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Duty of Fair Play Argument

-Assuming there is a duty of fair play, does that justify a prima facie duty to obey ALL laws?

-What about bad laws (sodomy law)? How does everyone’s forbearance with respect to that law create a benefit for you?

- **side issue**: One might think that following the law helps people cut down on deliberation costs. Notice that this is not a duty of fair play argument. The argument is unrelated to the fact that you are receiving any benefit from what other people do. The argument is simply that there is a reason for you (and everyone else) to obey the law, namely because it reduces deliberation costs. We will discuss this argument more fully later. Notice that it is actually an argument for why the law might have *authority*, in the sense (roughly) that you should follow the law without thinking.

* It is important to distinguish between a duty to obey the law and the law having authority. You can have a duty to obey the law despite the law having no authority over you. Assume that you have promised to obey the law. A lawmaker now tells you to stand on one foot. You needn’t stand on one foot without deliberating about what you want to do. You can stand on one foot because you conclude that your duty to keep your promise is more important than your other duties. An authority, by contrast, in some sense asks you to circumvent your reasoning about what you ought to do. You can recognize your duty to submit to the law without seeing the law as an authority in this sense.

But is it really true with respect to EVERY law, you are getting the benefit of not reducing deliberation costs by simply following the law? Likely not. The argument might work with respect to moral judgments that are complicated. For example, you might have a reason to simply stay at the red light without thinking, rather than engaging in complicated reasoning about whether this is a situation where going to the red light is OK. But it is hard to see how a law prohibiting sodomy does this. I can recognize the moral permissibility of sodomy quickly and easily. It is not the kind of moral question concerning which I have any significant deliberation costs.

**End of side issue about deliberation costs. We now return to the duty of fair play.**

* How about the following argument that even in connection with the sodomy law, we have benefited from people’s forbearances in abiding by the law? The question is the moral permissibility of sodomy is something concerning which people disagree, and they may fight because of the disagreement. But they do not fight about it, because they follow the law, which arbitrates the matter. You benefit from their not fighting. So that creates an obligation to abide by the law too, even with respect to the sodomy law.

But it is not clear that if the above argument about avoiding conflict over contentious moral matters worked, there would be any need for a person to receive benefits from people’s forbearances to have a duty to obey the law. Arguably one would have a duty to obey the law independently of whether one had received any benefits are not.

It would really be a *Consequentialist Argument*

-By virtue of being a human being, you have a duty to create an institution that gets rid of the state of nature. In order for government to function, it simply must be the case that people abide by its rules. If people constantly set up their judgment against the government, even if they are right, then the government cannot function. Thus, I have a prima facie a duty to abide by the government as well.

- notice that this duty is independent of whether one consented. One has this duty by virtue of being a human being.

- notice as well that this duty does not depend upon receiving benefits from a gov’t. It flows from the obligation to make the world a better place for everyone.

-The duty to support a government is a duty with respect to EVERY government (**particularity problem**). Thus, I have just as much reason to bring about a government in France as I do in the United States.

-There are good reasons, however, why I can help the United States more than I can

help France (distance).

But there is another problem. My individual acts of disobedience are unlikely to have any serious consequences for the state. I don’t have that kind of power. The response would be that one should not reason about one’s individual acts and their consequences, but ask what the consequences would be if everyone follow the principle that you do.

With that we move into

Rule Consequentialism/Utilitarianism

Let us start with -**Act utilitarianism**

* act utilitarianism as a theory of absolute obligation is the view that the right thing to do is what ever maximizes whatever we are trying to maximize (utility, happiness).

Many people think that such act utilitarianism is wrong is a moral theory

* The reason is that they hold a *deontological* moral theory. Under a deontological moral theory, there are limits to what one can do in the pursuit of good consequences
  + For example one cannot kill one person as a means of saving five people.
  + That act may have good consequences, but it is still morally impermissible

Note however that the act-utilitarian argument for a prima facie a duty to obey the law is not an argument from act-utilitarianism as a theory of absolute obligation. It only depends upon act-utilitarianism as a theory a prima facie obligation. And that’s hard to deny. The fact that bad consequences will result from one’s act is clearly a moral reason not to do it. The problem with the act-utilitarian argument for a duty to obey the law is that it is unlikely that bad consequences always come from one’s disobedience of the law.

-**Rule utilitarianism** is somewhere in between act utilitarianism and deontology.

It is usually put it as a theory of absolute obligation. One ought to act according to the rule which, if everyone follows, will maximize utility, or happiness.

Note: this is not the same as Kant’s categorical imperative. Kant thought we could tell which rules are not moral because when universalized they would not lead to *contradiction*. The question was not the consequences of everyone acting on the rule. (not saying Kant is right about how to identify moral rules though)

But, once again, Smith is offering rule utilitarianism as a theory of prima facie obligation. We spent some time worrying in class about whether that makes sense.

-but setting that problem aside, rule utilitarianism seems to fail as a theory of absolute or prima facie obligation. There are plenty of morally neutral acts, which, if everyone followed, would lead to bad consequences.

-For instance, the rule “eat dinner at 5 o’clock” would cause our national

defense to be unattended and certain essential services would not be provided.

And yet we do not have an absolute or a prima facie obligation not to eat dinner at five o’clock.

So the rule-utilitarian is going to have to figure out which are the types of rules that can count for and those that don’t count because they have, say, arbitrary limitations like five o’clock.

Let’s assume that they have solved the problem. A rule about obeying the law, let us assume, does not have the problems of the five o’clock rule did.

* But what exactly is the rule that we are interested in universalizing here?
* Always obey the law?

-Instead of universalizing “always obey the law” perhaps we should universalize “obey good laws.” wouldn’t universalizing that rule create a better world than universalizing the rule that one should always obey every law?

This is part of a general problem with rule-utilitarianism. One can simply have act utilitarianism as one’s rule. That rule when universalized would apparently create the best consequences. Rule-utilitarianism collapses into act utilitarianism.

- someone might say however, that if people adopted the rule “always obey good laws” their judgment would run off the rails and they would end up of disobeying good laws because they thought they were bad.

we are back to the idea that people disagree about moral matters and so need an arbiter

- but is it really true that the government would fall apart if people did not believe in a duty to obey the law? How much is the belief in the duty to obey the law really doing to uphold government? Are there other considerations that lead people to obey?

How about:

-People do not like being punished.

- many laws not only have good moral content, but people easily recognize that they do. They abide by those laws not because they believe in a duty to obey the law but simply because they correctly think the laws are good.

- people might also obey the law out of a sense of habit, people go along with what others do and conform.

- finally, people have self-interested reasons to obey 🡪 I drive on the right-hand side of the road to avoid collisions.

The general idea is that even though it is clearly good to have something like a government, it is not clear that a duty to obey the law follows from this

Edmundson, State of the Art: The Duty to Obey the Law

-**Mixed Accounts**: Samaritanism combined with fair play generates a duty to obey the law.

-“Each person has an obligation to obey the law as her fair share of the Samaritan task.”

The Samaritan argument is once again the consequentialist idea that we all have a duty to bring about the state as a way of avoiding the conflicts of the state of nature. What is added to this obligation is the idea that one must bear one’s fair share in bringing about the state. Some might say that disobedience on one’s part will not make a state fall apart, so one has no obligation to obey. But this ignores the idea that one must do one’s own part.

Argument from Associative Obligations

-The duty to obey the law arises from certain relationships we have with one another. These relationships are not volitional but rather attach to membership in some biological or social group. An example would be familial obligations, like the one I have with my mother.

-Can we reduce these obligations to ones we have by virtue of being a human being?

-I have an obligation to save my mother from drowning if I can because she is a

*human being* more so than because she is my *mother*.

-**Dworkin**: When you participate in a community, you are, in a sense, in your own moral world. There are certain obligations you have in these communities.

-When you are an American, you are a part of this world that gives you a prima facie obligation to your fellow citizens to obey the law.

-But what about Nazi Germany? Associative obligations do not apply to ALL communities. There must be four conditions:

1. Special: distinct, rather than general duties

2. Personal: run from each member to each member, rather than group as a whole

3. Pervasive: they must flow from general responsibility for the well-being of group

4. Egalitarian: group’s practices must show an equal concern for all members.

-The above four conditions constitute a **bare community** – a community that meets the generic or geographical or other historical conditions identified by social practice as capable of constituting a fraternal community.

-Do associative obligations give members of the community a duty to obey ALL laws in the society that satisfies the four conditions?

-You only have a duty to obey the laws AFTER interpretation, once you figure out the

deep meaning of your society and its laws.

-When you engage in interpretation, you take your community as given and draw out

the good, moral laws.

-Two restrictions for associative obligations: (1) must meet the four requirements of a bare community and (2) must draw out what is *really* the law of your community, after interpretation.