**Philosophy of Law – 1/23/17**

“Is there a p.f. duty to obey the law?”

* **Not a legal duty to obey the law, but a moral duty to obey**
  + Is there always a legal duty?
    - Instances where is no legal duty to obey the law:
      * K law: in one sense you sign a K and agree to abide by the terms, but even though its binding you don’t have to abide by it as long as you pay damages (efficient breaches; the law allows / encourages this because it would be economically irrational to abide by the K if its more sense to breach)
      * Parking tickets: abiding by the law and punishment are not supposed to be considered equivalent (e.g. you can’t just say I’ll murder and then go to prison as if they are equivalent things 🡪 you should not murder), but parking tickets and otherwise paying the fine are probably considered equivalent.
  + If there is a duty to abide by the law, it must be a general duty, but a prima facie one that can be trumped by other duties.
    - Different from what government demands. Govt. likely treats its legal duties like absolute duties?
    - Or it could be claiming its authority; so it’s not a situation in which you are balancing obligations 🡪 govt. may not want you to think, just act on what they say
    - Different from Q of justification of punishment. It may be that the Govt. can punish even if there is no duty of obedience to law. We will discuss this later.
* **Justification from benefits received from the gov’t:**
  + Gratitude argument.
  + Fair-play argument.
    - Hypo. Subway system with honor system and people have been paying. You are thinking about riding, and can get away without paying (it’s an honor system) 🡪 is this duty of fair play or consent?
      * Sounds like FP? Argument of receipt from benefits because of other people’s forbearance (by paying for the subway)
      * **Arguably Not FP** because you choose to use the subway. Not a case where you get benefits from the subway no matter what you do. You chose to take the benefit, with the implied promise that you would pay to keep the system going.
    - Hypo. Pollution example. Breathing nice air, and its clean because others have refrained from polluting (not a law, just people’s conduct). You want to burn a tire, that on its own would not be a problem, only if everyone else did it too.
      * Is this about the receipt of benefit or would the obligation exist even if the benefit did not exist?
      * **Arguably Not FP**. Is a rule-utilitarian argument on the basis of consequences? Even though your individual choice would not lead to the bad consequences, if everyone did it it would be a problem.
        + Not dependent on receiving anything.
        + You would have this duty not to pollute even if you would never received the benefits of clean air
      * Is there still a duty that depends on the receipt of benefits? Does the duty of fair play exist at all?
        + Nozick radio example. Would be weird to say that whether there is a radio station or not there is a duty to create it (unlike pollution where there is a more clear duty not to pollute). If you enjoyed the radio, do you have a duty to also take your turn and lead the radio one day?

Nozick says no. You benefited from other people’s forbearances, but there is no duty of FP. To the extent that you receive benefits that are not part of moral / natural duties (like not to kill, not to pollute, not to make the world terrible for your peers), there may not be any duty of FP that means you have to take your turn on the radio.

* + - * Hypo. There have been no feuds in your town because if there is a dispute, people go to an arbiter who just follow the ruling whether or not they agree. You benefit from this system, because there is no fighting among people, although you did not choose to receive this benefit
        + Is there a natural duty to create this system of arbitration anyway? E.g. Kant.
        + If people choose to create this arbitration system and you benefit from it, assuming you can go nowhere else, do you have an obligation to also follow this when you have a dispute?

No? It’s like the Nozickian radio example.

Yes? It’s like the pollution example where you have a natural duty to obey and participate because of a rule-utilitarian argument.

* + - * + Green. It may be that there is no true FP: either there is no duty, as in the Nozick example, or there is a duty but it doesn’t depend upon the receipt of benefits, as in the pollution and arbitration examples.
      * Lockian view. A world where everyone submits to the government is better, but you have no obligation to create. Can only come about with your consent.
        + Even if govt. can solve all of the problems (no collective action problem), there is no Kantian obligation to create. Requires consent.
        + Once you say there is a duty to create a system that solves a collective action problem, you may be expanding the scope too much. Too socialist? There are so many things that would be “solved” with centralized govt. taking over.
  + Consent argument for a duty to obey the law:
    - Rooted in our history? Founders were Lockian. Would we expect someone who is a Lockian to believe that there is a p.f.o. to obey the law because of consent?
      * No – just the opposite
      * E.g. the Revolution. The theory was that there was a lack of consent so no duty to obey the English king – in – parliament. But there was that a denial that the king in parliament was creating law.
      * The Lockian theory, rather than justifying a duty to obey the law, actually can justify anarchism
        + There is a lot of law, but you have an obligation to obey only if you consent. If you don’t consent, then you don’t have to obey. There is law without a duty to obey.

In a democracy, can you argue that there is consent because of elections? Duty of obedience to result of democratic elections based on consent through voting or being able to vote?

So there is, here, at least a p.f. duty of obedience?

It is hard to see how the existence of democratic procedures on their own -necessarily create duties of obedience. E.g. the majority decides to enslave you. You have no duty, even a prima facie duty, to obey that law, despite the fact that you voted against it.

Democracy itself does not seem to create duties of obedience. There may be a duty to create a political system of some sort, and democracy might be the best, but it does not necessarily follow that one has a duty to obey the results of that democratic system.

Even voting and winning arguably does not create an obligation.

* + - * Argument from consent because of the choice to remain in the country?
        + Traveling to other countries. By entering do you consent to their laws? IS there a p.f.o.?

E.g. Nazi Germany?

* + - * Even if there is actual consent, does it create a duty of obedience?
        + Explicit. “I consent to abide by all American law”. This would include Article 5 and future changes. So you would be consenting to the potential creation of internment camps. You can amend the Const. in almost any way to make anything American law. E.g. get rid of 13th amendment and bring back slavery. So open-ended 🡪 by consenting did you really create an obligation to yourself to obey all those future laws?
        + This is tie to a problem about whether promises can create obligations at all

Duty to keep promise for the sake of having made it is problematic. Does not seem possible that one could create such an open / broad / unlimited obligation.

Could make something bad “good” by virtue of your having promised to obey someone overall.

Even if it is an explicit promise.

* + - * + Other problems with explicit promises to obey the law: No bargaining power. K of adhesion? The authority could demand anything and everything of you using your prior consent.
* **Consequentialist arguments:**
  + You’re a human being with certain natural obligations by virtue of being a human being and it doesn’t matter whether you consenting or received benefits - you have an obligation to create a just govt. and keep it going. Obeying law is the only way to keep it going. Therefore you have a duty to obey the law.
  + Side note: the term “just” is being used here. That has limited the scope of the duty to obey the law from a general duty. Because unjust states can have laws. Nevertheless a just state can still have bad laws, so if this consequentialist argument worked it would still be important.
    - Particularity problem. If you have a duty support just governments. Consent was not a generic duty, because it was tied to United States or immigration in other country. Do you have a duty to support all governments? Would create a duty to abide by all other countries’ laws.
      * The problem here is that consequentialist arguments for a duty to obey the law do not seem to tie the obligation to a particular nation. And we are probably thinking of an obligation with respect to a particular nation when we talk about a duty to obey the law.
      * Green: this may not be a serious problem because given that you have a duty to support just governments, your opportunities to support just governments are usually limited to supporting the United States when you’re actually in the United States.