What it means for government to be legitimate

* We are philosophical anarchists- no duty created by existence of law
* Sub-set of laws of governments that are legitimate- what does this mean?
* Making moral claim when saying legitimate
* Standard view of governmental legitimacy- idea is if government has legitimacy, means then have duty to obey the laws
  + Applbaum says also under the standard view there is an *immunity* from outside interference
  + Immunity as Hohfeld uses it is a lack of vulnerability to a power
  + not what A means
  + so should say instead that under the standard view a legitimate government has a claim against other countries against interference in its enforcement of law
  + Legit government under standard view also surely has privilege to punish people who violate duties created by laws, though Appl does not mention this

Three possibilities per Applbaum

* 1 standard view (see above)
* 2 Governmental Privilege to Punish (Justification right view) – this is Ladenson’s view
* Government enacts a law, and is privileged to punish
  + But enacting a law does not create a duty of obedience (nor probably a claim against third parties against interference, although Ladenson does not mention this)
  + When government punishes you, government is violating no duty to you
  + If illegitimate government, on the other hand, no privilege to punish for violating laws (i.e. Nazi Germany)
* Mere fact that we don’t have duty to obey law, doesn’t mean we don’t have duty to create legitimate government to enforce the laws
* What might be the justification for such legitimacy? (Notice Appl does not talk about this)
  + Hobbesian idea of the state
  + having an entity with sole capacity to punish is necessary to avoid conflict
  + if such an entity arises, then it must be permitted to punish, even though we have no duty to obey
* If Standard Approach is right, how does it explain civil disobedience?
* Civil Disobedience tied to legit government
  + If the gov’t were illegitimate than one could resist it more fully than what is allowed under the doctrine of civil disobedience
  + Civil disobedience involve the acknowledgement that the government is legitimate although the law enacted is wrong
* Issue w/ civil disobedience under standard picture
* If have duty to obey, no justification for civil disobedience
* What about idea that civil disobedience might be permissible even if there is a duty to obey the law of the legitimate state, because the duty is a prima facie one that is overridden by the bad content of the law
* Applbaum rejects this possibility- he offers an argument against the existence of prima facies that is, duties that exist even when overridden
* For Appl if you promise to take someone to Zoo, and have to take your mother to hospital, you do not violate your duty to keep your promise- instead there simply is an exception
* If not obeying law is permissible, must mean an exception to the duty to obey the law applies, meaning government isn’t legitimate under the standard picture
* So which is right? Prima facie duty or exception rule approach?
  + Hard to tell because Difference doesn’t make a difference to what you all things considered ought to do
    - (under both views you should take your mother to the hospital)
  + but instead issue of how we think about morality itself
* Argument for Prima facie duty:
  + idea of regret for not keeping your promise
  + And the existence of a duty to apologize
    - Moral remainder- even though duty overridden, still should say sorry.
  + Appl: but one might say instead that when you drive mother to hospital, a new duty to apologize is created
    - The apology is tied to this new duty, not the continued existence of the duty to keep your promise
    - In effect, taking a mother to the hospital is the exercise of a power
    - Green: I had problems with this argument, since it’s hard to understand why there’s a duty to apologize unless you’ve violated the duty to keep the promise
* Applbaum says that needn’t feel remorse, but gratitude and regret are in order
* Civil disobedience- supposed to be peaceful, open + accept consequences when disobey
  + Narrow view about what you do as civil disobedient- does not fit in well with idea of prima facie duties being overridden
  + Overriding does not explain overall character of civil disobedience
  + Special response in particular circumstances to legitimate government
* Green: what about fact of moral conflict
* eg promise two people to do two different things at the same time
  + will do something wrong no matter what
  + doesn’t that support the prima facie theory?
* how about civil disobedience under the Ladensonian theory-
* All it means for gov to be legitimate is that when government punishes, morally permissible
* Is this too inclusive- does not explain narrow nature of what’s permissible with civil disobedience
* Appl argument against the Ladensonian view
  + Burning Rubbish/Raz example – privilege to act in way that impedes upon another is not authority
  + (A) Privilege to have smoke go into neighbor’s yard (B), in this case (B) privileged to blow the smoke back- B has no duties
* Green: but that example does not involve orders
  + consider POW camp
  + there is an order not to escape that does not create a duty not to escape but there is a privilege to punish for escaping
  + that certainly sounds like a type of authoirty
* what matters is what is conceptually possible

Now 3rd approach

* Applbaum
* Both Raz and Ladenson have issues explaining civil disobedience
* Applbaum says whole area in between, less than Raz and more than Ladenson
* Bad laws but legit government (clamdigger, has always used right of way to beach, land owner gets injunction w/ law misapplied- clamdigger ignores and keeps going to beach)
* What was moral status before and after the injunction?
* Before: clamdigger has privilege to go to beach and duty of beach owner to not interfere.
* under Ladenson – nothing changed
  + all laws ever means was announcements of policies of permissibly punishing people
  + Now announced new policy of punishing clam digger for going down to beach
* What happened under Raz’s standard theory- court judgement wrong but legit, under Raz, when court says don’t go to beach, Clamdigger now has duty not to go to beach. Beach owner has privilege to interfere
* In between Raz and Ladenson-
* clamdigger still has privilege, but beachowner’s duty not to impede has been turned to a privilege to impede (this is the power approach)
* By and large, would expect government’s laws to create duty of obedience
* Government is going to say laws do more than merely be legitimate in A’s sense

red light example

* Under Ladenson- light being up does not change moral status, but announcement of possibility of punishment
* Raz theory- moral duty to stay at the light with announcement, when violate duty gov is privileged to punish
* Under Applbaum, there is another possibility: when light put up, new duty- by turning right, have duty to pay. This possibility should be acknowledged- obligation to pay only if violates law