Lecture Notes 1/18

Kristel Tupja

**Is there duty to obey the law?**

* Narrow down/ define it
* Might not actually exist the closer we try to narrow it

**Has to be general duty to obey anything that is law of any legal system**

* Not enough to point to contingent reasons related to particular laws
  + Then that would be just be a duty concerning whatever that contingent reason as

similarity to question about whether there’s a duty to keep your promises

* not enough to point to reasonable reliance when you make a promise
  + There isn’t always a reasonable reliance there when there is a promise
* Autonomy justification is better, because there is always a willing choice whenever one makes a promise
  + Must find something essential to promise-keeping and then use that essential thing to justify the duty to keep one’s promises

**Does this mean that we have to have a theory of law before we can determine whether there is a duty to obey the law?**

**We roughly understand what the law is and that is probably enough to engage in determining whether there is a duty to obey the law.**

* You don’t want to define the concept of law such that there is a duty
* Imagine someone saying there is a law when there is duty to obey
* It would be easy to show that there is a duty to obey the law, so understood, but this concept of law diverges from what we normally think about the law - think of Nazi law

🡪 imagine someone who obeys every law that exists, has never broken any law. Do we know that person believes there is a duty to obey the law? Could he be an anarchist?

* could be an anarchist🡪 He could simply think that with respect to every actual law he encounters there is always a contingent reason to abide by it. But he could deny that there’s any duty to obey the law as such
* In short, must distinguish between “retail” and “wholesale” reason to abide by the law

In addition, the duty to obey the law, if it exists, is probably only prima facie

* + Prima facie🡪 weight, moral reason in favor of following law that can be overridden by other duties in favor of not following.
    - Otherwise described as “pro tanto”
* The duty to keep your promises is similar
  + If I promise to take you to the zoo, I have a moral reason to take you to the zoo. But that does not mean that that reason is overriding. If I have to take someone to the hospital, my duty to keep my promises will be trumped

🡪 imagine a guy that has broken EVERY single law in a legal system. Is it possible for him to believe there is a duty to obey. Or must he be an anarchist?

* He doesn’t have to be an anarchist. He might believe that there is a duty to obey the law but think that it has always been overridden by other moral duties.
* How weak can a Prima facie duty be, and yet still exist?
  + Ex🡪 PF duty to do what a fortune cookie says but always gets overridden by other consideration.
  + Green suggests that if it cannot ever override *any* other moral duty, that it may not exist
  + Smith says there should be some substantial weight to the Prima facie duty to obey the law, where it does override other duties a significant number of times
* We are asking whether duty to obey law—is that what the government claims?
  + Is it saying there is a general PF duty to obey its laws or something stronger?
  + Someone (was a Trevor?) suggested that it’s less. Maybe a gov’t doesn’t even claim that there’s a general prima facie duty to obey its laws at all.
    - We will discuss this in detail later. But Green noted that it would be strange if a gov’t did not think it was making some moral difference to what people morally ought to do by passing laws
    - At the very least, it seems, they’re claiming a Prima facie a duty to obey. This is true even if they get the content of the law wrong. You have a duty to obey even if the gov’t makes a mistake and coming up with the law.
  + But maybe government demanding *more* than just general PF duty to obey, but rather that the laws they pass are *overriding*/ trump any other moral obligations a citizen make think he has.
* Indeed maybe the gov’t demands even more than an overriding duty to obey their laws
* Idea of government authority
  + Their commands are more than just overriding duty to obey
  + The gov’t does not want you to think about what you’re morally supposed to do🡪 when you act, there is a direct line between what government says and what you do
    - Example🡪 telling child to go to bed
    - I want the child to simply go to bed, without considering what it morally ought to do
    - It is not abiding by my authority even when it comes to the conclusion that it has an overriding moral obligation to do what I say
  + Maybe government not even demanding an overriding moral duty to obey the law, but rather that you do not question at all.

**Does the government need people to have duty to obey the law to be justified in punishing them for violating said law?**

* Reason why they are justified in punishing you is because you violated duties, aka duty to obey law.
  + Do they have to be connected?
  + State of Nature example🡪 Prof. Green murders one class member and other class member punishes him. Does Prof. Green have duty to other class member who punished him? Is it appropriate/ does he have authority? Likely no authority but still able to punish.
    - So why does the government need authority to punish?
    - Are we wrongly demanding more of government than of natural person?
* **Two things seem to be going on here**
  + - * First of all, when the gov’t is considered to have a right to punish you, it has a right to punish you for violation of all laws, not just laws that overlap with your natural duties. So the gov’t needs something that people do not possess within the state of nature.
      * Sodomy laws as example, then is when you say you have duty to obey that law and that is why government is justified in punishing you.
      * Second, Government monopolizes punishment because an ordinary citizen cannot make prison in house and punish murderer.
      * When the government starts saying we are the only people who can punish, it is true that we need something more for government to punish. Maybe not duty of obedience but explanation why they have this monopoly.

**3 types of arguments to obey law**

1. Consent argument
   1. Willingly taking on duty to obey law
2. Bad consequences argument
   1. In each situation where you don’t obey, bad things happen
   2. Moral obligation/natural duty by virtue of being a human being to not make bad things happen
3. Arguments based upon the benefits you receive from the gov’t, even though these benefits are not ask for and even though disobedience would not have bad effects.

Gratitude

* 1. Assuming you didn’t willingly ask for benefits so no consent
  2. If you don’t abide, no bad consequences
     1. Government gives you a benefit (law and order, police protection) that you don’t ask for because there is no way to avoid receiving the benefit. (Only way would be if government had a territory that was NOT protected by military, police etc.) Then it would be a consent argument.
  3. How do we generate a duty to obey law simply from the fact that you gave me something that I didn’t ask for and I feel a certain emotion of gratitude. How does this emotion create some type of duty—here to duty to obey the law.
     1. How do we show the gratitude? Usually expressive. We show gratitude to the person to whom we owe it.
        1. Why then would we have a duty to obey the law when violation would be in secret?
  4. Another problem:
     + 1. Is there a quid pro quo element to gratitude?
          1. If gratitude only arises in quid pro quo relationship, in which people can exchange favors, that will be difficult to argue that the same relationship occurs with respect to the gov’t
          2. It is not clear how we are in such a give and take relationship with the government.
          3. In addition if there is a quid pro quo to gratitude, that sounds more like a consent argument again
  5. Is the gov’t an entity to which you can show gratitude to? Does in gratitude have to be shown to a particular person?
  6. Another problem: The government may be is conferring these benefits also for its own selfish reasons, and our benefits are ancillary. No duty of gratitude would exist.
     1. Also government is taxing you for some of these benefits, so why should you show gratitude for them.
  7. Assume the government is an entity you can show gratitude to, and there is a duty to show gratitude
     1. Shouldn’t gratitude be given willingly, freely giving something without demanding something in return?
     2. But the government demands obedience. That makes it hard to understand why obedience would be the expression of gratitude.
        1. argument is that gratitude isn’t a duty🡪 gov saying you ought to obey laws so seems to be taking it outside of realm of gratitude.
  8. But the biggest problem is this: How do you get to general duty to obey ALL laws from gratitude?
     + 1. You would have to assume that obeying all laws is best way to show gratitude. (Gov gives me police protection so I have to obey sodomy laws🡪 how does this make sense?)
  9. Prof. Green believes this is a rotten argument but makes sense why it is an argument that is made since other two – on the basis of consent and on the basis of consequences – are also difficult to make.

1. Another argument from the receipt of benefits is Fair play argument
   * 1. This is an argument that are duty to obey the law is a duty to your fellow citizens, not to the gov’t
     2. But start with a duty of fair play without taking into account the duty to obey the law
     3. Fellows have sacrificed an order to creates a public good, which you also benefit from although you did not ask for it
     4. Under the duty of fair play you have a duty to engage in same type of forbearance when your duty comes
        1. Maybe nothing bad happens if you don’t engage – this is not a consequentialist argument
        2. Example🡪 people not polluting air, you benefit from clean air. When it’s your turn, you burn tire but it is just a drop in the air and won’t affect anyone negatively. Do you nevertheless have a duty not to burn the tire independent of government?
           1. If you do, then it sounds like duty of fair play.

Not a consequential argument, not consent-- since nothing bad will happen and you didn’t consent to fresh air.

* + - * 1. Argument against - Nozick

Broadcasting example🡪 no duty to take your turn and tell story. I didn’t ask for it and so I do not have to do it. You can’t make me do it (unless natural obligation by nature of being human being) since I did not sign on it.

* + 1. So let’s say if there is a fair play duty you benefited from, is there a general PF duty to obey all laws now?
       1. Certainly works for some laws. When people abide by those laws, and so create a benefit you didn’t ask for. But not all laws create such a benefit, and therefore I am not obligated to obey.
       2. Just because everyone else refrained from engaging in sodomy because it was illegal, that did not create a benefit for me or for anyone else. Thus, there is no obligation for me not to engage in sodomy.