Still working on arguments for a generic prima facie moral duty to obey the law

What about voting (or the possibility of voting) as consent?

* problem 1 – not all states are democracies –
  + so can’t argue for a *generic* p-f duty to obey all law
  + if truly generic, then there would be a p-f duty to obey in dictatorship
* problem 2 - not everyone in a democracy has the ability to vote
  + so not even enough for a generic duty to obey the law of all democracies
* but questionable that voting is indicative of consent
  + Just because it is a democracy, does not make it moral- democracy merely means voting as society- not all decisions made are necessarily moral or just
  + if you vote for the winning side you might be understood to have consented to it
    - is that even true? the options you were presented with we not a matter of your choice
  + but what if your side loses? How have you consented to the result by voting against it?
    - can one vote even really matter enough to make it valid to hold person to results of election- look at VA recent local elections where it did matter in contrast to larger national elections where one vote was of little consequence
    - your vote could be just the attempt to do your best to avoid the bad consequences of the other side winning
  + it is different if you consented to be part of the democracy by staying
    - but in that case the act of consent would be *staying*, not voting
    - staying would be sufficient to consent to obey law even if the government were not a democracy
* compare arguments for a p-f duty to obey laws of a democracy that do not appeal to consent
  + some people think there is a duty to create and support a government in order to avoid the state of nature
    - compare Lockean idea that leaving state of nature is not a duty but is a matter of choice/consent
  + if there is such a duty then there might be a duty to create a democracy as the best means of government
    - that might create a p-f duty to obey the democracy’s laws
    - we shall get to such a consequentialist argument later
    - but this is not an argument from consent – it is an argument from the duty to create and support the democratic state, independently of one’s consent

Rule Consequentialism/Utilitarianism arguments

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.

this causes some puzzles

there are two ways of looking at this act utilitarian argument

* 1) one could say that there is a pf duty to obey the law because *some* good consequences will come from it, even if what results is not the best consequences
* Smith – the problem with that argument is that it would mean that there is a pf duty to kill people because some good consequences would come from that – namely reduction in the population
* 2) that means the only pf act consequentialist duty is the duty to bring about the best consequences
  + but it is obviously not the case that obeying the law will always bring about the best consequences (be optimific) so the argument fails
* Green has a problem with this strategy by Smith – don’t we say that there is a prima facie duty to bring about particular good consequences (say the reduction of pain) even if we recognize that that act might not be optimific – is Smith saying that there is something wrong with that talk?
* it seems odd to conclude that there is only one consequentialist pf duty – the duty to bring about the best consequences
* could one say that the pf duties to bring about particular good consequences (even if the consequences are not optimific) that Green is talking about are not really there, but are simply rules of thumb we use because of ignorance
  + Stephanie thinks this is the correct view
* this would make them like prima facie rules in the lawyer’s sense (that is evidentiary presumptions)
* the prima facie obligations that Smith talks about are actual obligations that prima facie because they are weighed against one another to figure out what one should do – they are not prima facie because of ignorance
* or could one say that there is only one actual obligation (do the right thing) and that all prima facie duties are actually prima facie because they are evidentiary

Let’s move on to rule utilitarian arguments for a prima facie duty to obey 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.