for the particularity of the duty to obey the law.¹⁶ Here, however, I want to consider the implications for Wellman's argument of his inability to demonstrate that an agent's fulfillment of his natural duty (whatever exactly it is) must take the form of support for his particular state.

This shortcoming in Wellman's account of political obligation does not eliminate it as a genuine justification for the moral duty to obey the law. Rather, it entails that agents can come to have such a duty on something like the grounds Wellman appeals to only in a world with a single legal system. Assume for the moment that in order to fulfill their natural duty to others, agents must support specifically political institutions, and that their support must take the form of obedience to law. If all humanity is subject to a single legal system, then given these assumptions an agent will be able to fulfill his duty only by obeying the law of this single, global, state. In such a world, all agents will have a moral duty to obey the law.¹⁷ Insofar as the world is not currently organized as a single state or legal system, this response to the particularity challenge commits Wellman to the conclusion Simmons defends in their recent book, namely, philosophical anarchism. This is the view that few if any subjects of existing states have a general moral duty to obey the law of

those states. Yet, while Simmons is sometimes concerned to defend only philosophical anarchism, at other times he defends a stronger conclusion, namely, that the only *possible* means by which a political institution can come to enjoy a morally justified claim to authority over any individual is via that person's consent to its rule.¹⁸ However, the particularity requirement does not appear to rule out as *impossible* Wellman's account of political obligation, or a version of it that replaces the hybrid duty to rescue others from the perils of a Hobbesian state of nature with a duty to promote basic rights. It seems worth considering, therefore, the validity of Simmons' third criticism of Wellman's argument for the duty to obey the law.¹⁹

Simmons contends that even if he grants "that I am morally bound to do my fair share in preventing the local emergency of lawlessness," it does not follow that he has a moral duty to obey the law. This is so because obedience to law is but one method of responding to the emergency, which is not lawlessness itself, but rather the harm (or perhaps vulnerability to harm) that people suffer in the absence of law (i.e., in a Hobbesian state of nature). Simmons argues that he could carry out his duty by directly providing security for himself and two or three others in need of it, perhaps "fancifully, by building a secure compound in which I invite some others to stay."²⁰ In fact, Simmons is unwilling to grant Wellman even this much; as he goes on to ask:

Why can I not simply do the duty described by Wellman just by scrupulously refraining from violence (deception, etc.) toward others (and letting others see my intention in this regard), while acknowledging no duty at all to *obey* the law? Since legal coercion and a sense of duty can assure my fellow citizens of my doing no more than this in any event, how can it be that my anarchist refusal to *obey* constitutes a failure to do my part in contributing to the security of all?²¹

Both of these objections follow from a purely instrumental interpretation of Wellman's argument; that is, Simmons understands Wellman to be claiming that agents must contribute their fair share to the provision of local security—that is an end they are morally required to promote—and argues that Wellman does not show obedience to law to be a necessary means to that end. As I will now demonstrate, however, Wellman's argument for the duty to obey the law is not a purely instrumental one.²²

Consider, first, Simmons' claim that he can contribute his fair share to the provision of local security simply by refraining from acts that directly violate others' rights, and making clear to others that he will do so. As I indicated earlier, I believe (and I think Wellman does as well) that the provision of local security requires that agents do more than simply refrain from certain sorts of rights-violating conduct. In addition, it requires support for institutions that enforce people's rights, such as a police force, and institutions that determine when people's rights have been violated, such as courts. Standards of justice for the latter sort of institution, such as a (defeasible) prohibition on *ex post facto* conviction, entail the moral necessity of institutions that provide publicly accessible rules defining what sorts of conduct will be viewed as rights-violating; in other words, a legislative body. At the very least, then, an agent will have to contribute a share of the resources necessary for the creation and maintenance of such institutions; that is, pay a tax and perhaps take a turn in one or more of the offices in these institutions.

At least for the sake of argument, however, Simmons appears willing to grant that doing one's fair share in the provision of local security requires positive action, and not merely refraining from acts that directly violate others' rights.

He denies, however, that this positive action must take the form of obedience to law; for example, the payment of taxes. Rather, Simmons maintains that an agent could contribute his fair share to the provision of local security by directly protecting a few people from the rights-violating conduct of others. It may appear that Wellman can rebut this claim simply by appealing to the following two reasons he gives as part of his justification for the state. First, even well-intentioned and conscientious agents will likely reasonably disagree as to what counts as the adequate provision of security to (local) others, and/or what counts as doing one's fair share of that task. Second, such agents are also likely to suffer from, or be perceived to be suffering from, various biases when they serve as judges in disputes to which they are a party. In the absence of specifically political institutions—i.e., ones that provide a relatively neutral (and, therefore, to some extent, just) method for settling disagreements like those just mentioned (at least for action-guiding purposes), applying those settlements to particular cases, and enforcing them when necessary—the practically inevitable result will be frequent harmful (or rights-violating) conflicts. Thus, it is not possible to contribute one's fair share to the provision of local security by means other than adherence to law (or, more precisely, the law that governs local relations).²³

Yet, Simmons will counter that as long as a sufficient number of people do their fair share of providing local security by obeying the law, the considerations Wellman points to will not suffice to show that he must obey it. Rather, a limited number of agents, including Simmons, will be able to fulfill their duty by means other than obedience to law. In some cases, we may suppose, there will be no disagreement between Simmons and the law as to what justice requires, either in the abstract or in a particular case. In other cases, Simmons might think the law mistaken, but also think that given widespread compliance with the law and the likely consequences for him and those he protects should he act contrary to it, what he morally ought to do, all things considered, is act as the law demands. In these cases Simmons will have a moral reason to comply with the law, but not to obey it. Finally, in some cases Simmons may think the law mistaken, and believe with good reason that disobedience to it will not result in any harm, either to him and those he protects, or to others, or to the state's ability to provide security. In these cases, Simmons will have neither a moral reason to obey the law, nor a moral reason to comply with it.

To claim that an agent has a moral duty to *obey* the law is to claim that he has a (perhaps *prima facie*) duty to do what the law demands simply because the law demands it. In contrast, to claim that an agent has a moral reason to *comply* with the law is to claim that he has a moral reason to act as the law demands, but not *because* the law demands that he so act. As was just indicated, an agent can deny the law's claim to authority, and at the same time acknowledge that he is morally required to act as a particular law would have him act because he has independent moral reasons to do so (as in the case of a law prohibiting murder) or because contingent factors such as patterns of coordination established by the law (and/or the state's coercive enforcement of it) entail that, all things considered, the morally best act for the agent to do is the one the law demands from him.²⁴ Simmons' claim, again, is that at best Wellman's argument shows that he will sometimes, but not always, have a moral reason to comply with the law. It does not show that he has a duty to obey it.

Simmons fails to recognize, however, that considerations of fairness play two distinct roles in Wellman's argument. First, as Simmons notes, fairness figures centrally in the specification of the end morality requires each agent to promote. Each agent must contribute his or her fair share to the provision of (local)

security. But second, fairness—or treating others fairly—also figures essentially in Wellman's argument that each agent's contribution must take the form of obedience to law. Wellman grants that cases are likely to arise in which either (a) an agent can do an equal or better job of supporting the state (and so providing local security) by acting contrary to the law, or (b) that it will make no difference to the existence and efficacy of the state (and so to the provision of security for all) whether or not the agent complies with the law. However, in both cases an agent's acting contrary to the law is compatible with the state's provision of security for all only because a significant number of agents comply with it. In other words, the liberty or discretion to act contrary to the law cannot be enjoyed simultaneously by all, and therefore, Wellman argues, it would be unfair for any particular agent to unilaterally exercise the discretion that is possible for some, but not all, to enjoy when all have an equal claim to it. Note that the unfairness follows from the *unilateral* exercise of discretion to which all have a claim but that some can enjoy only as long as others do not. Presumably Wellman will not object if the limited exercise of discretion compatible with the effective provision of security by the state is distributed by a fair procedure, such as a fair lottery or a majority rule decision procedure in which all have an equal vote. The problem is that the unilateral exercise of this limited discretion is not such a procedure.

Some might argue that a first-come first-served principle for distributing the limited discretion at issue also counts as a fair distribution, since it is "unclaimed" and so open to all.²⁵ This claim strikes me as false. Even if natural resources can be accurately described as unclaimed until some agent does something to take possession of them, and thereby acquire a right to them, the same is not true of the limited discretion at issue here. This is so because that discretion—that is, the possibility of acting contrary to law without failing in one's samaritan duty to contribute one's fair share to the provision of (local) security—obtains only because enough other agents comply with the law. In other words, those other agents collectively create the discretion in question, and, therefore, decisions about how it ought to be distributed must be made collectively or, as I argue elsewhere, via a procedure that gives each of the agents that (ought to and do) play a part in creating it equal authority to settle this matter.²⁶ Note that no agent can justify acting contrary to law by claiming that he is exercising only his fair share of discretion, since this requires that he act on the very sort of unilateral judgments (e.g., regarding the existence of limited discretion, and what counts as a fair share) that agents must forswear acting on in order to treat (local) others fairly.

The duty to *obey* the law follows from the moral requirement that agents treat fairly those with whom they act in order to provide security for all. As Simmons himself acknowledges elsewhere, the duty to treat others fairly is a matter of respect for others' status as moral agents.²⁷ As such, it is not justified on instrumental grounds; for example, merely because it is a means to a state of affairs in which all those with a right to it enjoy security. Thus, obedience to law is not owed to others because they are vulnerable to various harms or wrongs likely to occur in a Hobbesian state of nature; rather, it is owed to others because they have an equal claim to the discretion made possible by the fact that the law can tolerate a limited amount of disobedience. By obeying the law, agents acknowledge their compatriots' equal claim, and so their equal status as moral agents.

Simmons only briefly acknowledges this second role that fairness plays in Wellman's defense of the duty to obey the law, and he clearly does not appreciate its non-instrumental character. He writes:

obedience is only a *means* to general enjoyment of the good of security...the fact (if it is a fact) that everyone's using his discretion in genuinely trying to treat others well would cause chaos [does not effect the conclusion that] if one can do one's part in promoting that good *without* obeying the law, one has surely in so doing discharged any moral duty one might have.²⁸

As I have shown, Wellman does not offer a purely instrumental justification for the duty to obey the law. Rather, Wellman offers an instrumental justification for the state (or political institutions, or a legal system): it is the only means for achieving a state of affairs in which all enjoy security. Wellman then offers a non-instrumental justification for the claim that all moral agents have a duty to support it (even if their support is not necessary for the achievement of security), and, as we have just seen, the claim that support for the (or one's own) state must take the form of obedience to law. Only by doing so, Wellman claims, can those with a duty to support the (same particular) state treat one another fairly. I conclude, therefore, that Simmons does not succeed in his attempt to show that, even granting him a duty to do one's fair share in providing local security, Wellman cannot justify the claim that agents must obey the law in order to discharge this duty.

Note that this rebuttal of Simmons' argument depends on the assumption, which for the sake of argument Simmons explicitly grants, that agents have a duty to do their fair share in the provision of *local* security. I have assumed that "local security" is synonymous with "security for one's compatriots or fellow legal subjects," an assumption I take Simmons to share in this context. As I discussed earlier, Simmons rightly points out that claims of fairness only gain traction once an agent has a duty to participate in a given collective action scheme (broadly construed). It is only because it is assumed that agents have a duty to provide local security—that is, to support their particular state—that it is possible to appeal to considerations of fairness to explain why their support must take the form of obedience to law.

III.

The preceding discussion highlights two important points regarding natural duty approaches to justifying a moral duty to obey the law. First, with respect to Simmons' (and others') many criticisms, recent examples that combine instrumental and non-instrumental arguments, such as Wellman's appeal to both a samaritan duty of easy rescue and considerations of fairness, or my own appeal to the duty to promote basic moral rights and the duty to respect others' equal claim to authority over the form morally necessary collective action ought to take, fare better than previous accounts such as Rawls' and Waldron's, which rely on instrumental arguments alone.²⁹ Unlike those earlier defenses of political obligation, mixed accounts provide a plausible (and perhaps even compelling) justification for why all agents must support specifically political institutions if they are to fulfill certain of their natural duties, and why, if they have a duty to support the particular state in which they enjoy legal citizenship, that support must (at least) take the form of obedience to law. But, second, proving the antecedent of this last conditional claim continues to pose a challenge for advocates of natural duty approaches. Unless they can provide some justification for the claim that agents must support their particular state, those philosophers that ground their defense of political obligation in one or another natural duty will be unable to show that existing agents have a duty to obey the law of their state; indeed, they may be unable to show that agents have a duty to obey the law grounded in some natural duty in

any world except one governed entirely by a single state or legal system.³⁰

Endnotes

1. A. John Simmons. "The Duty to Obey and Our Natural Moral Duties." In *Is There a Duty to Obey the Law?* Christopher Heath Wellman and A. John Simmons (Cambridge: Cambridge University Press, 2005).
2. Christopher Heath Wellman. "Samaritanism and the Duty to Obey the Law." In *Is There a Duty to Obey the Law?* Christopher Heath Wellman and A. John Simmons (Cambridge: Cambridge University Press, 2005).
3. Such encouragement seems necessary given that, in my view, Simmons has successfully rebutted countless arguments in defense of a moral duty to obey the law over the past three decades. Despite the fact that many of the most important philosophers in the Western tradition have addressed this topic, I think it no exaggeration to say that none has made a greater contribution to the debate over the duty to obey the law than has John Simmons.
4. As I explain in more detail below, if an agent has a duty to obey the law, then the mere fact that the law requires some act from him provides him with a (possibly *prima facie*) moral reason to do that act. An agent has a reason to comply with the law if some fact other than the law's requiring it provides the agent with a reason to do that which the law would have him do. One can comply with a law (i.e., do that which the law would have one do) without obeying it (doing what the law would have one do because the law demands it); in fact, most people most of the time probably merely comply.
5. I will not attempt to summarize here Wellman's defense of each of the premises in the following argument. In particular, I will assume that Wellman reasons correctly when he argues that only political institutions (or, more precisely, a certain sort of modern state) can provide reliable protection against the perils of a Hobbesian state of nature. Simmons concedes something like this when he argues against the political (as opposed to philosophical) anarchist for the moral justifiability of a certain kind of state. See A. John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge: Cambridge University Press, 2001), 122-57. Note that both Simmons and Wellman distinguish between a state's being justified—i.e., its enjoying a (possibly protected) liberty-right to enact, apply, and enforce laws—and a state's enjoying legitimacy—i.e., its enjoying a morally justified claim to authority over its subjects, to which correlates those subjects' duty to obey the state's laws.
6. Note that unlike fair-play arguments in defense of the duty to obey the law, the receipt of benefits from a particular state is not what grounds an agent's duty to support it. Rather, the natural duty to rescue others from the perils of the state of nature does so, but only on the condition that the duty can be carried out at a reasonable cost. Wellman's claim regarding the benefits individuals receive from the state is meant to address this condition. Unlike fair-play arguments, it makes no difference here whether the agent would prefer to forgo the benefits the state provides, at least at the price the state demands for them. Rather, as long as the agent receives enough benefits from the state so that the net cost for him of compliance with the law is reasonable, he has a samaritan duty to support the state. George Klosko's criticism of Wellman rests in part on the failure to appreciate the importantly different role that benefits to the individual play in fair-play and samaritan accounts of the duty to obey the law; see Klosko, "Samaritanism and Political Obligation: A Response to Christopher Wellman's 'Liberal Theory of Political Obligation'," *Ethics* 113 (2003): 835-40.
7. More precisely, agents have a duty to support a particular kind of state: at the very least, one in which agents (all agents? the average agent?) enjoy greater security than they would were they living in the state of nature. All references to the state

or to an agent's particular state will assume that the state in question meets at least this criterion.

8. Wellman claims that this follows from "the commonsensical idea that each of us has good reason to want to be the author of our own lives, to choose the type of things on which we expend time and energy, and to be the one who determines which causes we support" ("Samaritanism," p. 41).
9. One might well question the first of these two claims, as I make clear later in this paper.
10. Simmons, "Natural Moral Duties," p. 183.
11. For one defense of the duty to obey the law grounded in such a conception of agents' basic moral rights, see Allen Buchanan, "Political Legitimacy and Democracy," *Ethics* 112 (2002): 689-719.
12. Or at least this is so insofar as such institutions are practically necessary for the secure enjoyment by all of their basic moral rights.
13. Or at least Simmons thinks this true of the duty of charity; see "Natural Moral Duties," p. 183.
14. For arguments in support of this claim, see Simmons, "Natural Moral Duties," and Sam Duncan, "The Borders of Justice: Kant and Waldron on Political Obligation and Range Limitation," *Social Theory and Practice* 33:1 (2007): 27-46.
15. Moreover, if you could make such an argument, then there would be no need to appeal to a natural duty, such as Wellman's hybrid duty or the duty to promote basic rights, in order to justify my duty to obey the law.
16. Lefkowitz, "Democratic Authority and the Particularity Requirement," manuscript on file with author.
17. The reader may wonder whether the particularity challenge would still arise if such a world were organized as a single *federal* state. To take an analogous case, why must I pay property taxes to the relatively well-off state of North Carolina, rather than sending that money to the relatively poor state of Mississippi? I have argued previously that if decisions regarding the basic or constitutional structure of a legal system—including questions of jurisdiction such as federalism—are settled by a democratic procedure in which all those with a duty to support the political institutions in question enjoy a right to equal participation, then this variation on the particularity challenge can be met. If successful, this argument also addresses the case of a global federal state. See Lefkowitz, "A Contractualist Defense of Democratic Authority," *Ratio Juris* 18:3 (2005): 360-61.
18. Simmons, "Natural Moral Duties," p. 120; "Consent Theory for Libertarians," *Social Philosophy and Policy* 22:1 (2005): 346-47.
19. Those concerned only with finding a moral justification for (some) existing states' claims to authority, and so their citizens' (or subjects') duty to obey them, may view the continuation of this discussion as being of purely academic interest (in the derogatory sense of that phrase). Yet the outcome may have important implications for current practice. Suppose that a state of affairs in which the law actually enjoys the authority it claims is an end (though not the only end) that agents morally ought to promote. It makes a significant difference to what an agent ought to do if consent is the only means whereby a state can come to enjoy a justified claim to authority over individuals, or if it might also come to enjoy such authority on the grounds set out in the modified version of Wellman's argument for the duty to obey the law. If the former is true, then agents should promote a state of affairs in which agents can freely consent to the rule of a particular state. If the latter is true, they should do this *or* they should seek to create a single global state (or, perhaps better, a well-integrated global legal system).
20. Simmons, "Natural Moral Duties," p. 187.
21. *Ibid.*, p. 188.
22. It may be that I am misinterpreting this last quote from Simmons, and that what he intends to challenge is the claim that agents must be *motivated* by the belief that they have a duty to obey the law. If that is what he means (and I suspect it is not), then the challenge is easily met, for neither Wellman nor to my knowledge any other defender of the duty to obey the law defends such a claim. Their concern is with a (purported) standard of right action, not judgments of moral worth or of an agent's character.
23. As many philosophers point out, this argument seems to require the creation of a single global state. Given my earlier remarks about Wellman's ability to account for the particularity of the duty to obey the law, such an implication may be a good thing. It is important to remember, however, that states and other sorts of political institutions have often inflicted, and still do inflict, massive violations of basic moral rights. It may be, then, that the morally best world, at least with respect to maximizing the number of people that securely enjoy their basic rights, will be one that strikes some sort of balance between interaction in the state and interaction in the state of nature. If so, then if it were possible to move from the present world to that one in a morally permissible manner, and if the transition costs were not too high, then it would follow that agents morally ought not to pursue the only state of affairs in which Wellman's argument entails that they have a duty to obey the law.
24. See Simmons, "Natural Moral Duties," p. 191, for a more complete description of the reasons an agent can have to comply with the law (in a particular case).
25. Interestingly, if the only alternative to an agent's unilateral exercise of this limited discretion were that no one exercise it, the Lockean proviso would not prohibit such an act, since all of the agents would be left with "enough and as good" a degree of liberty as they would have enjoyed had the agent not unilaterally exercised the discretion at issue.
26. Lefkowitz, "Contractualist Defense"; see also Buchanan, "Political Legitimacy," and Thomas Christiano, "The Authority of Democracy," *Journal of Political Philosophy* 12:3 (2004): 266-90.
27. Simmons, *Justification and Legitimacy*, pp. 29-31.
28. Simmons, "Natural Moral Duties," p. 188.
29. Lefkowitz, "Contractualist Defense"; "On a Moral Right to Civil Disobedience," *Ethics* 117 (2007): 202-33; John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971); Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy and Public Affairs* 22 (1993): 3-30.
30. I wish to thank the editors for the invitation to contribute to this issue of the *APA Newsletter on Philosophy and Law*, and the National Endowment for the Humanities for the award of a Summer Stipend that was instrumental to the completion of this paper. Any views, findings, conclusions, or recommendations expressed in this publication do not necessarily reflect those of the National Endowment for the Humanities.

The Anarchist Within: Natural Duty of Justice Accounts of Political Obligation

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One of many ways in which discussion of political obligation is indebted to A. John Simmons lies in his identification of the requirements that a successful account of it must meet. Intuitively, what we seek in an account of political obligation is an explanation of why most (if not all) citizens are bound in some special way to obey the political authorities of their own state. This intuition suggests two requirements for such an account. The *generality* requirement claims that it should be reasonably general in application, explaining why at least

most citizens are bound to comply with and obey their political authorities (at least in reasonably just states).¹ The *particularity* requirement claims that it should explain why these citizens are bound in a special way to obey the political authorities of their own particular state, an allegiance they owe to no other state or government.² These requirements are now generally assumed to frame the debate and thus are an indication of Simmons' lasting influence in framing it.

Yet, clearly, Simmons' most distinctive contribution to this discussion is his argument that no plausible ground of political obligation, by itself or in combination with others, satisfies both of these requirements (at least as states are currently constituted). Not enough people bind themselves to obey their political authorities through acts of express or tacit consent to meet the generality requirement.³ The same holds for acts of accepting benefits under the principle of fairness, or for acts of receiving benefits under conditions that would render obedience appropriate under a principle of gratitude.⁴ By contrast, a natural duty of justice account would seem to meet the generality requirement, since it would bind all citizens living under just governments to obey their political authorities. However, it would fail to meet the particularity requirement, since it would bind them to just governments everywhere and would not explain the *special* nature of the bond that exists between them and their own state or government.⁵ As a result of the failures of consent, fairness, gratitude, and justice as grounds of political obligation, Simmons embraces philosophical anarchism, which denies that citizens are bound in any special way to comply with and obey the political authorities of their own particular state.

Of course, each one of these moves has been challenged, and each of the rival views has prominent defenders.⁶ Here I will be concerned with just one part of this debate: the particularity requirement and its relation to natural duty of justice accounts of political obligation. Simmons' argument against natural duty of justice accounts has prompted two kinds of response. One response denies that the particularity requirement need be met at all.⁷ On this view, as long as a state or government is just, then it follows that it will be justified in enforcing its laws, and its citizens will have a natural duty of justice to obey it and to support it, even if they have no particularized obligations of obedience to it that correlate with its right to be obeyed. Since whether the state is justified in enforcing its laws and whether citizens have a duty of obedience are what fundamentally matter, goes this view, the *particularized* requirement can simply be dropped. The other response insists that a natural duty of justice account can meet the particularity requirement.⁸ If so, and if, as Simmons concedes, natural duty of justice accounts do meet the generality requirement, it would seem to follow that philosophical anarchism is false.

My concern here is with this latter view. Assuming that a natural duty of justice account can meet the particularity requirement satisfactorily, would that show that philosophical anarchism is false? I will argue that this does *not* follow. In fact, I hope to show that, if a natural duty account can meet the particularity requirement satisfactorily, it will establish not the defeat but the triumph of philosophical anarchism. The reason for this conclusion is that its account of practical reasoning would be exactly the same as that which anarchism itself recommends. Faced with legal commands that may conflict with extralegal, moral requirements, an individual's practical reasoning under a natural duty of justice approach would be no different from that championed by anarchism. Given the arguable centrality of such reasoning to anarchism, the resulting view should pose no threat to it—indeed, it ought to be welcomed as anarchism in disguise. My argument,

then, if sound, would place me in an unusual position, for it would amount to showing not that Simmons has gone too far in denying political obligation, which is the more common criticism of his view, but that he has not gone far enough to expose the central flaw in natural duty accounts.

I. The Anarchist Manifesto

What is the approach to practical reasoning that anarchism recommends? The following passage—the concluding lines from Simmons's *Moral Principles and Political Obligations*—I think plausibly represents the core of the view:

For those, like myself, who have always felt uncomfortable with the suggestion that as citizens we are morally bound in a special way to [obey the political authorities of, and support the political institutions of] our own countries, my conclusions in this essay may be reassuring. For those who have believed themselves and their fellows bound by such special obligations, perhaps these remarks can serve as a reminder that citizenship does not free a man from the burdens of moral reasoning. If we have blindly complied in the belief that by doing so we discharged our obligations, we have erred doubly. For, first, most of us have no special obligation of obedience. But second, even if we had such an obligation, the citizen's job would not be to blithely discharge it in his haste to avoid the responsibility of weighing it against competing moral claims on his action. For surely a nation composed of such "dutiful citizens" would be the cruelest sort of trap for the poor, the oppressed, and the alienated.⁹

Call this (manifesto-like) statement *the anarchist manifesto*. According to the anarchist manifesto, our belief in the existence of political obligations serves as a kind of false consciousness that interferes with practical reasoning. In deciding whether to obey some particular law, for instance, we are not to think of ourselves as being under some *prima facie* obligation to obey the law, which may or may not be overridden by competing, extralegal, moral considerations. Rather, since we are under no *prima facie* obligation to obey the law at all, there are only competing moral considerations, none with any privileged status simply in virtue of being law.¹⁰ As moral agents engaging in practical reasoning, then, our task is to weigh these considerations and to adopt that course of action which accurately follows the weightiest ones.

As these remarks suggest, on the standard view of political obligation, the strength of our obligation to obey the law is *prima facie*—neither so strong as to be absolute nor so weak as to be merely one moral consideration among others, but intermediate between the two—presumptive, yet defeasible. The strength of this obligation, moreover, is claimed to be independent of its content. Legal commands should therefore be regarded as describing *prima facie* obligations irrespective of their content.¹¹

The anarchist manifesto encourages us to treat this view with a healthy skepticism. On the one hand, it denies that legal commands describe *prima facie* obligations irrespective of their content. Yet, on the other hand, it does not require us to dismiss legal commands as lacking normative force altogether, or to ignore them entirely in the course of practical reasoning. It simply invites us to regard the strength of any requirements that they may describe as holding in virtue of the normative force of their content and not in virtue of their status as law. The legal prohibition against theft, for instance, does describe a *prima facie* obligation, but according to anarchism it does so in virtue of the normative force of its content.

Both anarchism and the standard view of political obligation, then, allow extralegal, moral considerations to influence practical deliberation. Where they differ is over the strength and the source of the normative force of any requirements that legal commands may describe—the requirements that are to be weighed alongside extralegal ones. Therefore, if we can show that, under a natural duty of justice, the normative force of legal commands is in virtue of, and commensurate with, the moral merit of their content—in other words, that they do *not* describe obligations whose strength is *prima facie* irrespective of their content—then the resulting view will be for all intents and purposes equivalent to anarchism and unlike the standard view. Practical reasoning, in that case, would proceed exactly as the anarchist recommends. There would be legal commands whose normative force holds in virtue of their content and not in virtue of their status as law, and there would be (possibly competing) extralegal, moral considerations. Our responsibility as moral agents would be to weigh them and to adopt that course of action which accurately follows the weightiest ones.

II. Leaving Particularity Behind

Since I am assuming for sake of discussion that the particularity requirement can be met (satisfactorily) by a natural duty of justice approach, I shall not rehearse here any attempts to meet it. Thus, a natural duty of justice, I shall assume for sake of discussion, involves all of the following normative commitments:

1. It implies a duty to comply with and to support just *institutions*.
2. This in turn implies a duty to comply with and to support just *political* institutions.
3. This in turn implies a duty to comply with and to support just political institutions that (are claimed to) *apply* to us.
4. This in turn implies a (particularized) duty to comply with and to support the political institutions of our *own country and no others* (on the assumption, for sake of discussion, that no other political institutions apply to us).¹²

The question I want to ask is this: Given these assumptions, would the normative force of legal commands be in virtue of, and commensurate with, the moral merit (the justice) of their content? If the answer is yes, then practical reasoning would seem to be no different than under anarchism.

The most plausible case for this answer comes from considering political institutions that administer (without any discrepancy between what is codified and what is enforced) basic legal protections, rights, and freedoms required by justice: legal prohibitions against theft and murder, rights protecting the security of the person, liberty of conscience, freedom of expression and action, and so on. Intuitively, it seems that if we have a duty to comply with and support institutions that protect such rights—a duty whose strength is *prima facie*—it is in virtue of the *prima facie* force of rights that afford these protections, in virtue, that is, of their content.

Matters become more complicated when we move from the realm of basic rights and freedoms to the provision of basic needs and welfare, or benefits valuable for any worthwhile life¹³ (taken here to be requirements of justice, too). The complication can be brought out by considering, say, a government whose domestic police are thorough professionals—justly enforcing just rules of conduct that protect basic rights and freedoms—but whose treasury officials, the ones responsible for collecting taxes and using them to administer social services providing basic needs and welfare, are thoroughly corrupt (so corrupt,

in fact, that they embezzle virtually every penny they collect). Given our natural duty of justice to comply with and support just political institutions, would we have a duty to comply with and support these institutions?

On the one hand, it may look like this question forces us to reach an all-things-considered judgment about the overall justice or injustice of these political institutions, and to conclude that we do have a duty to comply if and only if this all-things-considered judgment comes out favorable. On the other hand, this should strike us as an oversimplification, for it seems plausible to claim that we are dealing with not one political institution, but two: interior and treasury. Interior operates justly. We have a duty to comply with and to support it that obtains in virtue of the content of its commands. Treasury operates unjustly. We have no duty to comply with commands whose content is corrupted by corrupt officials, or to support it with our taxes.¹⁴

Of course, these are not the only choices. We could still strive to reach an all-things-considered judgment about the overall justice or injustice of these political institutions, but recognize that such a judgment admits of degrees. We might then be able to explain the intuition that, overall, their legal commands possess less normative force than they would otherwise by appealing to this judgment. But this would seem unacceptable for two reasons. First, it rests, implicitly, on the view that their (collective) normative force is in virtue of, and commensurate with, their content. Second, there is no good reason to saddle the natural duty of justice approach with such a coarse-grained instrument. We need not insist, for instance, that all legal commands suddenly get demoted from describing *prima facie* duties to stating merely one moral consideration among others, or coin some intermediate category that describes their force. Instead, we can explain the nuances in our intuitive responses much more readily by individuating institutions and indexing our duties of justice to each one.

Part of the difficulty, these remarks suggest, may seem to lie in deciding how to individuate institutions. I understand institutions to consist not only in primary rules and secondary rules that define offices with powers to make primary rules, but also (as suggested earlier) in how these primary rules are *administered* by those who occupy such offices. This last clause is needed in order to make sense of the intuition that institutions are unjust, no matter how good they look on paper, if their primary rules are corrupted by corrupt enforcement or administration. However, I shall offer no criteria for individuating institutions, since I believe the main difficulty lies elsewhere: in deciding how to handle pockets of injustice that exist within an (already individuated) institution acknowledged to be just (or at least not unjust).

Consider a case where treasury is just because it aims to meet the basic needs and welfare of the population, and to provide it with benefits for any kind of worthwhile life. In addition, it collects taxes in accordance with tax laws whose distributive consequences are just. It is efficient and fair in enforcing these laws. However, one significant branch of treasury, the branch responsible for allocating what it collects to the needy (a Health and Human Services)—though not corrupt—is so wasteful, inefficient, and inept at meeting these needs that they go largely or completely unmet. Given our natural duty of justice to comply with and support just political institutions, would we have a duty to comply with and support this one?

Once again, there is a perfectly natural way to answer this question. According to the natural duty of justice, we have a duty to comply with and to support the treasury insofar as it aims to meet the basic welfare needs of the population and to

provide benefits needed for any worthwhile life, collects taxes in accordance with just tax laws, enforces them fairly, and so on. But insofar as its Health and Human Services (HHS) is failing, miserably, to achieve what justice requires in terms of meeting basic needs, we have no duty to comply with and to support it. Our duty is to serve justice. Health and Human Services is not serving it. So we have no duty to continue supporting HHS. Our duty is to make sure that these basic needs are met, and we should find whatever alternative means exist (institutional or otherwise) to meet them. Practically speaking, it may be difficult for us to sever our support of HHS. We may not be able to reduce our tax payments in the right amount or designate their destination (or want to risk legal penalties for noncompliance). Nonetheless, morally speaking, if the reasoning here is sound, we may be entitled to, given the normative priority accorded to meeting basic needs.

The trend, it should be clear by now, is toward disaggregation. There is no need for us to reach an all-things-considered judgment about the justice or injustice of our political institutions overall, or even about individual institutions, and decide on that basis what the natural duty of justice requires and the strength of the requirement. Instead, we may proceed piecemeal. We can evaluate branches of institutions—indeed, it seems, we can evaluate individual rules, laws, and legal commands, for there seems no principled basis for lumping all that is to be evaluated together (more on this in a moment). But then the normative force of what is commanded would stand on its own: its normative force would depend entirely on its individual content. If we have *prima facie* duties to avoid stealing or harming people in other ways, or (to pay taxes) to help feed, clothe, and house the neediest, for example, the strength of the requirement would be in virtue of the content of these legal commands.

Against this conclusion, I imagine three types of objection. The first claims that the strength of the requirement to support just political institutions does not always depend on the strength of the normative force of the content of their commands. Suppose, for example, that HHS is neither corrupt nor inept, but not the most efficient readily available institution for meeting basic welfare needs either. Rather, it is adequate most of the time, occasionally good. In that case, its adequacy may seem to justify the requirement to support it as being merely one moral consideration among others, a requirement with less strength than a *prima facie* duty. Yet, nonetheless, our duty to support it is *prima facie*, or so claims the objection on behalf of the natural duty of justice account. Only *very* weighty competing requirements will justify using alternative institutions in place of HHS, whereas if the requirement to support it were merely one moral consideration among others, the competing requirements would only need to be (slightly) weightier.

The second type of objection claims that, on a natural duty of justice approach, we would still have *prima facie* duties to contribute to and support political institutions that make discretionary public goods (highways, industrial and scientific infrastructure, economic regulation, cultural and recreational activities) possible, even though they are not strictly speaking *required* by justice. But what is optional or discretionary can at most be one moral consideration among others, and then only on condition of its independent value, which is to be weighed alongside competing values. So the (*prima facie*) strength of the requirement to support just political institutions does not depend on the (one-consideration-among-others) strength of the normative force of the content of their commands.

The third type of objection extends this reasoning to political institutions that solve coordination problems (e.g., rules of the road). Strictly speaking, their commands are not required

by justice, and so would seem to be, at most, one consideration among others, were their strength commensurate with their normative force, whereas intuitively our duty to comply with them is *prima facie*—and so it is, claims the objection, according to the natural duty of justice.

One question that these objections raise is whether the duty of justice really does require us to go beyond what justice requires, and to do what it allows (under certain conditions). It is not clear to me that it does require anything so expansive, and, indeed, I suspect that the objections (or at least the second and third ones) may be conflating beneficence with justice. If we have duties to promote the good of others, these are imperfect duties of beneficence, in which case our requirement to support any specific institutions (or to obey their legal commands) that provide collective, discretionary public goods would fall short of having *prima facie* force. But if they fall short of having *prima facie* force, the strength of our requirement to support such institutions would be merely one consideration among others, dependent upon the independent value of the goods they provide. If this is correct, then we have further confirmation for the claim that the strength of any requirement to comply with their commands is in virtue of, and commensurate with, the normative force of their content.

For the most part, this same line of reasoning may be used to address solutions to coordination problems as well. However, some such solutions—like rules of the road—may be construed as being derived from a more general duty, with *prima facie* force, to avoid harming other people. Again, if this is correct, it confirms the claim that the strength of these requirements depends on the normative force of their content.

The first objection requires slightly different treatment. The commands in question seem to aim at what justice requires, not what it merely allows. However, by hypothesis the institutions are not the most efficient readily available ones at meeting basic welfare needs. They are usually adequate, occasionally good, but not the best. Yet why would its adequacy justify a requirement to support it that possesses less strength than a *prima facie* duty? Our intuitions about a natural duty of justice, I think, do not require us, in attempting to serve justice, to adopt the most efficient means of fulfilling what that duty requires. Our intuitions about what would fulfill that duty seem to support instead the more modest requirement that we adopt adequate means to that end. If that is right, then the adequacy of HHS in meeting basic welfare needs would seem capable of justifying a requirement to support it that possesses the strength of a *prima facie* duty rather than being merely one moral consideration among others. We have a (*prima facie*) duty to support just political institutions, including those that (by hypothesis) apply to us. Health and Human Services (by hypothesis) qualifies as adequately just. Hence, we have a (*prima facie*) duty to support it, and to comply with its commands. Moreover, the *prima facie* strength of this requirement is in virtue of the normative force of its content to help the neediest as a requirement of justice—in virtue, that is, of its content (which, by hypothesis, is undermined by neither corruption nor ineptitude). Given its *prima facie* strength, we may circumvent HHS and use alternative means of fulfilling our duty to the neediest only in the most compelling circumstances—although nothing morally prevents us, of course, from using them both.

Perhaps, though, one might object that these responses overlook the fact that, when commands issue from *democratic* institutions, the duty of justice applies, since democratic institutions are just. Thus, the second (discretionary public goods) and third (coordination) cases ought to be assimilated to the first, as ones involving the duty of justice, not beneficence.

But, more broadly, as long as commands issue from democratic institutions, then even where their content is morally defective, we would have a *prima facie* duty to comply with them.

If this claim rests on a proceduralist account of democracy, then its plausibility will be no greater than such an account. And such an account is not plausible, since it would imply that, under the natural duty of justice, we would have a *prima facie* duty to comply with and support democratic institutions that produced, without fail, the most egregiously immoral legal commands, when it would be more natural to claim that we were not bound at all to comply with or support them given their thorough injustice. But there is no good reason to saddle the natural duty of justice with such a commitment.

Instead, we might suppose something like the following. The law forms a seamless web. Therefore, rather than disaggregate, as argued before, and consider legal commands individually for evaluation, we must consider the value of the whole. Pockets of injustice, corruption, ineptitude, and inefficiency no doubt exist throughout that whole. But they are to be evaluated in the context of the whole. If the whole is just overall, and its justice is produced, however imperfectly, by democratic institutions whose instrumental and constitutive role in securing justice is assumed, then we are under *prima facie* duties to comply with and support whatever individual legal commands they issue, irrespective of their content. This will include not only commands whose content is redundant with what justice requires, but also ones that require support of institutions that provide discretionary public goods, solve coordination problems, or that work inefficiently or much worse, or whose content is morally defective. In short, we must take into account the great value of democracy and not minimize the damage to it that comes through noncompliance or disobedience. Would a position like this refute anarchism?

III. Practical Reasoning Revisited

We have seen, so far, a picture of practical reasoning under the natural duty of justice that looks exactly the same as it should under the anarchist manifesto. When we face legal commands, we ought to consider them individually, and accord them the weight in our practical deliberations that they deserve, which will be in virtue of, and commensurate with, the normative force of their content. They do not achieve any normative status, or gain any additional normative force, simply in virtue of their status as law. It may be that they describe *prima facie* obligations or duties, or that they describe moral considerations that are merely one among others. They may state duties of greater urgency than other duties, or they may state considerations that ought to be given no weight whatsoever. In each case, the verdict will depend on the normative force of their content. But that is not the end of the matter. Practical deliberation, done responsibly, will consider extralegal factors as well, which may potentially tip the balance against obedience and in favor of noncompliance, circumvention, or resistance, depending on the circumstance.

All of this the anarchist can accept without reservation, for it dispenses with the false consciousness that attaches to regarding legal commands as possessing normative force irrespective of their content. The one exception to this is the position that we described at the end of the last section, where the value of democracy is factored in.

But now the lines between the two views are continuing to blur. Is it really the case, we might ask, that factoring in the value of democracy converts disaggregation into aggregation, so that where we might have previously considered the normative force of legal commands to depend individually on their content, they are now all *prima facie* in strength irrespective

of their content, provided that, as a whole, they are reasonably just? Would it not be more straightforward, we might wonder, to regard the appeal to this value as expressing a caution not to take violating democratic rules too lightly, not to minimize the damage to democracy that accompanies noncompliance? If so, does this not seem like precisely the kind of *extralegal* consideration that an anarchist would claim we must weigh in our practical deliberation? After all, noncompliance can be based on the mistaken belief that one's judgment of means to an end required by justice is better than that selected by the law. Noncompliance can also be based on ignorance of consequences, or on the mistaken belief that others will not notice or follow suit. It can be based on selfishness rather than a proper regard for the independent value of collective goods. If widely mimicked, it has the potential to undermine fragile democratic institutions.

Surely these are all reasons for caution, and just as surely an anarchist can and should take them into account when engaged in practical reasoning—neither minimizing nor exaggerating the dangers.¹⁵

Endnotes

1. A. John Simmons. *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), 38.
2. *Ibid.*, p. 31.
3. *Ibid.*, chs. 3, 4.
4. *Ibid.*, chs. 5, 7.
5. *Ibid.*, ch. 6.
6. See Harry Beran, *The Consent Theory of Political Obligation* (London: Croom Helm, 1987); George Klosko, *The Principle of Fairness and Political Obligation* (Lanham, MD: Rowman & Littlefield, 1992); A.D.M. Walker, "Political Obligation and the Argument from Gratitude," *Philosophy & Public Affairs* 17 (1988): 191-211; and Jeremy Waldron, "Special Ties and Natural Duties," in *The Duty to Obey the Law: Selected Philosophical Readings*, edited by William A. Edmundson (Rowman & Littlefield, 1999), ch. 12.
7. See Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (New York: Oxford University Press, 2004), ch. 5.
8. Waldron, "Special Ties and Natural Duties."
9. Simmons, *Moral Principles and Political Obligations*, 200-01.
10. See also Joel Feinberg, "Civil Disobedience in the Modern World," in *Philosophy of Law*, 5th. ed., edited by Joel Feinberg and Hyman Gross (Wadsworth, 1995), 121-33.
11. William A. Edmundson. "State of the Art: The Duty to Obey the Law," *Legal Theory* 10 (2004): 215-59.
12. This is compatible with our being bound to comply with the laws of foreign countries during visits, although this obligation would be explained by our consent—our permission to visit being conditioned on our (perhaps tacit) agreement to obey.
13. By "benefits valuable for any worthwhile life," I have in mind what George Klosko calls presumptive benefits, which he argues ground political obligations. See Klosko, *The Principle of Fairness and Political Obligation*.
14. I am assuming that the content of the command is something like, pay taxes for these basic services (or so that purpose or end is generally assumed)—not to line the officials' pockets.
15. I would like to thank the National Endowment for the Humanities for its support during its 2005 summer seminar on Political Obligation, Democracy, and Human Rights, during which the ideas for this article were first discussed and developed. Any views, findings, conclusions, or recommendations expressed in this publication do not necessarily reflect those of the National Endowment for the Humanities.

The Particularity Problem

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I.

The majority of my writing in the area of “law and philosophy” has concerned questions about the existence, nature, and ground of a possible moral duty to obey the law (and, more generally, questions about the possibility of generic political obligations). A perhaps disproportionate percentage of my published work has been focused on these problems, including two books, parts of two others, and numerous articles.¹ Throughout I have argued that there is no moral duty of legal obedience (strictly construed) in modern states, at least as these are currently ordered, and that modern states thus lack the moral legitimacy² (or right to rule) that would in part correlate with a moral duty of subjects to obey their laws. These negative conclusions constitute the core of the position that is now widely referred to as “philosophical anarchism.”³ The continuous, ongoing nature of my arguments on this subject has been necessitated less by my personal compulsiveness than by the precise nature of the negative conclusion I have sought to establish. Because I do not believe that asserting the existence of a moral duty to obey involves any internal consistency (which would permit a general, a priori rejection of all possible accounts of that duty⁴), I have had to try to defeat proposed accounts of this duty one by one, as they have been put forward, modified, and combined. This process has perhaps gone on for sufficiently long to try the patience even of those who agree with my conclusions.

But as the contributors to this issue of the *APA Newsletter on Philosophy and Law* all make clear, others writing about the duty to obey have been less persuaded by my negative arguments about a moral duty to obey the law than they have been by the various framing assumptions that I have employed in discussing the problem. Foremost among these assumptions (and probably the most original of them) has been my demand that an account of the duty to obey meet the “particularity requirement.” This requires, roughly, that such an account be able to explain why the moral duty (or obligation) to obey is owed specially to one particular political society (or to its subjects or governors) above all others (namely, to “our own” societies), rather than offering only some moral reason for obedience that would bind one equally or more imperatively to obey or support the laws or political institutions of other societies. The moral duty to obey the law should be understood to be a duty to specially obey *our own* laws in our own societies, thus tying this duty to the idea of allegiance and to the exclusive relationship of citizenship.⁵ While this particularity requirement is certainly implicit in many historical accounts of the duty to obey, it was not, I think, ever explicitly formulated before I did so in my 1979 book on political obligation.

My principal use of the particularity requirement has come in trying to reveal the limits of appeals to natural duties in these debates about the duty to obey. If (to take the most familiar examples) the duty to obey is said to be implied by a natural moral duty to promote a morally important end such as justice or utility, the duty to obey will not be appropriately “particularized.” Justice and utility can be promoted abroad as well as locally (domestically), and only circumstantial considerations can dictate where one’s efforts ought to be made. Natural duty accounts, in short, can provide no principled grounds for preferring domestic legal obedience as a way of promoting justice or utility to domestic legal disobedience that yields

superior non-domestic production of those goods abroad.⁶ The aspect of the particularity problem that I have thus stressed most frequently has been that of *under-inclusiveness*: natural duty accounts of our duty to obey domestic law fail to show why those (or all of those) persons whom we would normally consider to be appropriate subjects of a duty to obey (say, the uncontroversial core of willing citizens) are in fact specially bound to domestic law and domestic political institutions.

But the particularity problem also has another side. Some attempts to ground duties of domestic legal obedience utilize (purported) moral principles that are actually *over-inclusive*—principles that, in explaining why citizens are bound to obey, also would imply duties of obedience for persons or groups (obvious “outsiders”) that nobody would be inclined to say are plausible candidates for such duties. Here is where (as I hope to show below) issues concerning historical injustices, contested claims to political authority, and states’ claims to geographical territory factor into the debates about the duty to obey.

So just as *under-inclusive* accounts fail to satisfy the particularity requirement by their inability to account for the special duties of obedience of everyone in the “right” group (or of anyone in that group all of the time), so *over-inclusive* accounts can fail by implausibly implying duties of domestic legal obedience for groups that plainly lack such duties. The particularity requirement demands most generally that the *special*, exclusive moral ties of obedience and support be justified for—and *only* for—those who are naturally construed as being real members of that political community. As we will see, the desire to avoid under-inclusiveness in accounts of the duty to obey has often produced results that suffer from the opposite particularity problem of over-inclusiveness.

Each of the contributions to the present issue of the *Newsletter* reveals in one way or another, I think, the centrality to these debates (about the duty to obey the law) of the problem of particularity—though some of the papers do so more clearly than others—and it is primarily on the importance of that particularity problem that I want to concentrate here. Before I begin, however, I should express my gratitude to the contributors for their willingness to consider and write about my work for this issue of the *Newsletter*. I am especially pleased to have the opportunity to respond to the arguments of these particular critics. Professor Klosko has been my friend and colleague at the University of Virginia for many years, and we have over the course of those years aged gracefully together in our incessant debates about political obligation. Klosko’s contribution here was obviously calculated to age me further. Professor Naticchia once had the dubious honor of writing his doctoral dissertation under my supervision; but he managed to overcome this early handicap and has gone on to produce in the intervening years a significant body of clearheaded and interesting work, which I have always enjoyed reading. Professor Lefkowitz is a much more recent acquaintance, but I have been fortunate to be able to interact with him in conference and paper settings and have had the pleasure of reading nearly all of his many exemplary publications. Finally, let me thank Chris Griffin and Steve Scalet, the editors of this *Newsletter*, for their generous decision to produce an issue organized around my work in the area and for their labors in bringing it to completion.

II.

Let us begin thinking more about the particularity problem by asking an obvious question. If, as I have urged, satisfying the particularity requirement is centrally important to developing a plausible account of the moral duty to obey the law (and of generic political obligations), why was (and, to a certain extent, still is) this requirement not more widely acknowledged in discussions of the topic? The principal explanations, I think,

are two. First has been a misunderstanding about the ways in which the theoretical must accommodate the real. This much seems clear: if theorizing about politics is to avoid charges of wild utopianism, theory must proceed against background assumptions about the world—about persons, about persons' possible motivations, about the likely nature of human interactions, about the workings of social institutions, etc.—that are acceptably realistic.⁷ A normative theory must not make itself inapplicable to the real world by ignoring salient and largely unchangeable features of the world.

But, one might claim, one salient and largely unchangeable feature of the real world is its division into sovereign, territorial political units. Another is that virtually all of us are born into these polities and in consequence taken by most (including the polities themselves and international law) as their subjects, provided only that political authorities refrain from despotism. But if we take this *de facto* division of humanity into subject populations to be simply a fact about the world that theory must accept, then we may mistakenly infer that the particularity problem is no problem at all. The real problem, it may seem, is simply that of how to explain or justify the (already acknowledged) local bonds of political and legal obedience (in non-despotic societies). Neither negative, anarchistic conclusions about our duty to obey nor worries about the particularity of the best account of such a duty might appear to be on the table. Much of the twentieth-century discussion of the duty to obey took place, I believe, with these assumptions behind the scenes, which in part accounts for the deeply conservative character of that discussion. It requires little imagination, however, to see that such a stance simply amounts to an undefended and unmotivated moral privileging of the political status quo. If the precise justification of a moral duty to obey the law is open to theoretical dispute, then so must be its very existence and the particularity (or non-particularity) of the justified moral bond.

The second explanation of the relative lack of attention to the particularity problem, and one that is probably at least as important as the first in explaining the orientation of contemporary political philosophy, is the influence of John Rawls.⁸ Rawls, of course, virtually recreated political philosophy as a subject of serious study in the twentieth century, and his majestic work on social justice quite rightly determined the mainstream preoccupations and set the principal objectives of political and legal theory during the past fifty years. But Rawls' political philosophy also has two characteristics that tend to obscure the importance of the particularity problem in accounts of the duty to obey. The first of these is the way in which Rawls' theory focuses exclusively on the requirements for substantively just social institutions at the expense of failing to acknowledge morally relevant *historical* considerations.⁹ Rawls' theory of justice, of course, advances two now-famous principles to which the basic structure of a just society must conform. To the extent that a society is (reasonably) just in these terms, Rawls argues, the natural duty of justice requires that all to whom its institutions "apply" support it and comply with its rules.¹⁰

The problems with this position (to which I have repeatedly pointed in my writings on the subject) are two. First, it is simply unclear why a duty to do justice or to promote the good of justice should be thought to bind us to scrupulous domestic legal obedience, given that justice can be done in a variety of ways and that justice is needed in every society (and that support for just institutions may be much more urgently needed abroad than at home). This is just the "under-inclusiveness" objection mentioned earlier. The second problem, though, lies in trying to understand "apply" in a way that renders Rawls' position tenable. If by "apply" Rawls means that institutions apply to us when they name us (explicitly or implicitly) as subject to

their rules—or when, say, international law so names us—then Rawls over-inclusively and without argument simply gives moral sanction to the status quo. If by "apply" he instead means that institutions apply to us, say, when we consent to be bound by their rules or otherwise freely *make* those rules apply to us, then the appeal to a natural duty of justice is redundant. Our voluntary acceptance of the authority of the institution would be sufficient by itself to explain any duty of compliance and support.¹¹

One might think that because Rawls is only speaking of *just* institutions that "apply" to us, there can be no real objection to allowing the *de facto* division of the world into subject populations to determine people's moral duties of legal obedience (our first option for understanding "apply"). But thinking that would be to simply ignore the problem of *historical* injustices. Substantive justice in the basic structure of society (including democracy and broadly egalitarian distribution of primary goods) is nonetheless surely consistent with a society's record's including grave historical injustices. In cases where the injustice at issue raises questions about that society's right to administer even its substantively just institutions to a subject population—say, to an illegitimately subjugated indigenous people or to the inhabitants of an illegitimately annexed or conquered territory—our concerns about claims that there is nonetheless a moral duty of legal compliance should not be calmed simply by pointing to the substantive justice of the institutions in question. Claims of a right to political autonomy by such groups cannot be undercut by arguing that the coercively imposed political institutions are substantively just. Claims to autonomy are claims that *no* institutions, however just, may be coercively imposed by others. If, then, we read Rawls as intending our first reading of "apply," his account faces the objection that it over-inclusively implies duties of compliance and support for those who are plainly not legitimate subjects of the political societies within whose claimed territories they reside. Because these kinds of historical injustice are ubiquitous in the real political world, the inability to deal with them persuasively severely discredits a theory.

The second feature of Rawls' political philosophy that precludes an interest in problems of particularity—and the feature that actually explains, I think, why Rawls is not uncomfortable about the "application" problem just noted—is the peculiar structure of Rawlsian ideal theory. Rawls, remember, distinguishes between ideal and nonideal theories of justice. Ideal theory establishes the "target" or ideal of social justice toward which our efforts in institutional reform ought to be aimed. By nonideal theory, Rawls appears to have in mind the theory of transitional justice: letting our ideal theory set the target, we ask what rules ought to be followed to move in fair and politically feasible ways from unjust circumstances to that ideal of social justice. The "peculiar" aspect of Rawlsian ideal theory lies in the assumptions that shape it. Ideal theory "assumes strict compliance" and "favorable circumstances" and "develops the conception of a perfectly just society and the corresponding duties and obligations of persons" in it.¹²

So far, so good. But by allowing ideal theory to focus solely on issues of internal or domestic justice, Rawls in effect limits his thinking about justice—and about the duties and obligations of persons relative to just institutions—by the further assumption (for purposes of ideal theory) that there is only one society in the world, a society that "we enter only by birth and exit only by death (or so we may appropriately assume)."¹³ This assumption is elaborated and played out in the two "steps" of ideal theory Rawls describes in his later work: the first step concerning purely domestic justice, only after which we develop the ideal theory for international relations.¹⁴ But if in ideal theorizing about just institutions and the duties of persons

toward them we assume a one-state world, we will of course have no concerns about particularity. If there is only one society, a society which each enters by birth, there can hardly be any question about *to which society's* institutions or subjects our duties of support or compliance are owed. Similarly, unjust subjugation or annexation cannot be problems for a society whose boundaries and subject population are imagined to be uncontroversially fixed. Problems of historical injustice are simply eliminated from consideration by this approach to ideal theory. It is, I think, a major defect of Rawlsian ideal theory that it does not even permit questions about particularity—about either under- or over-inclusiveness in its account of the duty to obey the law—to be raised. And the far-reaching influence of Rawlsian thinking about justice (and about our duties of legal obedience based on the natural duty of justice) largely explains why the particularity problem is not more widely discussed or considered in contemporary legal and political philosophy.

III.

I have said that the particularity problem is at issue in each of the essays contributed to this issue. This is probably least obvious in the case of Klosko's essay. In fact, however, the problem, though carefully concealed, looms largest in Klosko's case—and helps to explain why Klosko finds so many features of my own view (and of my earlier criticisms of his positions) mysterious and confusing. Klosko's approach to the duty to obey, like Rawls', illicitly privileges the status quo by ignoring the possibility of morally relevant historical considerations. For Klosko, as for Rawls, the boundaries of existing substantively—but not necessarily historically—just polities¹⁵ define the relevant domains of moral authority over persons and territories; for, in Klosko's case, it is existing polities that structure and administer the “cooperative schemes” that provide important public goods to those domains. Since the mere receipt of those (largely unavoidable) public goods is for Klosko sufficient to ground persons' duties to obey, Klosko's theory leaves no room to consider the morally crucial historical relations between states and their territories and populations. If a substantively (but perhaps not historically) just polity delivers important public goods to all parts of its territory, it matters not on Klosko's theory how that polity acquired that territory—which means that it matters not to persons' duties of obedience how they came to be recipients of the goods delivered to the territory within which they reside. Bloody conquest, coercive annexation, and wrongful abduction all appear, implausibly, to be possible paths to legitimate authority over territories and people on this theory, provided only that those territories and people are subsequently brought under the umbrella of a substantively just scheme that distributes unavoidable and important public goods.¹⁶ Societies with substantively identical schemes are treated identically by Klosko, even if their histories are dramatically different in morally important ways.

As I have already suggested, the inability of a theory to take seriously the de-legitimizing effects of such historical atrocities strikes me as an enormous defect, not one that can be repaired by tinkering at the edges of the theory or polling focus groups. Nobody, I assume, could seriously assert that a substantively just society—say, Canada—could come to have legitimate authority over (and be owed duties of obedience by) persons—say, the inhabitants of Alaska—simply by forcibly seizing and extending the provision of public goods (including franchise rights) to the territory in which those persons live. Yet Klosko's position forces him to say just that. As far as I can tell, Klosko seems inclined to dismiss such concerns as mindless Lockeanism. But the Lockean's insistence on consent as the source of our duty to obey plainly shows a sensitivity, absent from Klosko's theory, to the need to ensure that even beneficial

political arrangements not be counted legitimate without some kind of legitimizing pedigree. One cannot genuinely satisfy the particularity requirement by simply *asserting* particularity in the structure of one's theory, by (e.g.) simply asserting that the boundaries of the *de facto* activities of any importantly beneficial scheme are morally unassailable.

These deep problems in Klosko's theory become even more apparent when one examines his presentation of that theory in his current essay. There he employs his usual claims and examples. But the very examples Klosko takes to support his theory plainly themselves rest on undefended assumptions of legitimacy in the cases of political subjection at issue, rest on assumptions that the status quo defines the contours of political legitimacy. Grey and Brown are said simply to “live” in territories X and Y (Klosko, 4) and, in virtue of having benefited, to be obligated “to cooperate with *their* respective cooperative schemes” (Klosko, 4; my emphasis). What, exactly, makes those schemes “theirs”? Apparently, the simple fact of their having benefited from a substantively just (i.e., roughly egalitarian) “distribution” of an important public good through residing in a society with democratic decision rules. What, though, if Grey is a member of a coercively subjugated and unjustly decimated indigenous people who (quite reasonably) disputes Government X's title to rule? What if Brown lives in a forcibly annexed (or coercively ceded) portion of Y's territory? What if one of them was a member of an ethnic or racial group that was abducted and involuntarily relocated in the state that justly provides to all important public goods like military protection and pollution control? What if one of them is a supporter of a reasonable rival claimant (say, a legitimate government in exile) to the political authority being exercised by Government X or Y in its administration of the society's “cooperative schemes”?

Nobody, I venture, would automatically conclude in such cases what Klosko concludes—that Grey and Brown have clear obligations of fairness to do their parts even in coercively imposed “cooperative” schemes that yield those public goods. But Klosko's theory gives him no room to draw the more reasonable—the more skeptical—conclusion that those schemes are not *theirs* in a way that makes obligatory their cooperation with them. A scheme is not made *yours* (in any morally interesting sense) by your simply having unavoidable public goods rammed down your throat, in a fashion approved by the majority of those pushing the ram.

One could, of course, simply add to Klosko's theory (or to a theory like Rawls') an *ad hoc* provision that historical injustice (of a sort that would result in plainly over-inclusive obligation claims) outweighs or voids any obligations of fairness that would otherwise arise. But it is important to see that such a move would either be *nothing but ad hoc*—that is, completely unmotivated by the theory itself, motivated only by the need to cook up the correct result¹⁷—or would have implications that undercut the theory as it has actually been presented by Klosko. The first option, of course, is indefensible on its face. But if we try to imagine what the *motivation* might be for Klosko's making exceptions in cases of these kinds of grave historical injustices, the only natural explanation would seem to be this: that even significantly beneficial (and “democratic”) “cooperative” schemes may not be coercively imposed on people, with requirements that they participate and do “their parts,” where those people are entitled to govern themselves, to choose their own paths and administer for themselves any beneficial schemes they might favor. Schemes must be *genuinely* cooperative (not just *called* cooperative, as in Klosko's theory), with participants *freely* participating and accepting their benefits, before those participants are bound to do their parts by obligations of fairness. But acknowledging *that*

motivation would be fatal for Klosko's ambitions. For it would bring his position directly in line with the Lockean philosophical anarchist's conclusion that the path to political legitimacy is the path of *voluntary* political relationships—precisely what Klosko has always denied.

Once the nature of Klosko's predicament is made apparent, it becomes easier to appreciate why he cannot seem to understand the point of any of the aspects of my position about which he complains in his essay. Consider, for instance, Klosko's remarks on the "subjective conditions" that I have argued must be satisfied in order for the benefits of schemes to count as "accepted" in the right way (so that obligations to reciprocate for these benefits can be plausibly claimed to arise). My claim was (roughly) that there is an important moral difference between beneficiaries of schemes who take those benefits "willingly and knowingly" and those who regard the benefits as in essence forced upon them (or those who take them in non-negligent ignorance of their source¹⁸). On its face, it is hard to see why any reasonable person would think otherwise. But Klosko's position is precisely that such subjective differences matter only if the "benefits" in question do not count as benefits at all for their recipients (Klosko, 6). That persons are opposed to having some particular group or government administer the public provision of goods—perhaps because they have been wrongly subjected to that administration—is simply irrelevant for Klosko. But by now it should be clear what the subjective conditions I've defended are accomplishing: they are part of the proper understanding of the principle of fairness precisely because without them one is left with Klosko's over-inclusive (thus indefensible) version of the principle, which straightforwardly fails the particularity requirement.

Klosko regularly attempts to gain illicit rhetorical advantage on this subject by writing as if acknowledging these subjective conditions for acceptance of benefits means that people who simply *prefer* not to do their parts in cooperative schemes are, under these conditions, excused from any obligation to do so. (Throughout his current essay, things are no different on this score: Grey and Brown, he says, "would prefer" not to bear the burdens of supporting the scheme [Klosko, 4]; "it is not enough for Jones to say simply that he would prefer not to cooperate" [Klosko, 5].) But as Klosko knows perfectly well, my position has never been that those who merely "prefer" not to do their part are thereby excused from doing so. My version of the principle of fairness also condemns simple free riding. The claim actually in question is this: where, according to the values of the *recipient* (not the values of Klosko or others), the conjunction of the goods received from and the price demanded for them by the scheme does not constitute a net benefit—because of the character of the goods, the nature of the price, or the nature or source ("administrator") of the scheme—recipients of goods are not obligated (at least as a matter of *fairness* to other participants in the scheme) to reciprocate for receipt of those goods. The motivation for this position should by now be clear. These "subjective conditions" are what properly particularize a fairness account of the duty to obey to only those persons who cannot honestly claim that the "cooperative scheme" is, on balance, not a good for them. As far as I can tell, Klosko has never advanced any argument against *that* position; rather, he has chosen again and again to refute a much simpler position on "subjective conditions," one that is (as far as I can tell) held by nobody.

A similar response is available to Klosko's dismissal of my demand that "cooperative schemes" be strongly or genuinely cooperative before they may give rise to obligations of fairness. Klosko says in reply only that I have "no real argument" for my position (Klosko, 7). The argument, of course, has already been

offered,¹⁹ but is ignored by Klosko. I will not restate it here. In this context, however, the point of the demand for strong cooperation should be even clearer. If obligations are taken (as they are by Klosko) to arise from even the weak cases of "cooperation" I discuss—where benefits flow to persons from the mere coordination of the actions of others, without regard to others' motives—the fairness account of the duty to obey becomes even more wildly over-inclusive. Not only are those included who have been historically wronged (normally by the very entity that administers the society's "cooperative schemes"). Now we will be committed to saying as well that we have obligations of fairness to *reciprocate to* (to "repay," so as not to "take unfair advantage of") others who have benefited us entirely accidentally or even quite unwillingly. This, I take it, is simply implausible on its face. We cannot owe such a *debt* to such people any more than we can be indebted to someone for benefits he gives us only at gunpoint.

Consider finally what Klosko dismissively calls my "classification argument" (his name for it, of course, suggests that the argument concerns only what we *call* the relevant obligations or duties of obedience). His response, predictably, is that "it does not matter whether we describe the bases of their requirements as fairness or natural duty" (Klosko, 5). But, of course, we are not talking merely about how we "describe" or "classify" a duty. Our questions concern the *character* of the moral principle at work in an account of the duty to obey and consequently the sort of account that principle is (in virtue of its character) capable of yielding. As we have seen, natural duty accounts face serious particularity problems. And Klosko's discussion focuses throughout *not* on the nature of the schemes he discusses and the relationships of their participants—on which matters of *fairness* properly depend—but only on the *magnitude* of the benefits the schemes produce and the *needs* of the people implicated in those schemes. Grey's and Brown's "compatriots" desperately *need* some good; nothing is said about the *relationships* between them and their "compatriots."

When Klosko recasts my own examples to make them "more relevant" (that is, to make them better suit his purposes), he makes additions like supposing that "hearing the concert [is] necessary to preserve acceptable lives for all inhabitants of the community" (Klosko, 6). But if meeting society's needs (or, more properly, the needs of its inhabitants) is the moral concern at issue in Klosko's account, we ought to be examining the character of moral principles that are oriented toward that concern—such as principles of rescue or charity or beneficence or equality. But principles of that sort face straightforward particularity problems, for all people everywhere have equally important needs for the "essential" goods on whose importance Klosko fixes. There is nothing special, morally speaking, about the needs of people who happen to be nearby.

Klosko attempts to finesse this particularity problem by simply asserting that "because individuals receive the relevant public goods from particular cooperative schemes, the particularity condition is satisfied as well" (Klosko, 5). But that, of course, is just to miss the point—or, rather, to beg the question—in the most obvious way. The fact that goods were *received* from a particular source only shows that any subsequent efforts are *owed to* that source *if* the moral principle at work is one of *reciprocation* (such as a fairness or gratitude principle). But Klosko, as we have seen, shows no interest in establishing that the schemes on which he concentrates really are cooperative in the way that brings into play issues of obligatory reciprocation and considerations of fairness. And if those schemes are *not* properly cooperative—as I think they plainly are not in typical large-scale, centrally governed states—then the particularizing

effects of a true fairness account of the duty to obey simply cannot be appropriated as needed by Klosko.

Klosko wants us to focus our attention on political schemes that produce benefits like “law and order, national defense, control of threats to the environment, protection against infectious diseases, against natural disasters,” etc. (Klosko, 5) because these schemes “provide the essential public goods on which the successful functioning of modern societies depends” (Klosko, 5). What it is crucial to notice here is that the *explanation* Klosko offers for his special attention to these schemes has absolutely nothing to do with *fairness* in the relations or actions of the participants in the scheme. It has to do rather with the importance of these schemes *to* (some or all) of their participants, or perhaps just their importance *simpliciter*. It is not that failing to do one’s part in such “essential” schemes is somehow especially *unfair*; at most it is that widespread defection or non-participation would have worse consequences in such cases. Precisely the same kinds of relations between participants and the same kinds of requirements of participation can hold in cooperative schemes that produce far less essential goods (as Klosko, oddly, seems happy to concede). But that means that the values that actually drive Klosko’s account are not those of fairness. Rather, the real orientation of the theory concerns the importance to persons of the benefits of law and order, national defense, etc. In short, its orientation relies on the moral importance of producing some valued end—precisely the orientation of a natural duty account of the duty to obey. This is not a mere matter of “classification.” Klosko’s theory fails the particularity requirement in virtue of the kinds of considerations his theory identifies as morally important and the ways in which those considerations are employed to try to explain our duties.

IV.

My responses to the essays by Naticchia and Lefkowitz can be considerably briefer and less adversarial, for their arguments are in my view considerably more persuasive. Both essays are shaped in certain ways by their authors’ acceptance of the particularity requirement, and both concern the impact of that requirement on natural duty accounts of the duty to obey domestic law. Naticchia’s essay, though, suggests that the particularity requirement may be in certain ways less important (to debates about the duty to obey the law) than my remarks thus far have suggested. More specifically, Naticchia questions whether my “particularity objection” to natural duty accounts—the criticism that such accounts under-inclusively fail to show why the duties they employ require (of the “right” people) uniform domestic legal obedience—really targets “the central flaw in natural duty accounts” (Naticchia, 15). He argues that it does not, that even were the particularity problem not an issue for natural duty accounts, they would still fail in a more fundamental way—that is, fail in their ambition to establish a conclusion that is interestingly different from that of philosophical anarchism. Thus, natural duty accounts are in far worse shape than I have suggested (and philosophical anarchism in correspondingly better shape), while the particularity debate is far less decisive in the evaluation of such accounts than my writings have suggested.

Naticchia discusses only one kind of natural duty account—the most familiar kind that employs, with Rawls, the natural duty of justice. It is not clear to me whether his argument can be generalized to apply to *all* of the other kinds of possible natural duty accounts (such as Wellman’s account, discussed in Lefkowitz’s essay); but perhaps analogues of Naticchia’s argument can be constructed to deal with them, as well. (If not, of course, then the particularity objection to these accounts may turn out to be more central than Naticchia allows, with only

accounts utilizing the natural duty of justice facing the more basic problems he describes.)

Let us focus for now, though, with Naticchia, solely on the natural duty of justice and its potential to yield a suitably general account of a moral duty of legal obedience. His central argument, I believe, proceeds as follows: setting aside the particularity requirement (which a natural duty theory might be able to meet), the burden of any theory that purports to justify a duty to obey the law is to demonstrate that the bare fact that conduct is required by law constitutes a weighty moral reason so to act. Philosophical anarchism can allow that many laws have *contents* that make it obligatory to comply with them. But the obligation or duty is in virtue of the independent moral importance of the required act, not in virtue of that act’s being required by law. There is no general moral duty to obey the law *per se*. Unless the natural duty theorist can thus establish the general moral significance of something’s being required *by law*, she will have to deliberate about action just as the anarchist does—by weighing competing moral claims on her actions, but without ever considering in that process the fact that actions are legally required (forbidden, permitted). And, Naticchia argues, the natural duty of justice cannot in fact be plausibly characterized so as to establish the general moral importance of the bare fact of legal requirement.

Naticchia’s route to this conclusion rests on a criticism of the way in which theorists routinely (following Rawls) appeal to the natural duty of justice in these debates. (What follows is a slightly generalized, and not a particularly literal, summary of the force of Naticchia’s case.) The standard approach among natural duty theorists is to allow the assessment of the entire basic structure of society (that is, of all of society’s basic political, legal, economic, and social institutions) to determine what the natural duty requires. That structure is either reasonably (acceptably) just overall or unacceptably unjust overall (according to the correct principles of justice). If the former is the case, there is a natural duty of legal compliance (with provisions concerning those very special cases in which injustice in a reasonably just society may limit that duty). If the latter, compliance would only be required as a matter of justice if nonideal theory somehow (implausibly) identified compliance as the rule describing the fairest and most feasible transitional path to a basic structure that is just overall.

But, Naticchia (in effect) asks, why suppose that the natural duty determines moral requirements at the overall level of the basic structure? We can distinguish between the various institutions that comprise that overall structure, some of which may be individually just and others individually unjust (regardless of our overall assessment of the justice of the whole). And if it is the value of *justice* that is motivating our account, why not say that our duty of justice is to comply with the rules only of those institutions that are individually just? But if that move seems plausible, we can distinguish as well, within individual institutions, the justice and injustice of the various rules or sets of rules that constitute those institutions, arguing that justice requires only compliance with those rules that are themselves just, not compliance with all (including the unjust) of an (overall) just institution’s rules. But this process of “disaggregating” institutional rules (Naticchia, 17) leads inevitably to the conclusion that the natural duty of justice in fact requires of us a “piecemeal,” case-by-case assessment of the contributions of individual rules to the good of justice, with our duty being to comply or not with those institutional rules according to their individual content. And this, Naticchia argues, is just how the anarchist asks us to reason. No case has been made, on this plausible construal of what *justice* requires of us, for complying with institutional rules *just because they are* institutional rules.

I, of course, have no particular desire to defend natural duty theories, and I am, in fact, broadly sympathetic with Naticchia's suggestions. He seems to me correct in suggesting that not enough attention has been explicitly paid to the question of why the value of justice should be thought to ground a duty toward rules *qua integral parts of an overall social structure* rather than toward rules *qua individual vehicles for directly promoting justice*. I can do no more here, though, than try to imagine the natural duty theorist's answers to this question. Why, then, do defenders of natural duty accounts focus so quickly (in determining the duty's extent) on the overall justice of society's basic structure?

There are, I think, two natural answers. The first is not considered by Naticchia, but is central to Kantian thought about justice (which lies behind most natural duty accounts). Justice is only possible, on this view, in the presence of a neutral institutional structure that interprets and enforces peoples' rights and duties. So long as *some* such institutions are in place, their particular character is not terribly important, provided that the institutions are sufficiently respectful of persons to actually generate the support needed for stability (and thus for justice). The duty that the value of justice imposes on us is to create (where none exists) or support and comply with (where it does exist) an institutional structure that makes justice possible by "realizing" our otherwise merely "potential" rights. Our focus in determining our duties should be on the *overall* structure of the institutional arrangements, not on "disaggregated" institutional rules, because it is the structure of legislation and enforcement that creates the possibility of justice, not the characters of individual rules. Indeed, rules cannot even properly be *called* just (or unjust) except insofar as they are considered as pieces of an overall institutional structure that administers justice in a society. While I do not myself find this Kantian line at all compelling, it is a likely route for a natural duty theorist to take in disputing Naticchia's claims.

The second natural explanation of the focus on overall societal justice is the one Naticchia considers centrally (and one to which I will briefly return in connection with by Lefkowitz's essay): democratic political procedures are inherently just or fair "structuring" rules for a society. To the extent that other ("lower order") institutional rules flow from democratic decision-making by a society, the justice of that procedure is at least partly "transmitted" to the generated institutional rules, such that simply evaluating their justice piecemeal is to ignore their true moral character (by ignoring their genesis). Naticchia suggests that such "proceduralist" views of democracy are implausible (Naticchia, 17) and that, in any event, the anarchist can account for the moral value of democracy by accepting that he should not take lightly disobedience to democratically made rules, especially where doing so might negatively affect the prospects for the continuing viability of democratic decision-making (Naticchia, 17).

Naticchia's reply is, I think, correct as far as it goes. My own response to such democratic proceduralism would be simpler and more direct (and will anticipate some of my remarks below about Lefkowitz's essay). Even were it true that democracy is the fairest or most just form of collective conflict-resolution, it is still a decision procedure that could only be justly required of those who *constitute*, morally speaking, a collective in which joint decision-making is required and necessary. One cannot simply take any randomly chosen set of persons—say, me and my students, or two Scots and four Cambodians—and plausibly declare that they are collectively subject to democratic decision rules. And it is precisely the inability of natural duty accounts to identify the "right" group as bound to collective allegiance that caused their difficulties (of under-inclusiveness) with the

particularity requirement. The justice of democratic rule-making can only be "transmitted" to the created rules if the justice of subjecting all to democratic institutions is first established.

No existing democracy can, in my view, make such a case, in light both of historical injustices and contemporary required subjection. In the end, of course, as a Lockean philosophical anarchist, I would argue (with Locke) that only personal consent can make one a member, morally speaking, of a collective and that thus only personal consent to democratic decision-making can make just the imposition of democratically produced rules. If that is true, of course, then (in light of the scarcity of personal consent in actual political life) there is nothing of moral interest in institutional (including legal) rules *except* their contents. And it is that fact which implies that in discharging any natural duty of justice we must look solely at institutional rules' "disaggregated" potential for advancing the cause of justice.

V.

I turn, finally, to Lefkowitz's essay, from which I will pluck just three ideas on which I would like to briefly comment. Lefkowitz's goal in his essay is (contrary to Naticchia's) to "encourage" the development of natural duty accounts (of the duty to obey the law) by identifying the limits of my critique of Kit Wellman's "samaritan" natural duty theory (and showing how these limits can be exploited in developing a more convincing, but related theory). In particular, Lefkowitz thinks (a) that a related natural duty of "positive provision" could be painlessly substituted for the samaritan duty employed by Wellman (and correctly criticized by me); (b) that while I am correct in arguing that such accounts cannot satisfy the particularity requirement, this fact lends no support to my Lockean consent theory (of legitimacy and obligation); and (c) that were there in fact a moral duty to support a particular state, I am mistaken in claiming that this would still be insufficient to establish a duty of legal *obedience* (Lefkowitz, 9).

With the first and second of these arguments I have no particular quarrel. The second claim seems to me straightforwardly true, and if I have ever suggested the contrary, I did so unintentionally.²⁰ Consent theory is, I think, an especially compelling candidate for the source of particularized political bonds. But the mere failure of natural duty accounts to satisfy the particularity requirement—and the mere truth of philosophical anarchism—shows neither that consent can give rise to political bonds nor that it is the sole source of such bonds. I am also broadly sympathetic with some aspects of Lefkowitz's proposal to replace Wellman's "hybrid" positive duty with a perfect duty of positive provision. Though I would dispute some aspects of Lefkowitz's characterization of this positive duty, I am chiefly concerned to press the point that Lefkowitz concedes—namely, that even were a Wellman-style account to utilize the more plausible duty of positive provision, the resulting account would still fail to satisfy the particularity requirement (Lefkowitz, 11).

I am, however, prepared to dispute the last of Lefkowitz's arguments, concerning the relationship between a particularized duty of support and a duty of legal obedience. While this is, of course, in a way for me just a side issue—given that I in fact deny the premise (namely, that a Wellman-style account *can* ground a particularized duty to support *domestic* political institutions)—it might seem to be considerably more important than that to those who believe that some natural duty account can in fact satisfy the particularity requirement. Naticchia, remember, asked us to accept (*arguendo*) that belief, but he arrived nonetheless at a skeptical conclusion. Lefkowitz also asks us to accept it, but arrives at the opposite conclusion.

One strategy this coincidence suggests, of course, is to simply apply (a variant of) Naticchia's argument to Lefkowitz's claims. Even if the natural duty were a duty to address the need for justice (for overcoming Hobbesian lawlessness, for satisfying human rights, etc.) *locally*, those local political and legal institutions with which we will be presented in our home states will be divisible into rules and sets of rules that *differentially* contribute to the *local* end set by that natural duty. It would seem, then, that legal compliance will be far more strongly required in some cases than in others, and perhaps not required at all in still others (so that legal *obedience*, properly speaking, will not be required at all). This, of course, would square with the commonsense view that it is very important to obey some laws (e.g., core criminal prohibitions), less important to obey others (e.g., parking and panhandling laws), and not important at all to obey still others (e.g., sodomy and fornication statutes). It would also square, of course, with the practical stance recommended by the philosophical anarchist.

What is supposed to save the natural duty theorist from this conclusion, according to Lefkowitz (and Wellman), seems to be this: if there is a shared local task of doing justice (preserving lawfulness, satisfying human rights) that is advanced by law and state, it would be *unfair* for persons to use their own judgment to discriminate between important and unimportant laws (obeying and disobeying accordingly). This kind of *discretion* is a valued commodity that can only be exercised by a few. If all exercise it, chaos and lawlessness will ensue. So discretion must be foregone by each (unless some mechanism is installed to fairly distribute occasional rights of discretion) out of fairness to those others whose uniform obedience, after all, is what makes it possible for a few to exercise discretion without themselves suffering dire (or others suffering morally unacceptable) consequences (Lefkowitz, 12).

But surely something has gone wrong when an argument implies that we act just as unfairly (wrongly? unjustly?) when we violate an anti-sodomy statute as when we violate a legal prohibition on larceny or assault. If we are duty-bound not to unfairly exercise our discretion in judging the former law to be unimportant (indeed, deeply wrong) and so ignoring its requirements, we are duty-bound to take with respect to each law, good or bad, precisely the same practical stance. Lefkowitz writes that the moral duty "to *obey* the law follows from the moral requirement that agents treat fairly those with whom they act in order to provide security for all" (Lefkowitz, 12). If we think only of laws that are crucially instrumental in securing our basic rights, of course, this sounds more plausible. But no *actual* legal system, democratically produced or not, consists *only* (or even mostly) of such laws. And where laws are only indifferently related to the goal of "providing security for all," it is hard to see how considerations of fairness gain enough traction to sanctify such laws. Indeed, it is not obvious that if all used their discretion soberly and honestly, disobeying only those laws that seemed to them morally unimportant, chaos and lawlessness *would* be the result.²¹ Indeed, I would rather my neighbors act on such judgments than that they mindlessly obey the law, simply because it is the law. That, however, would be to live in a community of philosophical anarchists, not a community of persons who took themselves to have a duty to obey the law *per se*.

Let me conclude (I hope not unfairly) with some quick remarks about a couple of suggestions made largely *en passant* by Lefkowitz in his essay. The first of these concerns the possibility of utilizing the importance of "democracy to account for the particularity of the duty to obey the law" (Lefkowitz, 11n17). As I suggested above, democracy is no cure-all for political illegitimacy. Even if democracy is allowed to be an

intrinsically fair (or the fairest possible) decision procedure for collective resolution of intransigent disagreements, it remains true that even perfectly fair procedures may not be simply imposed on some by others without risk of wrongdoing.²² Destroying the societies of indigenous peoples (or coercively annexing some autonomous territory) before conferring on the survivors the blessings of (our, not their) democratic political institutions cannot legitimize (with respect to them) subsequent democratic decision-making and impose on the survivors duties to comply with the resulting rules (particularly in light of the likely result that, in the matters that concern them most, they will be steadily outvoted by entrenched majorities). Democracy is not an arrangement so special that it needs no legitimating pedigree. And that strongly suggests, I think, that democracy is an unlikely path to solving the particularity problem, especially when one keeps clearly in view the particularity problem of *over-inclusiveness* that I stressed above.

The second of the brief, passing remarks in Lefkowitz's essay on which I would like to comment is his intriguing suggestion that natural duty accounts can satisfy the particularity requirement "only in a world with a single legal system" (Lefkowitz, 11).²³ I call this intriguing because a world-state would appear to accomplish in reality what Rawlsian ideal theory constructs via thought experiment. As in the Rawlsian original position, in a real one-state world, particularity problems would appear to be eliminated for a natural duty account of the duty to obey domestic law. No longer could it be argued that the natural duty might bind one equally or more imperatively to serve justice (give aid, secure human rights) "abroad"; for there would *be* no "abroad" in a one-state world. Domestic law would be the only law.

It is important to see, though, that this argument rests on (at least) two contestable assumptions. The first is that a natural duty to support some set of political institutions really does imply a duty specifically of legal obedience. Lefkowitz, of course, does not "assume," but rather argues for this view; I have, however, already suggested some reasons to question it. The second assumption is that under-inclusiveness problems are the only particularity issue with which a natural duty theory (of the moral duty to obey) needs to cope. My arguments above suggest, though, that over-inclusiveness is an equally daunting particularity problem, and it is unclear why even the existence of a single global state would solve for natural duty theories this latter problem. Unless a world-state could miraculously manage to arise in a morally pristine fashion—an event even less likely than such a world-state arising at all—natural duty accounts would still find themselves without any well-motivated mechanism for excluding from duty those who are clear "outsiders" relative to that state, such as those unjustly subjected by force to the new institutions with global scope. Deeply compelling claims to individual and group autonomy would almost certainly persist throughout (and after) whatever process we might imagine leading to the creation of a world-state. And those claims would either have to be respected or ignored, resulting either (in the former case) in a non-global state (thus reintroducing particularity problems of under-inclusiveness) or (in the latter case) in a state whose legitimacy with respect to those claimants must surely be questioned. In neither case would a natural duty account—of the moral duty to obey the single legal system that claims global scope—avoid the particularity problem. So I think, in the end, that the particularity problem remains a hard nut to crack for any brand of natural duty theory.

Endnotes

1. *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979) and my portion of *Is There*

a Duty to Obey the Law? For and Against (Cambridge: Cambridge University Press, 2005) are entirely treatments of these problems. Several chapters of my *Justification and Legitimacy* (Cambridge: Cambridge University Press, 2001) and one chapter of *Political Philosophy* (Oxford: Oxford University Press, 2008) are also devoted to these problems. My articles on the subject are listed in the notes and bibliographies of those books.

2. Here I use the term “legitimacy” in what I take to be its classical sense. Klosko (in his Note 12) suggests that “most scholars” in fact use the notion of “authority” to convey what I am here calling “legitimacy.” Klosko’s claim is certainly false if taken to be about usage throughout the history of discussions of state legitimacy. Movement in the direction of *distinguishing* legitimacy from authority (rather than equating them) has been motivated primarily by relatively recent skepticism about the possibility of demonstrating a moral duty to obey (or political obligation). If there is no duty to obey that could correlate with state legitimacy—but if we still want to argue for the legitimacy of modern states—then we must invent a new, distinct notion of legitimacy, arguing that states may be legitimate in that new sense even if they lack the kind of moral authority that would correlate with subjects’ duties.
3. Thus employing the name given to a related position in R. P. Wolff, *In Defense of Anarchism*. I discuss the possible varieties and offer a fuller account of the substance of philosophical anarchism in “Philosophical Anarchism,” ch. 6 of my *Justification and Legitimacy*.
4. This, of course, is Wolff’s strategy in *In Defense of Anarchism*. See my grounds for rejecting this strategy in “Philosophical Anarchism,” 104-05, 110-11.
5. While dual or multiple (i.e., non-exclusive) citizenship is, of course, a familiar phenomenon, it is, I think, typically understood to bind persons in *virtually* exclusive relationships to those societies within which they reside.
6. Of course, I have also argued that, even confining our attention solely to the domestic promotion of such goods, the natural duties cannot dictate anything like uniform legal obedience. Lefkowitz disputes this contention, and I offer a reply below. For a much longer and more detailed version of these arguments, see *Is There a Duty to Obey the Law?* ch. 7.
7. Discussed in my *Political Philosophy*, 9-10. Klosko, in his contribution to this issue, in effect accuses me of ignoring this requirement of realism. He suggests that my political philosophy rests on an inadequately presented (“elusive”) and certainly false Lockean “political sociology” (Klosko, 3). This criticism is, however, simply confused. Lockean philosophical anarchism (of the sort to which I subscribe) is a purely *normative* position, which holds that most subjects of modern states have no moral duty to obey the law and that such moral duties can be grounded only in actual, personal consent to political authority. Arguing (for or against) that position requires only an understanding of the relevant moral principles (the principles that might ground a duty to obey) and a view about the character of *existing* political societies (to which these moral principles either may or may not be properly applied). The position in question presupposes or rests on *no* assumptions about how we could “do without the state” (Klosko, 3) or about what a stateless society would look like. I do not take myself (or Klosko, for that matter) to be qualified to make authoritative pronouncements on those subjects; nor are any such views needed in defending philosophical anarchism, however much Klosko may wish to make this his subject. We may speculate, if we wish, about the social consequences of the (highly unlikely) event of large numbers of people coming to *believe* the conclusions of philosophical anarchism. My own speculation (and it is no more than that) is that sovereign states would not be done in by such a development, but that they might be forced by their subjects to become more just and less uniform in their coercive demands. Klosko may speculate differently. But even if it were true that social chaos would be the result of people coming to subscribe to philosophical anarchism, that would not in any way demonstrate the falsity of the *normative* claims (unless we embrace what I regard as an implausibly simplistic version of a pragmatic theory of truth). Klosko, of course, disagrees, and he appears to believe that the crucial issue is that of the state’s “necessity” (whatever that might *mean*!). If the state is “necessary,” then we *must* be obligated to obey it. The only issue is exactly how we cobble together a plausible-looking defense of that preordained conclusion. I think that approach is deeply mistaken (see my discussion of the possible meanings of necessity claims and my critique of necessity arguments in *Is There a Duty to Obey the Law?* 127-42).
8. The first explanation offered above is, of course, also relevant to the context of Rawlsian political philosophy. Most explicitly in *The Law of Peoples*, Rawls identifies as his theoretical target the description of a “realistic utopia.” And part of the “realistic” aspect of his project is his acceptance of the world of modern, sovereign, territorial states—and his acceptance of the division of the world into the political units with their subject populations that have in fact evolved and in fact been accepted as such by custom and by international law—as the appropriate empirical starting point from which theorizing should proceed: “It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to focus on their arbitrariness is to fix on the wrong thing. In the absence of a world-state, there *must* be boundaries of some kind, which in isolation will seem arbitrary...” (*The Law of Peoples* [Cambridge, MA: Harvard University Press, 1999], 32). In my view, however, much of this “arbitrariness” has been deeply morally significant, and it ought to raise serious doubts about both the extent of political legitimacy in *de facto* states and the distribution of legal and political duties among *de facto* subjects.
9. Nozick, of course, famously criticized Rawls’ theory of justice for its neglect of historical considerations. I am not here reiterating *that* critique. Rather, my concern is about historical considerations bearing (primarily) on states’ acquisitions of geographical territories and on their consequent subjugations of groups and persons within those territories. Even were Rawls’ substantive theory of justice invulnerable to Nozick-style “historical critiques,” it would remain open to this second kind of charge of insensitivity to historical considerations (developed below).
10. *A Theory of Justice*, §§19, 51.
11. And any attempt to explain the duty to obey in real political societies in terms of voluntary acceptance would have to overcome the familiar objections to such accounts that they find voluntariness where there is none in evidence.
12. *A Theory of Justice*, Revised Edition (Cambridge, MA: Harvard University Press, 1999), 216. By “strict compliance” Rawls means that “everyone is presumed to act justly and to do his part in upholding just institutions” (*ibid.*, 8). By “favorable circumstances” he means that there are no “natural limitations and historical contingencies” (*ibid.*, 216) that present significant obstacles to achieving a just basic structure.
13. *Political Liberalism* (New York: Columbia University Press, 1993), 136.
14. *The Law of Peoples*, 30-33.
15. By a “substantively just polity” I mean only a polity whose basic institutions currently satisfy applicable principles of justice in their distributions of goods and burdens (to those persons identified by the polity as subjects or citizens).
16. The only place that I can find in Klosko’s work where he even comes close to considering these issues is in his very quick mention of (what he calls) the “transition requirement” (*Political Obligations* [Oxford: Oxford University Press, 2005], 65, 69-70). And there he appears to argue that victims of

“conquest and other injustice” must submit to imposed schemes, lest they violate the right of the democratic majority to have things the way they like them (69-70). Issues of historical injustice “are largely irrelevant” (70). If this is, indeed, Klosko’s view, it is quite extraordinarily insensitive to an enormous and plainly continuing challenge to political legitimacy in the modern world.

17. In my view, Klosko’s shift to his “multiple principle” approach (Klosko, 2-3, reiterating *Political Obligations*, ch. 5) is best described in this way—that is, as a perfectly *ad hoc* attempt to paper over the holes in his original theory by simply tacking on (or, better, “folding in”) whatever new “principles” his argumentative needs suggest to him. In particular, Klosko’s new (and rather bizarre) “Common Good Principle” (*Political Obligations*, 111-20) is plainly just a combination of elements of his fairness theory with those new elements that are required to give him exactly the conclusion he wants. Calling the resulting implausible concoction a new “moral principle” does not make it one. Obviously, the inadequacies of his fairness theory cannot be so simply remedied. The inadequacies of the original theory simply discredit that theory, showing that it accounts for no duties or obligations at all; there is nothing substantial remaining to which new “principles” can be added. If modern political societies are *not* “cooperative schemes” of the right sort to generate obligations of fairness, we cannot save the fairness theory by adding to it new elements with completely different characters and motivations. Klosko’s criticism of (what he calls) my “divide and conquer” strategy (i.e., the strategy of refuting individually one-principle accounts of the duty to obey) (Klosko, 2; *Political Obligations*, 99) would be more convincing if he could show—which, of course, he does not—that enough is left of the individually refuted theories that they can somehow be combined in a way that allows them to fare better collectively than the flawed theories fared individually. I see no reason to expect that two defective accounts are likely to combine in a way that magically repairs the defects of both.
18. The point of this aspect of the “conditions” is this: persons should not unwittingly acquire burdensome obligations (which they might otherwise have publicly renounced) in virtue of their unwitting receipt of benefits, where those benefits flow from schemes whose operations are concealed from reasonable, non-negligent “vigilance.”
19. *Justification and Legitimacy*, 38-42.
20. Incidentally, in neither of the passages cited by Lefkowitz in his Note 18 do I suggest that philosophical anarchism and consent theory are conceptually (or in any other way) linked. They simply happen to be two positions both of which I endorse.
21. It is easy to be drawn by proponents of such arguments into imagining that universal “discretion” would really amount to all just doing exactly what they happened to feel like doing. But *that* is not the kind of practical stance whose generalization we should be asked to consider. The philosophical anarchist proposes to act contrary to law only where his considered, honest judgment about morality’s requirements and permissions allows it. Discretion thus understood is not license (to paraphrase Locke).
22. *Political Philosophy*, 112-18.
23. I take my remarks above (on democracy as a “particularizer”) to suggest possible problems as well with Lefkowitz’s contention that democracy can solve particularity problems in a single, federal world-state (Lefkowitz, 11n17).