**Hold overs from last article**

Consequentialist Duties

* Article argues that can’t be act consequentialist duty to obey the law because it doesn’t always bring about the best consequences
  + the idea is that there can be only one prima facie act consequentialist duty – the duty to bring about best consequences
  + Green had a problem with this move (see last class’s notes)
    - he thinks you might be able to have multiple prima facie consequentialist duties:
      * they would be weighed against each other the way other pf duties are
    - Stephanie’s (and Smith’s) view is that there must be a prime criterion of consequentialist duties – what is optimific
    - We talk about prima facia duties because we are ignorant of what is optimific

Green – maybe all prima facie duties aren’t real but are only the result of our ignorance?

eg I promise to take you to the zoo

I treat this as a pf obligation because I am ignorant of all the exceptions to it, but if an exception applies (eg my mother needs to go to the hospital) there actually is no duty at all

how do we know which of these is the case when I promise to take you to the zoo and then take my mother to the hospital instead

1. I had no duty to take you to the zoo (not even a pf duty) because an exception to that duty applied
2. I had a pf duty that was overridden by my duty to my mother
   1. the duty is still there even though it was overridden

* under 1) no need to be sorry about not taking you to the zoo

under 2) there is a reason to be sorry

* + many philosophers argue for 2) - the obligation exists because it expresses itself in other moral attitudes (saying sorry)

Rule utilitarian obligation

* If you have a rule so that everyone abiding by the rule will bring about good consequences, you have an obligation to abide by the rule. — this kind of devolves into act utilitarianism.

Green: Smith’s discussion of rule and act utilitarian arguments for a duty to obey the law get us quickly into hard problems in moral theory – problem is nature of prima facie consequentialist duties generally

let’s just assume a prima facie consequentialist duty to bring about and support a just state

(to avoid state of nature) –

* can you use that to justify a pf duty to obey the law?

problems:

* particularity problem – this is a duty to all countries, not just to your own
* the duty to obey the law arguably ties you to your own country
* Green thinks this objection is less of a problem than it seems – after all, when you are in your own country your actions are usually relevant to supporting that country
* there are not many opportunities to support France in the US

the real problem is that it does not seem necessary to obey all laws in order to support the government

* disobeying bad law’s in private won’t cause a problem
* there are many reasons to obey law other than a duty to obey the law
  + punishment
  + the content of much law is moral
  + etc.

what is the weight of the duty to obey the law even if it does exist?

* not much
* tests to see weight of a duty A
  + test 1 - if you violate duty A but no other, how bad is it
  + test 2 - if you take a violation of duty B and then add a violation of duty A to it how much worse does it make it?
* example where only duty to obey the law and not other duties are violated
  + sitting at light when there are no other reasons to stay there (no chance of punishment accident etc.)
    - how bad to drive though light
    - doesn’t seem that bad
* test 2
  + imagine you kill someone and so violate a moral duty
    - how much worse is it when you add that murder is illegal
    - not much
* so duty to obey law doesn’t seem to add up to much
  + even concerning a democratic just state…

Associative Obligations for duty to obey the law

* More like deontological duties tied to relationships, not created by consent
* Maybe have these obligations towards nations
* Dworkin (quick & dirty)
  + The associative obligations you have are interpretive obligations
    - they are not what people in the group happen to think they are
    - must interpret the group’s practices to discover their deep meaning
  + Ex. In group where people tip hats
    - Non moral obligation to tip hat that is found by how you interpret the action. You try and make it more of what it really is. Duty of courtesy that can expand.
  + Associative obligation to abide by the law, but what is the law?
    - Result of interpretation of legal practices, the deep meaning of those legal practices.
      * Ex. Brown v. Board—segregated education was always wrong but we just discovered that preexisting the obligation over time.
      * same thing goes on in common law reasoning
      * explains how the rules can be applied even though no court had articulated them before – they were there anyway
      * avoids associative obligations from sounding fascist

**Legal Right (Hohfeld)**

* Problems of ambiguity with normal understanding of a right
  + Ex. Terrorist will press button and kill a bunch of people (time sensitive). Terrorist grabs you and uses you as shield. Police are shooting at you both. Terrorist gives you a gun. Can you defend yourself? (can’t shoot terrorist)
* Normally understand a right as putting duties on other people
* Right of self-defense creates no duties/obligations in above situation.
* Other understanding of a right!
  + *Claim Right* correlated with a duty
    - Ex. X has a claim against Y to phi (that Y perform act A).
      * Same as Y has a duty towards X that Y phi
    - Ex. Green’s claim against me to not drink his coffee, is my duty towards him to not drink his coffee
  + *Privilege* *Right (absence of duties)*
    - Ex. X has a privilege against Y to shoot Y / Y doesn’t have a claim against X that X not shoot Y.
      * Aka. X has no duty not to shoot Y
    - *No Claims*—many of these
* Irish Supreme Court Example
  + Woman claims the person who helps her commit suicide has a right to do so
  + Court says no, otherwise other things would follow *– government would have a duty to protect and support the person aiding her*
    - but she is arguing that the aider has a privilege not a claim
      * ct consuses the two
  + If someone assisting in suicide had a privilege to do this but not claim.
    - You help her commit suicide, but then state has no claim because you violated no duty. But there is also no duty of non-interference on the privilege holder.
    - Government can stop it if they find out it is going on. Battle going on without duties
* Ex. Throwing you in jail because they are enforcing pre-existing duties vs. they have the privilege to throw you in jail. Interesting juxtaposition

First Order

* Claim Privilege (corners are opposites / Up and down are correlated)
* Duty No Claim

2nd Order

* Power Immunity
* Liability Disability

Can you have a power with respect to yourself

* Yes, take things (that are allowed)